

CANADA / JUDGMENT

TB8-25010

COURT

Refugee Appeal Division

DECIDED

27 July 2020

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RAD File / Dossier de la SAR : TB8-25010 TB8-25011 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision July 27, 2020 Date de la décision Panel Joel Bousfield Tribunal Counsel for the persons who are the subject of the appeal Rodney L Woolf Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] This is the decision in the appeals of XXXX XXXX XXXX (the principal appellant) and XXXX XXXX XXXX (the minor appellant). The minor appellant is a citizen of the United States of America (U.S.). The principal appellant alleges that she is a citizen of Somalia. They appeal the Refugee Protection Division (RPD) decision dated September 5, 2018, rejecting their claims for refugee protection. They are requesting that the Refugee Appeal Division (RAD) set aside the RPD's negative determination and find that they are Convention refugees or persons in need of protection. In the alternative, they request that the RAD refer the matter back to the RPD for redetermination by a differently constituted panel. They have not submitted new evidence or requested an oral hearing.

DETERMINATION

- [2] The RAD dismisses the appeal of the minor appellant and confirms the decision of the RPD that the minor appellant is not a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).¹ The RAD allows the appeal of the principal appellant and sets aside the decision of the RPD concerning her. The RAD substitutes the determination that, in its opinion, should have been made, namely that the principal appellant is a Convention refugee, pursuant to section 111(1)(b) of the IRPA.

BACKGROUND**Bases of Claims**

- [3] The principal appellant fears that there will be no one to care for or protect the minor claimant if he returns to the U.S.

- [4] She fears that she will be persecuted by Al-Shabaab and her ex-husband if she returns to Somalia. The rest of the central allegations in her case are set out in paragraphs [4] through [7] of the RPD decision. RPD Decision
- [5] The RPD rejected the claim of the minor appellant because it found that he did not have a well-founded fear of persecution on a Convention ground and that, on a balance of probabilities, he would not be personally subjected to a danger of torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment if he returned to the U.S.
- [6] The RPD rejected the claim of the principal appellant because it did not believe that she is a citizen of Somalia.

ANALYSIS

Determinative Issues

- [7] The determinative issues in this appeal are whether the RPD made national identity assessment errors regarding the claim of the principal appellant and objective basis assessment errors regarding the claim of the minor appellant. For the following reasons, the RAD finds that the RPD did make national identity assessment errors with the claim of the principal appellant but that it did not make objective basis assessment errors with the claim of the minor appellant.
- [8] In rendering this decision, the RAD has considered Chairperson's Guideline 4.2 The RAD has also done an independent assessment of the record. The RAD is reviewing the RPD decision on a standard of correctness. Principal appellant
- [9] The RPD drew a negative inference about the principal appellant's Somali citizenship because it decided there were irregularities in her birth certificate and in a supporting identity letter from XXXXHospital in Somalia, and that she was unable to provide reasonable explanations about them - see paragraphs [25] - [44] of the RPD decision. The RPD relied on spelling errors in an English translation of her birth certificate, documentary evidence indicating that fraudulent identity documents are common in Somalia, internal contradictions in her testimony as to the first name of the person who helped her obtain the birth certificate, the fact that the letter from XXXXHospital appeared to have been produced by an inkjet or color printer, and her failure to call the author of the letter as a witness in the hearing. The RPD therefore found both documents to be fraudulent.
- [10] The appellants argue that the RPD should not have made these findings. The appellants argue that the spelling errors were the principal basis upon which the birth certificate was discounted by the RPD, and that it is not inherently implausible that an English translation of a genuine Somali birth certificate would contain spelling errors, particularly when the RPD itself acknowledged that English is not a Somali official language and that documents do not have to be perfect. The appellants argue that the RPD also had no basis upon which to infer that the inkjet or colour printing of a letter by a Somali hospital is implausible

because there is nothing in the country documentary evidence to indicate that a Somalian hospital would not do such a thing. Having reviewed the record and assessed it independently, the RAD completely agrees with these arguments. In the RAD's view, it is not clearly implausible that an English translation of a genuine Somalian birth certificate would contain spelling errors, nor is it clearly implausible for a Somalian hospital to print a genuine letter using an inkjet or colour printer. The RPD therefore erred in making these findings. The RAD finds further that the rest of the bases relied upon by the RPD to discount these documents are insufficient in themselves to support a finding that they are not genuine. The RAD therefore finds, contrary to the RPD, that both documents are genuine, on a balance of probabilities.

- [11] While it is true that there were some contradictions between the principal appellant's testimony and that of her identity witness, as the RPD noted, the RAD disagrees with the RPD about their significance. In the RAD's view, the totality of their overall testimony was more consistent in terms of what they know about each other than it was not. The RAD therefore declines to draw any negative inferences about the appellant's alleged Somalian citizenship based on the few contradictions between her testimony and that of her identity witness.
- [12] Having made these findings, the RAD finds that it is satisfied that the principal appellant is a citizen of Somalia, on a balance of probabilities. While the RPD also drew a negative inference from her failure to produce her XXXX XXXX documents, the RAD declines to do so because this failure is not directly probative of whether she is a citizen of Somalia. Moreover, the RAD finds that this failure would still be outweighed in the overall final national identity assessment balance by the birth certificate, the letter from XXXX Hospital and the testimony of her identity witness, all of which the RAD has found credible.
- [13] The affirmed evidence of refugee claimants is presumed to be true unless it is internally inconsistent, inherently implausible, or inconsistent with the documentary evidence on country conditions.³ Having reviewed the record and assessed it independently including a transcript of the hearing, the RAD finds no such issues with the rest of the principal appellant's evidence in its independent analysis in relation to the central allegations of her claim against Somalia. The RAD therefore finds that she is a credible witness and that the central allegations in her claim against Somalia are all true, on a balance of probabilities.
- [14] The documentary evidence⁴ on country conditions indicates that Al-Shabaab continues to perpetrate serious human rights abuses against persons in Somalia whom it perceives to be allied to foreign powers and/or opposed to its views of Islam, that violence against women is also a serious problem, that Somalia does not have a sufficiently functioning government to provide adequate protection, and that viable internal flight alternatives within Somalia are probably not available to victims. The RAD is therefore satisfied, on a balance of probabilities, that her claim is well-founded and that adequate state protection and viable IFAs are not available to her in Somalia. Minor appellant

- [15] The RPD was sympathetic to the principal appellant's wish to care for her own child. However, it rejected the minor appellant's claim because it found that the appellants had failed to establish a forward-facing risk to him in the U.S. that would fall within the legal definition of refugee protection.
- [16] The appellants argue that the RPD should not have made this finding. They argue that the RPD did not conduct an adequate forward-facing risk analysis in relation to his claim. The RAD disagrees with this argument. The RPD did conduct a forward-facing risk analysis of his claim. As any childcare risk to him in the U.S. clearly falls outside of the definition of a Convention refugee or a person in need of protection, it was correct for the RPD to simply say so as it did without a lengthy analysis. In its independent analysis, the RAD finds that it agrees with the RPD on this point. The RAD therefore finds that the minor appellant does not have a well-founded fear of persecution on a Convention ground and that, on a balance of probabilities, she would not be personally subjected to a danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to the U.S.

CONCLUSION

- [17] The RPD made national identity assessment errors which are fatal to the RPD's determination of the principal appellant's claim.
- [18] After an independent assessment of the evidence in the case, the RAD has arrived at positive conclusions about the principal appellant's Somali citizenship and the central allegations in her case. The RAD also finds that her fear of persecution in Somalia is objectively well-founded, that adequate state protection is not available to her, and that she does not have a viable IFA anywhere in Somalia.
- [19] The RAD therefore finds that the principal appellant has a well-founded fear of persecution in Somalia at the hands of Al-Shabaab and her ex-husband by reason of her gender and her perceived political opinion.
- [20] The RAD therefore allows her appeal and sets aside the decision of the RPD as it concerns her claim. The RAD therefore substitutes the determination that, in its opinion, should have been made, namely that the principal appellant is a Convention refugee, pursuant to section 111(1)(b) of the IRPA.
- [21] However, the RAD finds the RPD's decision concerning the minor appellant is correct. The RAD finds that the minor appellant does not have a well-founded fear of persecution on a Convention ground and that, on a balance of probabilities, he would not be personally subjected to a danger of torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment if he returned to the U.S.
- [22] The RAD therefore dismisses the minor appellant's appeal and confirms the decision of the RPD that the minor appellant is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the IRPA. (signed) JOEL BOUSFIELD Joel

Bousfield July 27, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant section 159(1)(h) of the Immigration and Refugee Protection Act. 3Maldonado v. Canada (M.E.I.), [1980] 2 F.C. 302 (C.A.). 4 Exhibit RPD-1, RPD Record, Exhibit 13, National Documentation Package (NDP) for Somalia (March 29, 2018), p. 265. See all items in sections 1, 2, 4, 5 and 10.

RAD File / Dossier de la SAR : TB8-25010 TB8-25011 RAD.25.02 (January, 2020) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (January, 2020) Disponible en français

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