

**IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION**

Date:20001214

Docket: IMM500/501-96

OTTAWA, ONTARIO THIS 14th DAY OF DECEMBER 2000

PRESENT: THE HONOURABLE MR. JUSTICE HUGESSEN

BETWEEN:

**HUSSEIN JAMA ADEN, FADUMO GUIRE ALI,
FOSIYA RIYALE, ADEN MOALLIMADEN,
ABDULAZIZ MOHAMED ABDI, MOHAMED ALI ABDI,
SHARMARKE MOHAMED SALEH, AMINA NURI JAMA HASSAN,
ALI HAJI MOHAMED, MADINA MOHAMUD HASSAN,
MARIAM ABDULLAHI DIRIE**

Plaintiffs

-and-

HER MAJESTY THE QUEEN

Defendant

ORDER

Upon consent of the parties, this Court hereby Orders:

1. The provisions contained in Schedule "A" attached hereto form a part of this Order.

2. These actions shall be stayed from the date of this Order until June 3, 2002 or until such earlier time as any of the parties requests, upon 30 days written notice, a continuation of the pre-trial conference.
3. In the event that no request for a continuation of the pre-trial conference is made on or before June 3, 2002, the terms of Schedule "A" shall become the final order of this Court in these actions without the need for further order.
4. In the event of any legislative change within the period provided for in paragraph 2 above, any party can apply to this Court to vary the terms of Schedule "A" of this order to ensure conformity with any successor legislation or regulations.
5. The defendant shall process identification documentation being submitted as a result of Schedule "A" as expeditiously as possible, in all the circumstances, with a view to providing an applicant who will benefit from the terms of this Schedule with a timely assessment of such documentation.
6. No proceedings for contempt may be commenced in reference to this order.
7. The issue of costs is to be dealt with separate and apart from this order.

James K. Hugessen

SCHEDULE "A"

The interpretation of s. 46.04(8) of the Immigration Act, R.S.C. 1985 c. I-2 (as amended) shall include, but shall not necessarily be limited to, the following:

1. As a general rule, pursuant to subsection 46.04 (8) of the *Immigration Act*, a Convention refugee applying for landing under subsection 46.04 (1) of the Act requires an official identity document as a precondition to the grant of landed immigrant status. However, where there is a reasonable and objectively verifiable explanation, related to country conditions, for an applicant's inability to obtain an official document, the following documents satisfy the statutory requirement for a "satisfactory identity document" pursuant to s. 46.04(8) of the Act, subject to the discretion of the Immigration Officer as set out in paragraph 2:

(a) The applicant's sworn declaration attesting to his or her name, date of birth and country of nationality and including a reasonable and objectively verifiable explanation as to the applicant's inability to produce any official documentation from his or her country of origin and, where applicable, including a reasonable explanation of any material discrepancies between information provided in the applicant's Personal Information Form and/or application for landing and any other material discrepancies in documents provided in support of the applicant's landing application; and

in conjunction with the applicant's sworn declaration, the applicant will also provide a sworn declaration from a Canadian citizen, permanent resident, or any other person deemed acceptable in the discretion of the officer, who personally knew either the applicant or the applicant's immediate family members prior to the applicant's arrival in Canada and who, by virtue of this knowledge, can attest to the applicant's identity.

Sworn declarations from persons other than the applicant shall include, but need not be limited to, the following information: how the affiant knows the applicant and/or the applicant's family; when and under what circumstances the affiant first met the applicant and/or members of the applicant's family; the family relationship, if any, between the affiant and the applicant; the degree and nature of the contact between the affiant and the applicant prior to the applicant's arrival in Canada; and how the affiant and the applicant made contact in Canada ; OR

- (b) The applicant's sworn declaration attesting to his or her name, date of birth and country of nationality and including a reasonable and objectively verifiable explanation as to the applicant's inability to produce any official documentation from his or her country of origin and, where applicable, including a reasonable explanation of any material discrepancies between information provided in the applicant's Personal Information Form and/or application for landing and any other material discrepancies in documents provided in support of the applicant's landing application; and
- in conjunction with the applicant's sworn declaration, the applicant shall also provide a sworn declaration attesting to the applicant's identity from an official belonging to an established and credible organization representing nationals of the applicant's country of origin. A declaration sworn by such an official shall include, but need not be limited to, the following information: a detailed explanation of the organization's attestation of the applicant's identity, including what steps were taken to establish the identity of the applicant.

2. Without limiting the generality of the following, in determining whether the documents submitted by an applicant satisfy the requirements of subsection 46.04(8), the Immigration Officer shall assess the documents to determine, as may be necessary, whether:

- a) Explanations as to why official identity documents are not available or cannot be obtained from the country of origin are reasonable and objectively verifiable;
- b) Sworn statements are consistent with other documents submitted in support of the landing application;
- c) Explanations given for discrepancies are reasonable;
- d) Affidavits from other affiants demonstrate sufficient and credible knowledge of the applicant to attest accurately to identity; and
- e) Evidence of identity is not contradicted in any material way by other information.

Such assessment, if negative, shall be recorded within the officer's notes or the FOSS extract.

3. Applicants shall be advised of, and provided with an opportunity to correct or contradict, any negative assessments made by the immigration officer which are based on extrinsic evidence, prior to a final decision being made by the immigration officer.

4. In the event of a negative assessment, the FOSS extract or the officer's notes concerning the assessment, as the case may be, shall, until June 3, 2002, be provided to an applicant upon request.

JAMES K. HUGESSEN