



RAD File / Dossier de la SAR : TB8-17372

Private Proceeding / Huis clos

Reasons and decision – Motifs et décision

**Person who is the subject
of the appeal**

XXXX XXXX XXXX

Personne en cause

**Appeal considered /
heard at**

Toronto, ON

**Appel instruit /
entendu à**

Date of decision

10 November 2020

Date de la décision

Panel

S. Thompson

Tribunal

**Counsel for the person
who is the subject of the
appeal**

Cemone Morlese

**Conseil de la
personne en cause**

Designated representative

N/A

**Représentant(e)
désigné(e)**

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

[1] The Appellant, XXXX XXXX XXXX XXXX is appealing a decision of the Refugee Protection Division (RPD) dated June 13, 2018, refusing his claim for refugee protection.

[2] For the following reasons, the appeal is allowed. I substitute a finding that the Appellant is a Convention refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act* (IRPA), on the grounds of religion and imputed political opinion.

OVERVIEW

BACKGROUND OF APPEAL

The Appellant's claim, the RPD's decision, and the Appellant's arguments before the Refugee Appeal Division (RAD)

[3] According to his Basis of Claim (BOC) narrative¹, the Appellant alleged he was a citizen of Somalia who faced a serious forward-looking risk of persecution in that country at the hands of the Al-Shabaab terrorist group. The Appellant alleged that he is a Sunni Muslim who practices Sufism, and that he was first targeted by Al-Shabaab in 2009 when they prevented him from visiting his ancestors' gravesites by abducting them for three days.

[4] He also alleged that in 2015 Al-Shabaab demanded farmers in his home village of Nun Gare deliver 75% of their harvested produce to the group. On this occasion, Al-Shabaab abducted and beat the Appellant, his brother and others who tried to negotiate a reduction in the quantity of food demanded. Al-Shabaab also killed a pregnant woman in the presence of community members to intimidate them into complying with their demands. Thereafter the Appellant and his family fled to another town, but his brother was killed by Al-Shabaab when he returned to Canada.

[5] The Appellant fled Somalia via Kenya and the United States of America (US), making a failed claim for asylum in the latter country. He arrived in Canada on XXXX XXXX XXXX 2016 and claimed refugee status.²

[6] The RPD refused the Appellant's claim on the grounds that he failed to establish his identity as a citizen of Somalia with acceptable evidence. It also found that his testimony was at times "evasive, vague, did not provide straightforward or detailed answers" and that "at times he evolved his answers, did not answer the questions put to him" and on occasion repeated the details of his BOC form and narrative. The RPD attributed the Appellant's "perceived difficulty in answer questions to a lack of credibility rather than to his psychological state or to a lack of understanding of the questioning."³ In particular, the RPD found:

- The Appellant submitted a fraudulent document, namely an affidavit from his aunt⁴;
- His allegation that he travelled to Brazil using a Somali passport without incident was not credible⁵; and
- That his testimony was inconsistent with the content of his BOC narrative concerning an alleged incident central to the risk allegations at the heart of his claim.⁶

[7] The RPD gave less weight to the testimony and statutory declaration of his identity witness⁷ and to the affidavit sworn by one of the Appellant's friends.⁸ It also gave an identity verification letter disclosed by the Appellant less weight.

[8] Before the RAD, the Appellant submits the RPD wrongly assessed his identity⁹, made erroneous credibility findings, and failed to assess his evidence in accordance with the Board's Credibility Guidelines¹⁰, and erred further when it relied on pure speculation in dismissing his testimony about travelling to the Americas on a Somali passport.¹¹

[9] The Appellant has not asked me to admit any material as new evidence in this appeal. Nor has he requested an oral hearing of this appeal.

ANALYSIS

[10] My role is to look at all the evidence and decide if the RPD made the correct decision.¹² I will apply the correctness standard of review after independently assessing the record to determine whether the RPD erred. I will only show deference to the RPD's credibility

assessment and/or to its weighing of the oral evidence in situations where the RPD enjoys a particular advantage. If I find the RPD had a particular advantage, my reasons will explain why.

[11] My determination is based on my independent assessment of the evidence before me. This includes: the records prepared by the RPD and the Appellant; a transcript and an audio recording of the Appellant's RPD hearing on May 8, 2018; and documents contained in the current compilation of the National Documentation Package (NDP) for Somalia.

The RPD's credibility assessment

Whether the RPD gave due consideration to the Appellant's "personal circumstances"

[12] The Appellant submits the RPD was wrong when it failed to assess his evidence in accordance with section 2.6.2 of the Board's January 31, 2004 *Paper on the Assessment of Credibility in Claims for Refugee Protection* ("the Credibility Guidelines").

[13] He submits that as "a young, unsophisticated man" whose "personal circumstances meet many of the factors outlined" in the Credibility Guidelines, the RPD erred when it ignored the statement that "[t]he RPD must ... take into account ... 'unusual characteristics'" including (but not limited to) "nervousness caused by testifying before a tribunal", "the claimant's psychological condition (such as post-traumatic stress disorder) associated with traumas such as detention or torture; the claimant's young age", "the claimant's educational background and social position; and cultural factors".¹³

[14] Based on my review of the RPD's reasons, I reject this submission. The RPD Reasons state the panel "considered that the claimant testified he did not receive any formal education"¹⁴ and indicate that it considered and rejected the possibility that any difficulties he had in responding to its questions were the result of "his psychological state or ... a lack of understanding of [its] questioning". Moreover, the Appellant testified that he was 27 years old at the time of the hearing, and the Credibility Guidelines clarifies that the age of minor claimants is to be considered special circumstances.¹⁵

[15] For these reasons, I reject the Appellant's submissions on this point.

Adequacy of the RPD's reasons

[16] The Appellant submits the RPD's Reasons were inadequate to explain its decision, because at certain points the panel relied on "discrepancies" in the evidence to impugn the Appellant's credibility without ever specifying what the discrepancies were.¹⁶

[17] While paragraph 46 of the RPD's Reasons for Decision refer to "further instances in the [Appellant's] testimony of inconsistencies with his BOC and evolutions in his testimony", the RPD makes it clear that it "has declined to make further findings" because "it find that [its] other findings are determinative.

[18] In my independent assessment, it is clear from the RPD's Reasons that these "further instances" were not mentioned because they did not inform the RPD's determination. I therefore find the Appellant's submission on this point is without merit.

The RPD's assessment of the Appellant's identity

[19] The Appellant submits the RPD was overzealous in finding fault with the Appellant's efforts to establish his identity as a citizen of Somalia, and failed to fairly consider his evidence in light of the challenges faced by Somalis in obtaining identity documents.¹⁷

The RPD's assessment of the Appellant's testimony

[20] He submits further that the RPD "ignored the principles enunciated in" the Federal Court of Appeal's judgment in *Maldonado*, "where there is a presumption that a claimant's testimony is presumed to be truthful and corroborating evidence is not a necessity".¹⁸

[21] The RPD appears to have accepted the Appellant's testimony about various aspects of his professed Somali identity without incident.¹⁹ However, given the Appellant disclosed documents and called a witness to establish his identity and support key aspects of his claim, it was open to the RPD to test the Appellant's testimony against that other evidence. The fact that it did so is not a violation of the presumption of truthfulness in *Maldonado*.

[22] The Appellant also submits the RPD "provided no consideration to his attempts to find his lost family members and obtain documentation to establish his identity."²⁰ He points to a

tracing request letter from the Canadian Red Cross²¹ as proof he tried to locate his mother in Somalia. He also testified that he “tried so many times”²² to locate his spouse, mother and siblings in Somalia, without success.

[23] In my independent assessment, the fact the RPD Reasons make no mention of the Appellant’s contact with the Red Cross is not a significant error, as this was not the only evidence the Appellant tried to obtain to establish his identity. The RPD considered the other evidence the Appellant disclosed alongside his own testimony and the testimony of his identity witness and made several findings. I address the Appellant’s arguments about the RPD’s findings immediately below.

The testimony of the Appellant’s identity witness XXXX XXXX XXXX

[24] The Appellant submits the RPD failed to clarify it had credibility concerns with his identity witness and “failed to consider the corroborative elements of his witness’ testimony.” He submits the RPD scrutinized the witness’s testimony microscopically in rejecting it.²³

[25] The RPD found the respective testimonies of the Appellant and his witness were “generally consistent” with one another, but gave “less weight” to the witness’s testimony and statutory declaration because “[t]he witness could not account for the [Appellant’s] whereabouts for a period of approximately three years.” The RPD “[did] not accept” the witness’s testimony about “seeing the [Appellant] in Somalia in 2014” was “enough to establish [the Appellant’s] current citizenship, on a balance of probabilities.”²⁴

[26] In my independent assessment, the RPD was wrong to minimize the value of the witness’s evidence about the Appellant’s ties to Somalia, because the witness’s and Appellant’s respective testimonies²⁵ about how they knew one another in Somalia are directly relevant to the assessment of the Appellant’s identity as a national of that country.

[27] The witness’s statutory declaration²⁶ says he first met the Appellant in 2012 when the latter lived with him for a week while celebrating the “dikry” festival, one of the ritual observances of their shared Sunni Muslim faith and the Sufi sect both men say they belong to. The declaration says the Appellant against stayed with the witness in 2014 during at another Sufi gathering in Dinsoor, the witness’s hometown.

[28] In my view, their testimony about their relationship before they reconnected in Canada is not less relevant because of the comparatively short period of time in which they were not in contact with one another. This is because the start of their relationship predates their separation and concerns aspects of the Appellant's past that could contribute to establishing his personal and national identity.

[29] The fact that their respective testimonies about their relationship were mutually consistent supports a finding that the witness's testimony and statutory declaration are reliable sources of information about the Appellant's personal identity. In my independent assessment, the witness's evidence also warrants some weight in establishing the Appellant's identity as a national of Somalia, which the witness asserted in his statutory declaration.

[30] While the witness's evidence is not, by itself, conclusive of the question of the Appellant's nationality, given the absence of inconsistencies or other indications that the witness's evidence was neither credible nor reliable, I find the RPD erred in giving his evidence less weight for the purpose of establishing the Appellant's identity as a national of Somalia. I substitute a finding that the witness's evidence (testimony and statutory declaration) warrant some weight for that purpose.

The affidavit of XXXX XXXX XXXX

[31] The Appellant submits the RPD "erred by concluding the affidavit was fraudulent."²⁷ He submits RPD's reasons show "there were unrealistic expectations that the Appellant's documents from Somalia would meet the same Canadian standards for documentation" and that he "was not present when the document was drafted" and "reasonably answered the Panel's questions with the limited knowledge he had."²⁸ He submits the RPD failed to examine the content of the affidavit and "rejected every reasonable explanation provided by the Appellant to explain the discrepancies with the document." He submits the RPD erred in finding the affidavit was fraudulent because the panel "is not bound by the strict rules of evidence".²⁹

[32] For its part, the RPD found it "suspicious that the document seems to suggest it was signed in Mogadishu" given the Appellant's testimony that his aunt did not go to Mogadishu to sign the affidavit but to another "small village" with a government office.³⁰ It noted the affidavit was not accompanied by an identity document³¹, and found it did "not make sense" for the

commissioning court to have issued the affidavit in English “without some confirmation that the deponent understood the contents”, given his testimony that his aunt did not understand English.³² The RPD noted there was “no signature of the commissioner for oaths in the section [of the affidavit] that requires it”³³ and expressed concern that the affiant signed the affidavit despite the misspelling of the word “deponent”.³⁴ It also noted the document appeared to “referenc[e] a Kenyan law.”³⁵

[33] In my independent assessment, the Appellant’s testimony about the affidavit³⁶ was not, in and of itself, lacking in credibility, as his answers to the RPD’s questions appear to have been straightforward and non-evasive. In light of this, I find there is some merit to his submission that he was not present when the document was commissioned and cannot be expected to explain defects in its commissioning and content. As his testimony does not suggest that he knowingly submitted a fraudulent affidavit, in my independent assessment, the RPD erred to the extent that it drew a negative inference about the Appellant’s credibility from its assessment of his aunt’s affidavit.

[34] However I cannot fault the RPD’s finding that the Appellant’s testimony “did not reasonably explain [its] concerns with his aunt’s alleged affidavit”.³⁷ While I am concerned the RPD’s finding the affidavit appeared to “referenc[e] a Kenyan law”³⁸ does not appear to have been rooted in any evidence tending to indicate the affiant had ties to Kenya, having independently examined the copy of the affidavit,³⁹ I find the RPD’s concerns with the document are, for the most part legitimate.

[35] Given that I draw no adverse inference about the Appellant’s credibility, however, and barring any other explanation for the affidavit’s defects, I substitute my own finding that the affidavit is irregular rather than fraudulent. In my independent assessment, it was open to the RPD to give the document no weight.

The affidavit of XXXX XXXX XXXX

[36] The Appellant submits the RPD “erroneously rejected [this] affidavit because of credibility concerns” when it should have assessed the document “in [its] own right” rather than “discard[ing] [it] solely based on credibility concerns related to testimony or a claimant’s other documents.”⁴⁰

[37] In giving the affidavit “less weight,” the RPD noted that it neither “clearly stated the [Appellant’s] current citizenship, nor does it account for the [Appellant’s] whereabouts between 2011 and 2016.” The RPD states also that as it “had no opportunity to question the affiant] or test his credibility as it relates to his affidavit, his relationship with the [Appellant], and the [Appellant’s] identity” the affidavit “[did] not overcome [its] credibility concerns”.⁴¹

[38] In my independent assessment, it was open to the RPD to find the affidavit was inconclusive of the question of the Appellant’s national identity. As no mention is made of the Appellant’s citizenship status in Somalia, I find the affidavit is not useful for this specific purpose. However, it does state the Appellant “lived in XXXX village in Lower Shabelle” and that when he visited his aunt, the affiant’s neighbour, between 2009 and 2011, the affiant and his “siblings ... would interact with XXXX” and “saw him about 3 times during this period.”⁴²

[39] However I also find, following the rationale given at paragraphs [28] and [29] of these reasons, that the RPD erred to the extent that it assigned the affidavit less weight because it “does not account for the [Appellant’s] whereabouts between 2011 and 2016.”⁴³

[40] Nor in my opinion was it open to the RPD to assign the affidavit less weight simply because the affiant Mr. XXXX was not available to be cross-examined at the hearing. The purpose of swearing an affidavit is to present evidence in a sworn or affirmed format that makes its content presumptively truthful. Unless the content of an affidavit is clearly questionable on its face or in light of other evidence before a decision-maker, there should be no need for an affiant to be cross-examined on a document they have sworn in order to establish the document’s content is credible.

[41] To the extent the RPD found Mr. XXXX affidavit warranted less weight overall because it could not cross-examine the affiant, the RPD erred, and it also erred in giving the affidavit less weight simply because the affiant and Appellant were not in touch in the years before the Appellant sought refugee status in Canada. While the affidavit merits no weight in establishing the Appellant’s identity as a Somali citizen, I find Mr. XXXX affidavit does warrant some weight in establishing the Appellant’s personal identity.

The letter from Dejinta Beesha Somali Multi-Service Centre

[42] The Appellant submits the RPD erred in giving little weight to his identity verification letter as the document was indicative of his Somali citizenship, even if it was not conclusive on the matter. In his submission, the fact the person who signed the letter did not know him personally is not relevant to an impartial assessment of the letter's content. He submits the RPD "should have fairly assessed this document" along with "all of the other identity evidence submitted ... to determine [if] his identity was established."⁴⁴

[43] The RPD found the letter was neither "persuasive [nor] conclusive" in determining the Appellant's national identity, as "speaking Somali and knowing about Somali geography, history and culture" do not "definitively mean that one is a national of Somalia." The RPD found Dejinta Beesha was "able to determine" only "that the [Appellant] is ethnically a Somali and this is not the same as determining his identity or nationality" and therefore gave the letter "less weight in establishing the [Appellant's] identity."⁴⁵

[44] While I agree with the RPD's observation that "speaking Somali and knowing about Somali geography, history and culture" is not conclusive proof of Somali nationality, in my opinion this should not generally be grounds for summarily dismissing the content of an identity verification letter such as the one disclosed by the Appellant as the RPD did in this case.

[45] The Dejinta Beesha identity verification process relies on the organization's assessment of individuals' knowledge and affect with reference to bodies of cultural and other knowledge established within the Somali community in Canada itself, and not on personal relationships between individuals being assessed and those who conduct assessment interviews. The whole point of such letters is to independently verify whether persons who exhibit such characteristics are in fact Somali citizens.

[46] I have independently assessed the Appellant's Dejinta Beesha identity verification letter against an August 2018 Response to Information Request (RIR) in the current NDP for Somalia about the identity verification processes of different Somali-Canadian associations in Canada. The RIR lists practices commonly used by similar organizations to help refugee claimants establish their Somali nationality, including (but not limited to):

- Assessing the claimant's accent or Somali language dialect;

- Asking the claimant questions about Somalia, or asking them to complete a questionnaire, to get details such as (but not limited to) the claimant's name, their parents' names, their date and place of birth, their places of residence, their clan and sub-clan, their region of origin, and Somali geography, language and culture generally;
- Requiring the claimant to provide contact information from two witnesses to confirm the claimant's identity and corroborate their town of origin. Some organizations require the witnesses to be known Somali community members who are either citizens or permanent residents of Canada, and to have been known to the claimant either in Somalia or in Canada;
- Reaching out to contacts from other regions in Somalia to corroborate the claimant's account of their identity with people from their region or clan in Somalia; and
- Helping the claimant to find and contact relatives and acquaintances who knew them in Somalia.
- Some of the organizations canvassed in the RIR issue letters stating that the claimant's identity was corroborated by two witnesses.⁴⁶

[47] I note also that the Federal Court of Canada advises:

that evidence purporting to establish the identity of a claimant should provide sufficient information about the author and the criteria on which that identity was determined in order to allow decision-makers and reviewing Courts to assess the reasonableness of the evidence and to assign it proper weight.⁴⁷

[48] Having read the letter,⁴⁸ I note Dejinta Beesha's identity verification process uses one of the practices commonly employed by Somali community associations in Canada to assess and verify the nationality of refugee claimants professing to be Somali citizens, namely the administration of a "community verification assessment questionnaire".⁴⁹ While it appears to rely entirely on the Appellant's oral attestation that he was "born in the village of XXXX XXXX in the Lower Shabeele" region of Somalia, and belongs to the Gare clan⁵⁰, this information appears to corroborate the Appellant's assertions about his birthplace and clan in his communications with US border and immigration officials⁵¹, his BOC narrative⁵², and his testimony to the RPD.⁵³

[49] In my opinion, while the Dejinta Beesha letter is not conclusive as to the Appellant's identity as a citizen of Somalia, it does merit some weight for the purpose of establishing his national identity.

The Al-Shabaab attack

[50] The Appellant submits the RPD conducted a memory test to find inconsistencies between his testimony and BOC narrative, and to identify perceived omissions from the latter. He submits the RPD wrongly concluded that his testimony about his interactions with Al-Shabaab was vague, evasive, and not-responsive to its questions, when in fact he was simply an unsophisticated claimant.⁵⁴

[51] The RPD found the Appellant's testimony that he was celebrating at the mosque when he was first abducted by Al-Shabaab in 2009 was "vague and evasive," and made the same findings about his testimony that Al-Shabaab started to control him and his friends when they took control of his city. It found that despite rephrasing its questions in more specific terms, the Appellant's responses to its questions about how Al-Shabaab took him "simply recited a portion of his BOC" narrative.⁵⁵

[52] The RPD found the Appellant's testimony that Al-Shabaab abducted him from the mosque was inconsistent with his BOC narrative, which stated he was abducted from a cemetery. It rejected his explanation as it "[did] not explain the inconsistency". The RPD also found the Appellant's testimony that he was beaten unconscious by Al-Shabaab was an evolution of his testimony that was omitted from his BOC narrative. The RPD rejected his explanation "that he was beaten badly but still awake" and drew separate negative inferences about his credibility from the inconsistency and the omission.⁵⁶

[53] Having reviewed the Appellant's testimony, in my independent assessment the RPD erred in its assessment of the Appellant's testimony about the alleged Al-Shabaab attack. First, while the Appellant's initial response to the RPD's question about how he was abducted by Al-Shabaab was not descriptive of the abduction, he did provide a more detailed and specific response a short while later when the RPD rephrased its question:

MEMBER: So how -- can you -- how did Al-Shabaab take you?

CLAIMANT: When Al-Shabaab came to -- come to the control of the cities, then they stated to control us, and they told us that there will not be any Sufi celebrations at all.

MEMBER: The day that Al-Shabaab took you and your brother and your friend, how many people from Al-Shabaab took you?

CLAIMANT: I couldn't tell you their number because there are lots of them.

MEMBER: And can you tell me how exactly were you taken? Did they grab you, did they -- what did they do? How were you taken?

CLAIMANT: They were heavily, heavily armed with weapons, and then they came into the mosque and they said, "We told you not to celebrate this stuff."

The took us with the outside and they kept us three days and start beating us very badly and bodily harm us. And the last time, the third day, they have warn[ed] us and told us this would be the last warning. "If we ever caught you doing this again, you will be killed."⁵⁷

[54] I have compared the Appellant's testimony on this point with the relevant parts of his BOC narrative,⁵⁸ and I find that the former is not a recitation of the latter.

[55] Second, the RPD was overzealous in finding that the Appellant gave inconsistent evidence (his testimony versus his BOC narrative) about where he was when Al-Shabaab abducted him. The Appellant's explanation that he was in the cemetery adjacent to the mosque when he was abducted:

MEMBER: So your Basis of Claim form says that, "I was at the cemetery with some friends when we were taken by Al-Shabaab," but you said you were at the mosque. Please explain the discrepancy.

CLAIMANT: Like I said before, I can explain that. When the celebration is going on, by visiting the graves and reading Quran is part of it. And some of them stay inside the mosque and read and some of them, there is a big open, wide-open area where they gather and start reading and chanting. And they have taken some other people from the cemetery as well, but I was one of the groups that was captured from the mosque. **And the mosques and graves are not far from each other.**⁵⁹

[56] The statement in the Appellant's BOC narrative, that he was at the cemetery, is not inconsistent with his testimony if one is willing to accept that the cemetery was part of the grounds of the mosque. In my independent assessment, the Appellant's initial testimony that he was "[a]t the mosque" when Al-Shabaab came to abduct him, and his explanation shortly thereafter that "the mosques and graves are not far from each other" seems to place this within the realm of possibility.

[57] Third, the RPD's finding that the Appellant omitted the fact that he was unconscious from his description of his mistreatment by Al-Shabaab during the abduction appears to ignore the fact that the interpreter told the RPD that the Appellant explained his use of the word unconscious:

- MEMBER:** I said, for the 2015 incident, the next day after you were held overnight, tell me all the steps that happened, starting with, you were in the jungle. In the morning, you were still in the jungle, I imagine, so all the steps that happened from that point until you reached somewhere safe,
- INTERPRETER:** "Next morning, I was -- we were," he said, "me and my brother were unconscious and they brought us to the street. We were taken from there and taken to Afgooye City to be treated."
- MEMBER:** So this is the first time hearing that you were unconscious. Why is that? Why has that never been mentioned, either in your testimony or in your Basis of Claim form?
- CLAIMANT:** It's written there. I wrote it down. It's written there. Do you want me to show you?
- MEMBER:** I'm going to look for it. I don't see any reference to being unconscious.
- INTERPRETER:** He just explained, Madam Member. He said, "What I meant by "unconscious", we have taken a very bad beatings, but we were still awake, but we were almost conscious. So it didn't -- in Somali word is 'unconscious', but we were not unconscious exactly," he is saying.⁶⁰

[58] Regarding the RPD's criticism of the Appellant's responses as "vague, evasive [and] non-responsive"⁶¹, based on my review of his testimony it appears the Appellant initially misunderstood the RPD's questions:

- MEMBER:** So if you were conscious, then why are you not able to tell me all the steps before you ended up on the street?
- CLAIMANT:** I don't understand.
- MEMBER:** I've asked you two or three times about all the steps that happened between being in the jungle and being in a safe place.
- INTERPRETER:** Sorry, madam. From the morning, you said?
- MEMBER:** Yes.
- INTERPRETER:** Okay. Not the day before?

- MEMBER:** No, no, no. The morning, because ---
- INTERPRETER:** I just want to make sure that -- what that (inaudible).
- MEMBER:** Yeah. And you -- just a -- you just keep saying that, "They threw us on the street." You haven't actually told me the steps. So why are you not telling me the steps?
- INTERPRETER:** "Now I understand," he [the Appellant] said.
- "First of all," he said, "they took us in the evening and put us in the boat, took us to the jungle, beat us up 'til the next day -- all night, sorry. And then the next morning, they pick us up, put us in the boat again, throw us onto the street, and they don't care whether they were dead or not."
- MEMBER:** Now, why is it taking this much effort to get that information from you?
- CLAIMANT:** **Maybe we misunderstood each other, and I don't know why, what's the misunderstanding coming from.**⁶²

[59] Clearly, once the Appellant understood the RPD wanted him to explain the sequence of events that made up the alleged Al-Shabaab abduction, he testified sequentially and with specificity about the process of the abduction. His attempt to explain events in the manner called for by the RPD is not, in my opinion, indicative of an attempt to evade the RPD's questions or mislead the panel with his responses.

[60] Given the foregoing, I find the RPD erred in its assessment of the credibility of the Appellant's testimony concerning his alleged abduction by Al-Shabaab. I substitute a finding that, on a balance of probabilities, the Appellant was credible in his account of this incident, which was broadly consistent with the account of the incident given in his BOC narrative.

The RPD's credibility assessment

The Appellant's travel to the Americas

[61] The RPD relied on a Response to Information Request (RIR) in the NDP for Somalia in taking issue with the Appellant's testimony "that he had no difficulties" using a Somali passport given to him by an agent to travel "from Kenya to Dubai, then to Brazil".⁶³ The panel quoted the RIR, which indicated that several foreign government did not recognize Somali passports as valid documents for international travel. The RIR questioned whether the Somali passport would

be considered reliable by international governments, and the RPD relied on the RIR to reject as not credible the Appellant's "allegation that he travelled using a Somali passport".⁶⁴

[62] I have considered the Appellant's submission that the RPD erred by speculating he would have difficulty travelling on a Somali passport, since the country evidence does not state conclusively that such passports are not accepted as valid travel documents, or "that all travelers with Somali passports face difficulty travelling".⁶⁵

[63] The RIR relied on by the RPD does not state that the Somali passport is not recognized as a valid travel document by any government outside of Somalia. The Appellant's evidence was that he used it to travel to Brazil via Kenya and Dubai⁶⁶, and Canada is the only country that the RIR confirms does not recognize Somali passports as valid travel documents.⁶⁷

[64] I also acknowledge that the European Union's Public Register of Authentic travel and identity Documents Online includes an entry for a Somali passport that was first issued in 2016 and characterizes Somali travel documents issued after 2016 as valid.⁶⁸

[65] In my independent assessment, however, the RPD's true error was in failing to raise its concerns with the Appellant's testimony about his travels using the Somali passport during the hearing. Because the Appellant did not know of the RPD's concerns, he never had the chance to address them. I therefore find the RPD erred by drawing a negative inference about the Appellant's credibility in a manner that was unfair.

Cumulative findings on credibility and identity

[66] Based on the foregoing analysis, I find the Appellant has established his identity as a citizen of Somalia on a balance of probabilities. Although the affidavit of XXXX XXXX XXXX warranted no weight in establishing his identity, I find Mr. XXXX affidavit helps to establish the Appellant's personal identity, while Mr. XXXX statutory declaration and testimony helps to establish not only the Appellant's personal identity but also his identity as a national of Somalia. These documents buttress the Appellant's testimony about his links to Somalia⁶⁹, which the RPD did not take issue with during the hearing.

[67] I also find while the determination of Dejinta Beesha is not conclusive of the question of the Appellant's national identity, its identity verification process and the resulting letter disclosed by the Appellant go some way towards establishing the Appellant's professed identity as a Somali national.

[68] While no single one of these documents, taken individually, would suffice to establish the Appellant's identity, I find that taken cumulatively they are acceptable evidence that establishes on a balance of probabilities that the Appellant is who he says he is and that he is a citizen of Somalia, born in the village of XXXX XXXX and a member of the Garre clan.

The Appellant's subjective fear of persecution; objective basis; internal flight alternative and state protection

[69] In my independent assessment, the Appellant was a credible witness in testifying about the serious forward-looking risk of persecution he faced in Somalia from Al-Shabaab. His testimony about the nature of the risk posed by Al-Shabaab is corroborated by objective country conditions documents in the current NDP for Somalia.

[70] For example, the United Kingdom Home Office's July 2017 Country Policy and Information Note entitled *Somalia (South and Central): Fear of Al Shabaab* states that al-Shabaab "moves freely" though the "most vulnerable areas" of Somalia, including in the Middle and Lower Shabelle regions.⁷⁰

[71] The January 2018 report of the Asylum Research Consultancy entitled *Situation in South and Central Somalia (including Mogadishu)* quotes the 2016 United States of America's 2016 International Religious Freedom Report for Somalia and observes that Somalia has "a small Sufi community, and an unknown number of Shia Muslims."⁷¹ The report continues:

The US Department of State 2016 Report on International Religious Freedom stated that "Al-Shabaab continued to impose violently its own interpretation of Islamic law and practices on other Muslims. [...] Fear of reprisals from al-Shabaab often prevented religious groups from operating freely. Al-Shabaab reportedly threatened to close mosques in areas it controlled if the mosques' teachings did not conform to the group's interpretation of Islam". The same report stated "There reportedly continued to be strong societal pressure to adhere to Sunni Islam traditions."⁷²

[72] This supports the Appellant's assertion in his BOC narrative that he, his late brother, and other members of his community were targeted by Al-Shabaab because the group objects to how members of the Gare clan practise Islam:

Al Shabaab took over my area in 2009. They want to control how everybody behaves and to make everyone comply with their view of Islam. Traditionally we honour our ancestors and celebrate their birthdays and the birthday of the prophet. We also chant and sacrifice animals as part of our religious practices. Al Shabaab believes these practices are non-Islamic and forbids people from doing them. They do not believe Sufis' beliefs and practices are proper Islam.⁷³

[73] I find the Appellant's subjective fear of persecution in Somalia is objectively well-founded in the country conditions evidence.

No viable internal flight alternative or state protection

[74] In my independent assessment, the country conditions evidence does not support a finding that a viable internal flight alternative or adequate state protection would be available to the Appellant in Somalia, due to ongoing armed conflict and insecurity. In the Lower Shabelle region, the government in Mogadishu has a very limited ability to enforce law and order, and Somali citizens living in that region are vulnerable to political violence and armed conflict because the government struggles to provide basic security to citizens.

Summary

[75] In my independent assessment, the Appellant has established that he is a Somali citizen on the basis of his own testimony, the testimony of his witness, and the documentary evidence. The presumption of truthfulness of his sworn testimony has not been rebutted. As his evidence is presumed true, the Appellant has also discharged his burden of proving that he faces serious forward-looking risk of persecution upon return to Somalia. The objective country evidence suggests no viable internal flight alternative or adequate state protection is available in that country.

[76] The proper remedy in this appeal is to substitute a finding that the Appellant is a convention refugee within the meaning of section 96 of the IRPA.

CONCLUSION

[77] The appeal is allowed. I substitute my own decision that the Appellant is a Convention refugee.

(signed)

Sybil Thompson

S. Thompson

10 November 2020

Date

¹ Exhibit RPD-1, RPD Record, Exhibit 2, pp. 18-19.

² Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 4 at para. 5.

³ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 5 at para. 12.

⁴ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 7-9 at paras. 22-32.

⁵ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 9-10 at paras. 33-37.

⁶ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 10-11 at paras. 38-46.

⁷ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 13 at para. 50.

⁸ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 12-13 at para. 49.

⁹ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 21-31 at paras. 8-54.

¹⁰ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 31-36 at paras. 55-76.

¹¹ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 36-37 at paras. 77-80.

¹² *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93; *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145.

¹³ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 34 at para. 68.

¹⁴ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 5 at para. 10.

¹⁵ Immigration and Refugee Board of Canada, *Paper on the Assessment of Credibility in Claims for Refugee Protection* (31 January 2004), p. 83 fn 289.

¹⁶ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 35-36 at paras. 71-75.

¹⁷ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 21-22 at paras. 8-12.

¹⁸ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 23-24 at paras. 13-18.

¹⁹ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 6 (lines 7-43), 7 (lines 45-49) to 9 (lines 5-9) inclusive.

²⁰ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 29-30 at paras. 49-51.

²¹ Exhibit RPD-1, RPD Record, Exhibit 8, p. 290.

²² Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at p. 5 (lines 8-14).

²³ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 24-26 at paras. 19-30.

²⁴ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 13 at para. 50.

²⁵ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 20 (line 18 and following) to 32 (lines 6-8) inclusive.

²⁶ Exhibit RPD-1, RPD Record, Exhibit 9, p. 292.

²⁷ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 28 at para. 40.

²⁸ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 26 at para. 33.

²⁹ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 27-28 at paras. 39-40.

³⁰ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 7-8 at para. 25.

³¹ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 8 at para. 26.

- ³² Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 8 at para. 27.
- ³³ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 8 at para. 28.
- ³⁴ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 29.
- ³⁵ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 30.
- ³⁶ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 5 (lines 39-40), 11 (5-49) to 19 (lines 5-21) inclusive.
- ³⁷ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 32.
- ³⁸ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 30.
- ³⁹ Exhibit RPD-1, RPD Record, Exhibit 9, p. 296.
- ⁴⁰ Exhibit P-2, Appellant's Record, Appellant's Memorandum, p. 29 at paras. 47-48.
- ⁴¹ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 12-13 at para. 49.
- ⁴² Exhibit RPD-1, RPD Record, Exhibit 7, p. 283 at paras. 4-6.
- ⁴³ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 12 at para. 49.
- ⁴⁴ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 28-29 at paras. 41-46.
- ⁴⁵ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 12 at para. 47.
- ⁴⁶ National Documentation Package (NDP) for Somalia (March 31, 2020), item 3.5, Immigration and Refugee Board of Canada (IRB), August 13, 2018, Response to Information Request (RIR) ZZZ106153.E.
- ⁴⁷ *Aziz v Canada (Citizenship and Immigration)*, 2008 FC 914 at para. 13.
- ⁴⁸ Exhibit RPD-1, RPD Record, Exhibit 7, p. 285.
- ⁴⁹ Exhibit RPD-1, RPD Record, Exhibit 7, p. 285.
- ⁵⁰ Exhibit RPD-1, RPD Record, Exhibit 7, p. 285.
- ⁵¹ Exhibit RPD-1, RPD Record, Exhibit 1, pp. 71, 83 ("Where were you born (city, state, country)?"), 84 ("What clan in Somalia do you belong to?").
- ⁵² Exhibit RPD-1, RPD Record, Exhibit 2, p. 18 at paras. 1-2.
- ⁵³ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at p. 6 (lines 7-9, 34-31).
- ⁵⁴ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 31-34 at paras. 56-67.
- ⁵⁵ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 10-11 at paras. 38-42.
- ⁵⁶ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 11 at paras. 43-45.
- ⁵⁷ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at p. 35 (lines 27-45).
- ⁵⁸ Exhibit RPD-1, RPD Record, Exhibit 2, p. 18 at paras. 6-8.
- ⁵⁹ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 35 (lines 47-49) to 36 (lines 5-10), emphasis added.
- ⁶⁰ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at p. 38 (lines 20-40).
- ⁶¹ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 10 at para. 39.
- ⁶² Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 38 (lines 42-50) to 39 (lines 6-26), emphasis added.
- ⁶³ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 33.
- ⁶⁴ Exhibit RPD-1, RPD Record, RPD Reasons for Decision, pp. 9-10 at paras. 34-35.
- ⁶⁵ Exhibit P-2, Appellant's Record, Appellant's Memorandum, pp. 36-37 at paras. 77-80.
- ⁶⁶ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at p. 42 (lines 26-36).
- ⁶⁷ NDP for Somalia (31 March 2020), item 3.11 at p. 4/12. IRB, RIR. SOM105248.E. 17 March 2016.
- ⁶⁸ NDP for Somalia (31 March 2020), item 3.23. SOM-AO-05001. European Union. Public Register of Authentic travel and identity Documents Online.
- ⁶⁹ Transcript of hearing in RPD file no. TB6-10892 on May 8, 2018 at pp. 6 (lines 7-43), 7 (lines 45-49) to 9 (lines 5-9) inclusive.
- ⁷⁰ NDP for Somalia (31 March 2020), item 1.19, Somalia (South and Central): Fear of Al Shabaab. United Kingdom. Home Office. July 2017, at para. 5.2.5 (pp. 16-17/36).
- ⁷¹ NDP for Somalia (31 March 2020), item 1.7, Situation in South and Central Somalia (including Mogadishu). Asylum Research Consultancy. 25 July 2018, at p. 253 ("5.3. Freedom of religion").
- ⁷² NDP for Somalia (31 March 2020), item 1.7 at p. 256 ("5.3.2.2. Treatment of Shi'a minority population – By non-state actors").
- ⁷³ Exhibit RPD-1, RPD Record, Exhibit 2, p. 18 at para. 6.