

Federal Court



Cour fédérale

Date: 20250414

Docket: IMM-7414-24

Citation: 2025 FC 683

Ottawa, Ontario, April 14, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

FARDOWSA AHMED MOHAMED

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Refugee Protection Division [RPD] in which it granted the application of the Minister of Citizenship and Immigration [Minister] seeking to vacate the Applicant's refugee status under s 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] On May 28, 2018, the Applicant made a refugee claim in Canada under what the Applicant alleges is her true identity, Fardowsa Ahmed Mohamed, a citizen of Somalia, who was born on March 12, 1996. She alleged that she was at risk of persecution in Somalia and that she entered Canada via Turkey using a false Canadian passport in the name Yasmin Mohamed. On May 10, 2019, the RPD accepted the Applicant's refugee claim, based on her Somali identity, and found her to be a Convention refugee.

[3] On March 20, 2021, the Minister brought an application to vacate the Applicant's refugee status. The Minister asserted that the Applicant had misrepresented or withheld material facts regarding her true identity. Specifically, that the Applicant's true identity is Khadra Jama Mohamed, a Kenyan national born on February 7, 1999. She entered Canada travelling on a valid Kenyan passport and using a student visa, both in that name.

[4] During the course of the vacation hearing, the Applicant acknowledged that she had traveled to Canada using the valid Kenyan passport bearing the name Khadra Jama Mohamed, which she claimed to have improperly acquired via an agent. However, she asserted that her true identity is Fardowsa Ahmed Mohamed and that she is a Somali national.

[5] The RPD's decision granting the vacation application is the subject of this judicial review.

Decision Under Review

[6] The RPD described the allegations contained in the Minister's application to vacate and the Applicant's response.

[7] The RPD stated that the Minister has the burden of proof in establishing that the protected person directly or indirectly misrepresented themselves or withheld material facts relating to a relevant matter at their refugee claim. At the hearing, the Applicant had acknowledged that the Kenyan passport, which she used to travel to Canada, was legally valid although obtained by an agent. The RPD held that the Canadian jurisprudence reflects that possession of a national passport is presumptive evidence of citizenship. Referring to the Minister's evidence, the RPD found that the Applicant used the Kenyan passport to travel to Canada. Therefore, her citizenship was presumptively Kenyan. Further, that the Applicant had not sufficiently rebutted the presumption with any credible evidence.

[8] The RPD then discussed its comparison of photographs of the Khadra Jama Mohamed and Fardowsa Ahmed Mohamed. It concluded that this revealed that they are the same person and that it is empowered to make a finding that an applicant is or is not the person appearing in a photograph and need not resort to expert testimony (citing *Olaya Yauce v Canada (Citizenship and Immigration)*, 2018 FC 784 [*Olaya Yauce*]). The RPD found, on a balance of probabilities, that Khadra Jama Mohamed (who applied for a Canadian study permit and who had photos taken of her at a medical examination in Kenya for that purpose), and Fardowsa Ahmed Mohamed

(who applied for refugee protection and had photographs taken of her in that regard), are the same person.

[9] As to the Kenyan documentation, the RPD noted that the Minister had submitted several Kenyan documents provided by the Applicant in her application for a Canadian student visa, which application she alleged was made via an agent. This included the valid Kenyan passport issued to Khadra Jama Mohamed with her photograph, bearing the number A2245953, issued in Nairobi on August 29, 2014, and valid until August 24, 2024 [Kenyan Passport], a secondary school leaving certificate, a copy of her transcript, a birth certificate and personal statement all in the name of Khadra Jama Mohamed, as well as the record of the Khadra Jama Mohamed's attendance for a medical examination in Kenya on September 2017 in connection with the student visa application. The RPD noted that the Minister submitted that the Applicant is a Kenyan national who failed to disclose this information at her refugee hearing with the result that the RPD was denied the opportunity to assess the refugee claim with the correct reference to Kenya.

[10] The Applicant adduced an affidavit from Jama Mohamed Ali, who, according to the Applicant, is Khadra Jama Mohamed's father. After reviewing the content of the affidavit, the RPD found that it failed to provide any evidence of this alleged daughter, an alternate or the "real" Khadra Jama Mohamed's existence. The RPD drew a negative inference from this material omission and allocated no probative value to the affidavit.

[11] The RPD then turned to the Applicant's Somali documents submitted in response to the vacation application. This included a DNA report and Somali passport for a woman the Applicant purports is her mother. Referring to the National Documentation Package [NDP] information for Somalia, the RPD found that official documents issued by the Somali government are not reliable as there has not been a functioning state government since 1991. It also acknowledged the Minister's submission that the Canadian government and other democratic nations do not recognize Somali passports as authentic and reliable travel documents, as well as the Applicant's argument that the passport is a valid travel document because the passport's owner used it to successfully travel to Saudi Arabia. The RPD concluded that the passport has no probative value and failed to establish the Applicant's Somali nationality.

[12] The RPD also considered the testimony of Mohamed Gilao, who was proposed by the Applicant as an expert at confirming Somali nationality. Having reviewed Mr. Gilao's resume and considered his testimony, the RPD found that he is not an expert in establishing the Applicant's nationality.

[13] Ultimately, on the evidence and submissions before it, the RPD concluded that the Applicant's misrepresentation was material, and a causal connection exists between the withholding of a material fact (her Kenyan nationality) and her favourable consideration as a Convention refugee from Somalia. As such, the RPD granted the application to vacate the Applicant's refugee status.

Issue and Standard of Review

[14] The sole issue arising in this matter is whether the RPD's vacation decision was reasonable.

[15] Reasonableness review asks this court to: “develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

Preliminary Issue

[16] On March 21, 2025, the Applicant filed a motion seeking an order striking from the record the translation of a portion of the Applicant's evidence given at her vacation hearing before the RPD on March 21, 2024. The Applicant submits that 34 seconds of her testimony (which she delivered in the Somali language) was inaccurately translated into English, and that the Respondent has relied on this inaccurate translation in their submissions.

[17] The motion record includes the affidavit of Hodan Said [Said Affidavit], the receptionist and office manager at the Applicant's counsel's law firm, which states that, at the request of counsel for the Applicant, the affiant reviewed the Respondent's Further Memorandum of Argument at paragraph 28, which quotes the RPD transcript and indicates that the Applicant

referred to the passport that was in her possession as “my passport”. Upon then listening to an audio file of the Applicant’s original Somali testimony, the affiant concluded that “nowhere does the applicant refer to the passport as ‘my passport’”. The affiant also attached as exhibits two certificates of translation from two interpreters (who are said to be accredited as interpreters with the Immigration and Refugee Board), neither of which translations include the phrase “my passport.”

[18] The Applicant submits that the inaccurate interpretation in the record is clearly prejudicial, must be struck from the record and be replaced by either of the translations provided by the interpretations attached as exhibits to the Said Affidavit.

[19] In response, among other arguments, the Respondent submits that the Applicant could have, but ultimately did not challenge the quality of the interpretations during the hearing and, accordingly, she has waived the right to object to the interpretation. The Respondent refers to *Mohammadian v Canada (Minister of Citizenship and Immigration)* (CA), 2001 FCA 191 (CanLII), [2001] 4 FC 85, at paragraph 13 [*Mohammadian*], where the Federal Court of Appeal upheld the analysis of Justice Pelletier (as he then was), finding that “waiver results if an objection to the quality of interpretation is not raised by the claimant at the first opportunity during the hearing.” Barring exceptional circumstances, there is an onus on a claimant to raise this issue where it is reasonably possible to do so. Waiver of a right to object may be inferred from a person’s conduct:

[18] [...] Indeed, where a claimant chooses to do nothing despite his or her concern with the quality of the interpretation, the Refugee Division would itself have no way of knowing that the interpretation was in any respect deficient. The claimant is always

in the best position to know whether the interpretation is accurate and to make any concern with respect to accuracy known to the Refugee Division during the course of the hearing, unless there are exceptional circumstances for not doing so.

[20] The Respondent submits that *Mohammadian* remains good law and has been consistently cited by this Court, including in recent years (for example: *Espitia Amador v Canada (Citizenship and Immigration)*, 2024 FC 339 at para 35; *Mekengo v Canada (Citizenship and Immigration)*, 2025 FC 132 at para 16).

[21] I am dismissing the Applicant's motion.

[22] The Applicant is asking the Court to strike her testimony as interpreted by the RPD interpreter and transcribed, and to replace it with either of the two unsworn translations provided as exhibits to the Said Affidavit – which interpretations, I add, are not identical. The Applicant does not refer to any rule in the *Federal Court Rules*, SOR/98-106 or elsewhere that would permit this. This is not a situation contemplated by Rule 221(1), which permits pleadings to be struck out on the grounds described in that rule, including failing to disclose a reasonable cause of action. Nor does the Applicant provide any jurisprudence in which this Court has granted a similar request.

[23] The Applicant does not suggest that she raised this concern at the hearing. Indeed, at the hearing, the RPD noted that the Applicant is knowledgeable in English and that:

At a sitting held on July 14, 2023, the record was struck when the Respondent alerted her counsel that the interpretation in English was inaccurate. The interpreter audit confirmed the same. Furthermore, counsel, during the last sitting on March 21, 2024,

instructed the Respondent to alert all parties if the interpretation in English of her viva voce testimony in Somali was inaccurate. The panel finds on a balance of probabilities that counsel comments indicates that he finds the Respondent's knowledge of English more reliable than an Immigration and Refugee Board certified interpreter.

[24] The transcript of the March 21, 2024, hearing includes the following exchange about interpretation:

[M. Berger]...The second point is with respect to interpretation. So we know that it was an issue in a previous hearing with interpretation. And the respondent, Fardowsa, still would like to proceed with the assistance of the interpreter, but her English has dramatically improved over the years. And I can say that yesterday I interviewed her, I would say 95 percent in English without needing an interpreter. So I was gonna suggest that if Fardowsa feels that a particular phrase was not interpreted the way she had wanted, she can just simply just say that phrase in English to you.

[25] However, rather than raising the interpretation concern with the RPD at the hearing or even when the transcript was received (the transcript indicates that it was completed on January 28, 2025), the Applicant now seeks to admit new evidence on judicial review and substitute it for the evidence as transcribed at the hearing.

[26] In my view, if the Applicant had a concern with the RPD's official translation, this should have been raised with the RPD, as she had done on a prior occasion. I agree with the Respondent that in these circumstances, the Applicant has waived her right to object to the interpretation. Nor has the Applicant established that it is even open to the Court to strike out portions of the official transcript and replace it with new evidence.

[27] And, in any event, little turns on this evidence that the Applicant's motion purports to resolve (i.e., that she did not say "my passport" in reference to the Kenyan passport in her RPD testimony). It is not determinative to my analysis below.

[28] Finally, I would observe that counsel for the Applicant, in replying to the Respondent's response to the motion to strike, asserts that counsel for the Respondent "is attempting to block the accurate translation of a phrase used in the Applicant's evidence from being considered by the Court. This is antithetical to counsel's role." This comment is unfounded, unwarranted and inappropriate. Counsel for the Respondent's arguments are based on the evidence and the law.

The Decision was Unreasonable in Part

Applicant's position

[29] The Applicant argues that she made clear at the hearing that the Kenyan passport was improperly obtained, that it did not belong to her, and that it belonged to a different individual named Khadra Jama Mohamed. For the RPD to use the term "her" Kenyan passport, suggests that the RPD did not properly understand or ignored the Applicant's explanation. The Applicant submits that the burden is on the Minister to demonstrate that the Applicant is the authorized holder of this passport, and the Minister failed to discharge this burden. In any event, she supplied clear and convincing evidence that she is Fardowsa Ahmed Mohamed of Somalia. Further, that the RPD did not compare the passport photo to photographs in the study permit application, which should have been the first step undertaken in verifying the Applicant's explanation.

[30] She also submits that the RPD erroneously: gave the affidavit of Jama Mohamed Ali no probative value; ignored Asha Ahmed Shire's DNA test result, which establishes that she is not the mother of the Applicant; gave the Applicant's mother's DNA test result no probative value without explanation; and, failed to consider the Applicant's mother's Somali passport as a valid identity (as opposed to travel) document. Additionally, that it was a capricious finding of fact for the RPD to conclude that the Applicant failed to provide any credible evidence that she is a national of Somalia, when she provided evidence to that effect at the initial refugee hearing. The Applicant also takes issue with the RPD's treatment of Mohamed Gilao's testimony and the RPD's finding that the Applicant's evidence was "evolving". She submits that she presented a plausible and credible account of how she travelled from Somalia to Canada and that the RPD's treatment of this was unreasonable.

Respondent's position

[31] The Respondent submits that the RPD specifically engaged with the Applicant's argument that her Kenyan passport was improperly obtained but genuine and, therefore, was not proof of her true identity. However, the RPD found that the Applicant had used and travelled on the Kenyan passport, withstanding scrutiny from security officials, which strengthens the presumption that the passport reflected her true identity. The RPD's reference to the United Nations High Commissioner for Refugees [UNHCR] Handbook's statement that a mere assertion by the holder of a passport that it was not issued to him or her is not sufficient to rebut the presumption of nationality, is directly applicable here, particularly in light of the RPD's other concerns with her supporting evidence. Moreover, the RPD is empowered to make a finding that an applicant is, or is not, the person appearing in the photograph of an identity document – this is

at the core of the RPD's expertise (citing *Olaya Yauce*). The Applicant's evidence as to whether it was her photo in the Kenyan passport was inconsistent. Further, the significance of the Applicant's evolving evidence was threefold: (1) her denial under oath that she did not possess the Kenyan Passport until April 2018, which was proven untrue by the Minister's evidence that she attended a medical exam in Nairobi on September 2017 and there used that passport as an identity document, impacted her credibility; (2) it established her presence in Kenya, which was relevant to the issue of her Kenyan citizenship; and (3) it proved that the Applicant's story of obtaining the Kenyan Khadra Jama Mohamed passport from an agent in April 2018 was not true, since she was in possession of the passport much earlier. That the Applicant attempted to conceal her earlier possession and use of the passport weighed against her, making it more likely that Khadra Jama Mohamed was the Applicant's true identity.

[32] Further, the RPD's treatment of the Applicant's various affidavits was reasonable. The RPD pointed out that she had amended her affidavit three times to respond to the Minister's evidence. The Respondent submits that this is relevant to credibility and the RPD was entitled to give the evolving evidence minimal weight. Further, its treatment of the affidavit of Jama Mohamed Ali was reasonable. If there was actually another Khadra Jama Mohamed, who was not the Applicant, then it should not have been difficult for her father to produce some independent corroborating evidence to support her existence. His affidavit also demonstrated that he was a willing participant in a scheme to mislead Canadian authorities in return for financial gain, which impacted his credibility. As to the secondary evidence presented by the Applicant, including the DNA test, the RPD provided detailed reasons for why it found that this was insufficient to rebut the presumption of citizenship. The RPD found that the Applicant is of

Somali ethnicity, but that she had failed to provide any credible evidence that she is a national of Somalia. The RPD did not err. It applied the presumption of citizenship based on the Applicant's possession of a Kenyan passport, it considered the evidence to the contrary, but gave it limited weight in view of the Applicant's lack of credibility and supporting evidence. It is not the role of the Court to reweigh the evidence.

Analysis

[33] Section 109(1) of the *IRPA* states as follows:

Vacation of refugee protection

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Rejection of application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

[34] As noted by the RPD in its reasons, and by Respondent, there are three elements to s 109(1) of the *IRPA*: (1) there must be a misrepresentation or withholding of material facts; (2) those facts must relate to a relevant matter; and (3) there must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other

(*Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 181 at para 7; see also *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 at para 35).

i. Presumption of Nationality

[35] The Applicant argues that the RPD misstated or entirely ignored the Applicant's evidence that her Kenyan passport was improperly obtained, that it did not belong to her, it belonged to a different individual named Khadra Jama Mohamed, and that the Applicant had no right to use it. I disagree. As noted by the Respondent, the RPD specifically engaged with this argument when it stated: "the Respondent acknowledged that her Kenyan passport was legally valid, however, obtained via an agent". Although the RPD referred to the Kenyan passport as belonging to "her" (i.e., the Applicant), this does not suggest that the RPD did not properly understand or otherwise ignored the Applicant's explanation. Rather, for the reasons it set out, the RPD was not persuaded by the Applicant's explanation that the Kenyan Passport belonged to an individual other than the Applicant.

[36] On this point, it was reasonable for the RPD to begin its analysis with the presumption that the Applicant is Kenyan and not Somalian. As held in *Fadhili v Canada (Citizenship and Immigration)*, 2022 FC 1121: "a passport is *prima facie* evidence of citizenship and the burden is on a claimant to rebut this presumption" (at para 32, citing *Abrha v Canada (Citizenship and Immigration)*, 2020 FC 226 [*Abrha*] at para 17). The RPD acknowledged this in its reasons. Further, the RPD accepted the Minister's evidence that the Applicant used the Kenyan Passport to travel to Canada (which included boarding aircrafts, and passing through customs, security

and immigration) during her journey from Nairobi to Toronto. Indeed, the Applicant ultimately conceded that this was true and that her story when seeking refugee protection (i.e. that she traveled via Turkey on a Canadian passport) was not true.

[37] The Applicant argues that the RPD's reliance on paragraph 93 of the UNHCR Handbook was unreasonable because it did not apply to the facts of this case. However, as noted by the RPD, paragraph 93 of the UNHCR Handbook states that "a mere assertion by the holder of the passport was not issued to him/her is not sufficient to rebut the presumption of nationality". I see no error in the RPD's finding that this reflects the Canadian jurisprudence, described above, and the Applicant's circumstance. While the Applicant proposes to reverse the burden, such that the Minister would be required to establish that the Applicant is the authorized holder of the passport, she offers no jurisprudence in support of this view. Thus, while the Applicant asserted that the Kenyan Passport did not belong to her, but to an individual who was not her by the name of Khadra Jama Mohamed, the RPD reasonably found that this assertion was insufficient to rebut the *prima facie* presumption that she is a Kenyan citizen (see *Abrha*, at paras 33–34).

ii. Photo Comparison

[38] The Applicant argues that the RPD's conclusion that the Applicant "acknowledged it is her photograph" in the Kenyan passport directly contradicts her testimony. Specifically, it contradicts her affidavit dated October 6, 2022. In that affidavit, the Applicant states, with regards to the Kenyan passport, "[t]he photo in the passport is not me." And later, "[t]he photo in Khadra's passport is not mine and I assume that the visa officer processing the study permit application believed that the passport photo and my own photo in support of the study permit

application were of the same woman.” The Applicant argues that this is a critical point because, if the RPD believed that the Kenyan passport was authentic and contained the Applicant’s photograph, then it would follow that the RPD would conclude that the Applicant was indeed Khadra Jama Mohamed from Kenya – even though, per the Applicant, she is not.

[39] First, this is what the RPD found. It stated that it found on a balance of probabilities, “that Khadra Jama Mohamed, a.k.a. Fardowsa Ahmed Mohamed is the same person.”

[40] That said, I agree with the Applicant that the RPD misstated the evidence, as found in the Applicant’s October 6, 2022, affidavit when it found that she had acknowledged that the Kenyan Passport photo was a photo of her. However, this was not determinative of the outcome because the RPD also conducted a photo comparison and found elsewhere that the Applicant was not credible nor trustworthy.

[41] The Applicant also submits that the RPD failed to compare the passport photo to the study permit application photo, which should have been the starting point in verifying her explanation.

[42] In its decision, the RPD stated that “[a] comparison of photographs of Khadra Jama Mohamed taken upon her arrival in Canada on April 5, 2018, and of photographs taken of the person using the alias Fardowsa Ahmed Mohamed during her refugee intake at the Etobicoke IRCC office on May 18, 2018, revealed that they are the same person.” Further, that the RPD had observed the Applicant’s facial features during the virtual hearings and also “undertook a

Careful and meticulous comparison of the photographs taken of the [Applicant] upon her application for a study permit, her entry into Canada using her Kenyan passport, and when she initiated her refugee claim in Canada as a person of Somali nationality.” The RPD found that a comparison of the photographs revealed that, on a balance of probabilities, they are the same person. The photograph taken of Khadra Jama Mohamed on September 29, 2017, when she attended at her medical exam in Nairobi, Kenya, demonstrated for the RPD that it resembles the Applicant who appeared before the RPD during the vacation proceedings.

[43] A copy of the Kenyan Passport, with photo, is found in the Certified Tribunal Record [CTR] as part of the study permit application. That application also contains another photograph. The CTR also contains a comparative photo sheet (part of the Minister’s disclosure package) with a photo described as the “REF-CLM IDENTITY” (Fardowsa Ahmed Mohamed) and a second photograph described as the “STUDY PERMIT IDENTITY” (Khadra Jama Mohamed). The CTR contains a second comparative photo sheet entitled “Additional Photographic Comparison”. This compares the photograph found in the application for refugee protection application of Fardowsa Ahmed Mohamed (identified as “FCC Photo” (Five Country Conference) dated June 20, 2010) and a photograph from the application for study permit of Khadra Jama Mohamed, which is identified as a photo from Kenyan passport A2245953 issued on August 29, 2014 (the Kenyan Passport). The CTR also contains an Information Sheet from the medical which includes a photograph taken on that day and indicates that the Applicant used the Kenyan Passport to confirm her identity.

[44] The Applicant argues that the RPD failed to compare the Kenyan Passport photo (which she says is of a different individual named Khadra Jama Mohamed) with the study permit photo (which she says is of her). However, the Kenyan Passport photo was part of the study permit application. That photograph was compared to the photograph indicated to be Fardowsa Ahmed Mohamed when applying for refugee protection. Thus, the passport photo and a photo which the Applicant confirms is her photograph were compared. And, in any event, the RPD had before it both photo comparison sheets, the medical examination photo, the student visa photo as well as the Applicant, in person. Its reasons refer, via footnote, to both photo comparison sheets in its analysis. It was open to the RAD to review all of these photos (*Olaya Yauce*, at para 9), including the Kenyan Passport photo, and conclude that they were the same person: Khadra Jama Mohamed.

iii. Jama Mohamed Ali Affidavit

[45] The Jama Mohamed Ali Affidavit, dated July 11, 2023, states that he is the father of Khadra Jama Mohamed, that he wanted his daughter, Khadra, to have a good education, and that he hired an agent to fast-track her application for a study permit to Canada. However, his daughter was then accepted by the University of Nairobi, which meant that the Canadian study permit was no longer necessary. The agent informed him that he could recoup most of the money he had already paid for Khadra's study permit application if he allowed another family's daughter (Fardowsa) to pass herself off as Khadra and continue with the study permit application. Her family would pay him for his permission to so proceed. He went on to say that he never met Fardowsa, but heard of her issues with Canadian immigration authorities who

believe she is really his daughter, Khadra, and that she had asked his (and his spouse's) assistance "to clarify my knowledge and understanding of the situation".

[46] In other words, as noted by the Respondent, the purpose of this affidavit was to establish that there was another person – the "real" Khadra Jama Mohamed – who was not the Applicant. However, the RPD found that the affiant did not furnish any evidence attesting to the "real" Khadra's existence: "No identity documents, photographs, or at a minimum her acceptance letter to the University of Nairobi" was provided. In my view, it was entirely reasonable for the RPD to expect that the father of the "real" Khadra to provide evidence of her existence – which should be readily available to virtually any parent – and to draw a negative inference from this material omission. The RPD's assessment of this affidavit was reasonable.

[47] It was also reasonable for the RPD to allocate no probative value to this affidavit because the affiant failed to establish, on a balance of probabilities, that he was credible or trustworthy. The RPD justified this finding by explaining that Jama Mohamed Ali acknowledged that he willingly participated in a scheme that mislead the Canadian government authorities, and there was no indication that he is reliable now.

[48] On this point, the Applicant argues that the RPD cannot have it both ways – it cannot find there to be no documents proving Khadra's existence, while simultaneously relying on other documents pertaining to Khadra (namely, supporting documents for Khadra's study permit application being her secondary school leaving certificate, a copy of her transcript and birth certificate). However, it is important to note that in making this finding, the RPD was addressing

the Jama Mohamed Ali Affidavit. The documents referred to by the Applicant were not provided as exhibits to the Jama Mohamed Ali Affidavit. Thus, there is no merit to the assertion that RPD is attempting to “have it both ways”.

iv. DNA Tests and Ibado Bile Ibrahim’s Somali Passport

[49] The Applicant submits that the RPD ignored the DNA test results concerning Asha Ahmed Shire, purported to be the mother of Khadra Jama Mohamed. It is true that the RPD did not mention this DNA result in its reasons. However, taken at its highest (i.e., that the Applicant is not the daughter of Asha Ahmed Shire, who is held out to be the “real” Khadra’s mother), this alone would not constitute evidence capable of rebutting the presumption that the Applicant is a citizen Kenya, based on her use of the Kenyan Passport.

[50] Moreover, it was reasonable for the RPD to not consider the Somali passport of Ibado Bile Ibrahim, who the Applicant claims is her real mother, as a valid identity document. In detailed reasons, the RPD explained that NDP country conditions documents for Somalia indicate that documents issued by the Somali government are not reliable, that Somalia has not had a functioning state government since 1991, and that large parts of the territory are under no actual central administration or governing. Official documents such as ID cards, passports or various certificates have been unavailable for 17 years. As a result, all documents and certificates issued by various private agencies rely on information provided by the individual concerned (with witnesses when appropriate) or relatives. The NDP documents also indicated that most countries, including Canada, do not recognize Somali identity documents and/or the Somali passport. Based on the objective evidence, which the RPD described and included information

from a variety of reputable and reliable sources, the RPD reasonably found that the passport of Ibado Bile Ibrahim had no probative value and, therefore, did not establish the Applicant's Somali nationality. The RPD acknowledged, but given the objective documentary evidence, did not accept the Applicant's argument that the passport is a valid travel document because its holder used it to successfully travel to Saudi Arabia.

[51] Before this Court, the Applicant attempts to make a distinction between passports being recognized as travel documents and as identity documents, relying on *Farah v Canada (Citizenship and Immigration)*, 2023 FC 760 at paragraph 23 [*Farah*], and alleges that the RPD erred in not considering the passport of Ibado Bile Ibrahim's as a valid identity document. However, the RPD did not err. It specifically considered NDP documents that found that Somali identity documents are not recognized by most countries. This distinguishes the circumstances from *Farah*. Further, in the context of the Kenyan Passport used by the Applicant to travel to Canada, the RPD *did* consider it with respect to the presumption that her citizenship is Kenyan based on that passport. Unlike *Farah*, she did not provide a Somali passport, and, as I have found above, the RPD did not err by considering the Kenyan Passport as presumptive evidence of her nationality. The Applicant also did not contest that the Kenyan passport was legally valid.

[52] The RPD's treatment of the Applicant's DNA test for Ibado Bile Ibrahim reasonably flows from its finding concerning her Somali passport. That is, because Ibado Bile Ibrahim's passport – as an identity document – was found to be unreliable, a DNA test evidencing the Applicant's relation to her would consequently be inconclusive as to the Applicant's nationality.

While further justification on this point would have been preferable, it is sufficient to permit the Court to understand the basis for the RPD's decision.

v. Documents from Somalia

[53] The Applicant argues that she provided numerous documents in her original refugee claim that corroborate her Somali citizenship, including her birth certificate, her Somali school leaving certificate, and declarations from the Applicant's friends and family. Despite this, the RPD in numerous instances concluded that the Applicant "presented no documents from Somalia" and "no credible opposing evidence." Further, that the RPD "failed to refer at all to the reasons for the decisions in the applicant's original refugee hearing", which found that she had provided corroborating evidence to support her identity and that her testimony was credible.

[54] The RPD's statements referred to by the Applicant are, when discussing the DNA test and passport of the Applicant's purported mother, that the Applicant "presented no documents from Somalia." It later stated that the Applicant had testified in the Somali language and that this established that she is of Somali ethnicity "however, she has failed to provide any credible evidence that she is a national of Somalia and no other country". And, in summarizing its concerns with the Applicant's credibility to reach its conclusion that the Applicant had misrepresented, it stated that in the vacation proceedings, it found that, on a balance of probabilities, the Applicant "failed to be provided reliable opposing evidence to refute the Minister's evidence, which the panel finds persuasive of the [Applicant]'s material misrepresentation of her nationality and identity. Further, that she presented no credible opposing

evidence to refute the Minister's evidence that the [Applicant] was in Kenya and not in Somalia during the relevant time period."

[55] The latter points are reasonable based on the RPD's findings. Indeed, the Applicant ultimately conceded that she was not in Somalia at the time she originally claimed. And, based on the content of the CTR, the RPD did not err in finding that the Applicant did not provide any documents from Somalia when responding to the Minister's vacation hearing. The Applicant does not assert otherwise but submits that she provided such documents in support of the refugee hearing.

[56] The CTR contains two identity documents. Namely, a Somali birth certificate and an intermediate school leaving certificate for Fardowsa Ahmed Mohamed, as well as six affidavits from family members and friends asserting that the Applicant is Fardowsa Ahmed Mohamed, a Somali national. These documents appear to have been submitted in support of the refugee claim. The Applicant's affidavit made in support of her application for judicial review, dated May 22, 2024, states that she attaches the supporting documents that she relied on at her refugee hearing. In addition to the birth certificate and school leaving certificate, this includes affidavits from family members and friends that purport to confirm her Somali identity.

[57] In its reasons, the RPD refers to *Bafkih v Canada (Citizenship and Immigration)*, 2020 FC 689 as setting out the test under s 109(1). I note that subsequently, in *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18, at paragraph 40, the Federal Court of Appeal endorsed the five principles governing applications made pursuant to s 109 as set out in

Canada (Minister of Citizenship and Immigration) v Wahab, 2006 FC 1554 [Wahab]. These were as follows:

- a) Under s. 109(1), to determine if the original decision was made as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter, the RPD must consider all the new evidence put forward by the Minister and the claimant.
- b) *Mens rea* or the intention of the claimant is not relevant to the finding to be made under s. 109(1).
- c) As the extent and nature of the material misrepresentation or withholding may be relevant to its ability to exercise its discretion pursuant to section 109(2) of *IRPA*, the RPD must give sufficient details in its reasons as to which misrepresented or withheld fact(s) it found material and in respect of what relevant matter. Those detailed findings will enable the RPD to consider if a particular claimant is, for example, excluded under section 98 of *IRPA*. Such determination must be made prior to proceeding to the second step set out in s. 109(2) and involves consideration of all the evidence on file, including the new evidence presented by both parties.
- d) The RPD only needs to proceed to the s. 109(2) analysis (step two) if it is satisfied that a claimant is not excluded under section 98 of *IRPA*.
- e) When carrying out the analysis set out in s. 109(2), the RPD can refer to its findings under section 109(1) but only to identify what "old" evidence remains untainted by the withholding or misrepresentation. The RPD cannot reassess the "old" evidence in light of new evidence adduced by the Minister or the claimant pursuant to section 109(1). The RPD cannot give any weight or even consider the new evidence produced by either party when exercising its discretion pursuant to section 109(2)

(See also *Turkson v Canada (Citizenship and Immigration)*, 2022 FC 1266 at paras 2–3.)

[58] I do not agree with the Applicant that the RPD erred by failing to refer to the refugee panel's reasons. The whole purpose of the vacation hearing is to address the allegation of misrepresentation. Where misrepresentation is found, the refugee panel's findings on credibility are no longer relevant. However, my concern here is with respect to the RPD's treatment, or lack of treatment, of the "old" evidence. That is, the identity and nationality evidence that was before the refugee panel, given that ss 109(1) and (2) are a "two-part test" (see *Ibrahim v Canada (Citizenship and Immigration)*, 2024 FC 497 at para 26).

[59] On this point, it is also of note that in the oral submissions to the RPD (found in the transcript of the March 21, 2024 hearing) the Minister spoke to s 109(2), arguing that there was no remaining reliable credible evidence in the original record and addressing that evidence. The difficulty here is that the RPD made no finding in that regard.

[60] Because the RPD did not engage in a s 109(2) assessment it did not identify whether the Applicant's "old" evidence (being her birth certificate, school leaving certificate, and affidavits from friends and family) remains untainted by her withholding or misrepresentation. In this sense, I agree with the Applicant that the RPD erred in failing to consider that evidence. This is a reviewable error.

vi. Mohamed Gilao's Testimony

[61] In response to the vacation application, the Applicant submitted a letter from Mohamed Gilao, of the Loyola Foundation, with respect to the identification of Fardowsa Ahmed Mohamed. The letter states that the assessment process for identity verification purposes "consists of the

administration of a Community Verification Assessment (CVA) which is written in the Somali language script, as well as an oral interview in the Somali language with the settlement counselor. Both exams are based on information about Somalia including its geography, history, heritage, sociopolitical and the current political situation, the individual's clan lineage and culture. The exams are subsequently assessed by a professional Somali settlement counselor who determines whether the individual's identity has been sufficiently established". The document went on to say that, after reviewing the examination results of the Applicant, the Applicant "is a national of Somalia, and that she belongs to minority ASHARAF clan from the Somali clan structure".

[62] The RPD states that, at the vacation hearing, Mr. Gilao testified that he finds the Applicant's accent is "100% Somali" after having met her on one occasion in 2019. When asked whether he could provide the Applicant's written sample, he stated that he did not have the materials with him. The RPD found that, given that the Applicant had called Mr. Gilao as an expert, it was reasonable to expect an experienced professional to attend prepared with evidence to substantiate his testimony. Regarding payment, Mr. Gilao testified that his services are self-funded and that he relies on the generosity of the community to make financial donations. The Applicant testified that she donated \$150 to Mr. Gilao. From this, the RPD concluded that the witness "profits financially from his services. Thus, it is reasonable to conclude on a balance of probabilities that he will be generous in issuing identity letters."

[63] On this point, the Applicant argues that the RPD, without explicitly saying so, concluded that the witness was paid off in order to issue a letter favorable to the Applicant and that medical

and other expert witnesses are routinely paid a small fee for preparing reports used at refugee hearings. I agree that the RPD's reasoning is problematic. As the Applicant notes, expert witnesses are routinely retained and paid by parties who seek their opinions. Without evidence establishing a lack of independence by the expert, the RPD's finding is unreasonable. However, this is not fatal to the decision as a whole.

[64] This is because the RPD also found that Mr. Gilao is not an expert in establishing the Applicant's nationality. In that regard, the RPD asked Mr. Gilao whether he had any professional training in linguistics or other areas to enhance his ability to identify accents from different regions. His response was that his documents were destroyed during the civil strife in Somalia. He also stated that he has worked with the Somali community for a decade and is therefore experienced. The RPD stated that, having carefully reviewed Mr. Gilao's resume and having heard his testimony, which was not primarily focused on the Applicant, that on a balance of probabilities, he is not an expert in establishing the Applicant's nationality. The RPD found that his testimony was sufficient on a balance of probabilities to establish the Applicant's Somali ethnicity – but the issue of nationality was not resolved by Mr. Gilao's evidence. I note that nothing in Mr. Gilao's CV indicates that he has any education or training in linguistics, and, in fact, his CV does not address this.

[65] Additionally, in my view, the RPD's conclusion that Mr. Gilao's testimony "preliminarily focused on his personal achievements and his government contracts in Somalia and in Canada", which "self-promotion was not helpful" was a peripheral point made by the

RPD that did not otherwise jeopardize its findings relating to the weight afforded to his testimony.

Conclusion

[66] In my view, the RPD reasonably found that the Applicant was not a credible and trustworthy witness. As the RPD explained, her evidence was not forthcoming as she only admitted to facts differing from her account of events when faced with compelling evidence provided by the Minister. Her evidence then evolved, as seen from her affidavit evidence. The Applicant's affidavit dated March 4, 2019, made in support of her refugee application, states that she only travelled to Kenya from Somalia in February 2018. She revised her evidence by her affidavit dated October 6, 2022, filed in response to the vacation application (the hearing subsequently took place over four sittings) to acknowledge that she had acquired and used the Kenyan Passport and student visa. She made no mention of attending the medical examination in Kenya and, at the hearing, denied that she attended the medical examination. However, when presented with evidence establishing that she had attended (including a photograph taken at the medical examination and the fact that she used the Kenyan Passport to identify herself there), the Applicant changed her testimony and acknowledged that she had attended the medical examination. By her affidavit dated July 6, 2023, she again revised her October 6, 2022, affidavit, stating for the first time that she travelled to Kenya for the medical on September 29, 2017, where her photo was also taken. By affidavit dated September 8, 2023, she further amended her evidence to state that she left Somalia for Kenya in February, and not March, 2018.

[67] While the Applicant submitted when appearing before me that these revisions were made as a “courtesy” to the Minister and that they do not amount to material misrepresentations that would have affected the outcome of the original hearing had they been before the original decision-maker, the RPD concluded differently. I agree with the Respondent that, where a claimant tailors their story in an effort to rehabilitate damaged evidence, this is relevant to credibility and permitted the RPD to afford such evidence minimal weight (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1558 at paras 27–28; *Jawara v Canada (Citizenship and Immigration)*, 2024 FC 1334 at para 50).

[68] The RPD also found that the Applicant had not provided reliable or credible evidence to rebut the Minister’s evidence concerning her identity and nationality. That is, she was not successful in establishing that she is not Khadra Jama Mohamed and that Khadra Jama Mohamed is a different person who is not the Applicant. Further, that the Applicant withheld information about the use of the Kenyan Passport to apply for a student visa and at the medical examination, which occurred prior to her initially claimed date of departure. These misrepresentations were material and there was a causal connection between the withholding of a materials fact, her Kenyan nationality, and the favourable decision, finding her to be a Convention refugee from Somalia. These findings were reasonable and will not be disturbed.

[69] However, the RPD did not proceed to the second part of the s 109 test. That is, it did not assess whether the "old" evidence submitted in support of the refugee hearing remains untainted by the withholding or misrepresentation. This is a reviewable error. Accordingly, I will remit the matter back to the RPD to conduct that aspect of the analysis.

JUDGMENT IN IMM-7414-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted in part;
2. The matter is sent back to be redetermined solely on the issue of s 109(2) of the *IRPA*;
3. There shall be no order as to costs; and
4. No question was proposed for certification and none arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7414-24

STYLE OF CAUSE: FARDOWSA AHMED MOHAMED v THE MINISTER
OF IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 27, 2025

JUDGMENT AND REASONS: STRICKLAND J.

DATED: APRIL 14, 2025

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