Federal Court  Cour fédérale

Date: 20160725

Docket: IMM-5633-15

Citation: 2016 FC 871

Ottawa, Ontario, July 25, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MENGISTU BIFTU ADERA
MEKIDES GIRMA WARGA
HEMAN MENGISTU BIFTU
ELDAAH MENGISTU BIFTU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] dated November 23, 2015 [Decision] which

denied the Applicants' appeal of a decision of the Refugee Protection Division [RPD], and confirmed the determination that the Applicants are neither Convention refugees within the meaning of s 96 of the Act nor persons in need of protection under s 97 of the Act.

II. BACKGROUND

A. *Facts*

[2] Mengistu Biftu Adera [Principal Applicant], his wife, Mekides Girma Warga and their two minor children, Heman Mengistu Biftu and Eldaah Mengistu Biftu are all citizens of Ethiopia.

[3] The Principal Applicant says that he has been a member of the Blue Party since 2013 and that he was selected to be an election observer for the national election on May 24, 2015. He claims that he was arrested and detained by Ethiopian authorities on May 20, 2015 for five days because of his political opinions and activities. During this time, he says he was beaten and interrogated about his travels to Europe and was asked to name opposition party contacts. The Principal Applicant paid his bail and he was released on May 25, 2015 on conditions which included not leaving Addis Ababa and not involving himself in any political opposition activities.

[4] The Applicants had unused visas for travel to Canada that were issued in November 2014. They used these to flee Ethiopia. The Principal Applicant's wife, an employee

of Turkish Airways, bribed a security worker at the airport through a co-worker so that they could leave through the airport in Addis Ababa on June 3, 2015.

[5] The Principal Applicant and his wife allege fear of imprisonment and torture if they are returned to Ethiopia because of the Principal Applicant's political opinion and membership.

B. *RPD Decision*

[6] The Applicants' claims were heard by the RPD on August 17, 2015. Finding that the Principal Applicant was not a credible witness regarding his claimed political activity, the RPD rejected the claims by written reasons dated September 10, 2015. The Applicants appealed the decision to the RAD.

III. DECISION UNDER REVIEW

[7] On appeal, the Applicants submitted additional documents as new evidence pursuant to s 110(4) of the Act: an affidavit prepared by the Principal Applicant's wife, Mekides Girma Warga, and two photographs. The affidavit, dated October 3, 2015, stated that neighbours of the family had communicated that the family's house and furniture had been seized by the government. Photographs to corroborate this information, sent by Mekides Girma Warga's sister, were also included. While the documents were accepted as new evidence, the RAD placed little weight on them and did not find that they established that the government has an ongoing interest in persecuting the Principal Applicant for several reasons, including that the affidavit did not state when the government seized the property and lacked any declaration about the allegations

of the property being seized. Furthermore, date stamps were absent from the photos, as was anything indicative of the address of the home portrayed in them. The RAD concluded that they did not support an allegation that furniture had been removed from the Applicants' home, let alone by Ethiopian authorities.

[8] The RAD noted that documentary evidence shows that there are about two dozen political parties operating in Ethiopia, a country with an electoral base of 30 million. While Ethiopian authorities do sometimes harass or persecute leaders of the opposition party, the RAD concluded that if ordinary members, or even every officeholder, of an opposition party were persecuted by the state, it would be indicated in the documentary evidence.

[9] Evidence regarding the treatment of members of the Blue Party was noted by the RAD to be somewhat mixed. While the leadership has been quoted as stating that 60-90 of its members were arrested by the authorities and released after several hours without being charged, other sources are silent on the issue.

[10] The RAD reviewed the questions asked of the Principal Applicant by the RPD, noting that his testimony regarding the Blue Party and its candidates was not what one would expect from a political operative, or even an active member of a political party. The RAD, like the RPD, did not find the Principal Applicant's explanation for his lack of knowledge – that he had travelled outside Ethiopia prior to the 2015 election – to be reasonable.

[11] The RAD agreed with the determination that the Principal Applicant was no more than a mere member of the Blue Party and that he lacked the profile of a political activist who would be targeted by the authorities for any reason. The record demonstrated that the RPD had considered all of the evidence, including that pertaining to the Principal Applicant's alleged detainment from May 20-25, 2015, and clearly articulated its conclusion that he was not credible regarding his political activities.

[12] The RAD further observed from the audio recording of the RPD hearing that the Principal Applicant was a difficult and evasive witness, who had often required prompting by the panel, and who had provided embellished and confusing answers.

[13] The claims of the other Applicants were determined to be entirely dependent on that of the Principal Applicant and, as a result, were also dismissed.

IV. ISSUES

[14] The Applicants submit the following is at issue in this proceeding:

- Did the RAD commit reviewable errors of law in affirming the RPD decision and dismissing the appeal?

V. STANDARD OF REVIEW

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a

satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[16] The Applicants have brought forward only one issue to be determined in this matter, asking whether the RAD committed a reviewable error in its Decision to affirm that of the RPD. Both parties agree and I concur that the standard of review to be applied in the review of the RAD's findings and assessment of the evidence is that of reasonableness: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 at para 42 [*Siddiqui*].

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[18] The following provisions from the Act are relevant in this proceeding:

Convention Refugee	**Définition de « réfugie »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	(a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	(b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:
(a) to a danger, believed on	(a) soit au risque, s'il y a des

substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir

Procedure

Fonctionnement

110 (3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the

110 (3) Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant

appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.

d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

…

…

Hearing

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

(b) that is central to the decision with respect to the refugee protection claim; and

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

Audience

(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

…

…

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

(a) confirm the determination of the Refugee Protection Division;

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

réfugiés.

VII. ARGUMENTS

A. *Applicants*

[19] The Applicants argue that the Decision was based on findings of fact that were contrary to the evidence before the RAD. For instance, the Decision incorrectly states that in spite of the "harassment and persecution of political leadership of several opposition parties, opposition parties won numerous seats in the assembly." The Applicants point out that evidence available at the RPD hearing, including documents published by the International Foundation for Electoral Systems and the European Union Election Observation Mission, indicates that the ruling party (the Ethiopian People's Revolutionary Democratic Front) and its allied parties won all 547 seats. None of these allied parties can be considered "opposition parties."

[20] Also, the RPD's finding that the Principal Applicant lacked a political profile for future persecution is unrelated to the credibility of his detention in May 2015; the RPD made no finding that he was not detained as he alleged. It was an error for the RAD to imply as much. A further error was committed by ignoring independent evidence that corroborates the Principal Applicant's detention. The Applicants submitted two magazine articles which state that members

of the opposition parties have become victims, including individuals who had been nominated to become election observers. It was not open to the RAD to completely ignore this evidence. In addition, the Applicants submit that, contrary to the RAD's findings, the documentary evidence is replete with examples of detentions and persecutions of ordinary members of opposition parties such as the Blue Party, including those perceived to be ordinary members. In a previous, similar set of circumstances, the Federal Court has found that the Board erred by ignoring documentary evidence that contradicted its conclusion that an applicant lacked a well-founded fear of persecution because his low profile was not likely to attract the attention of the Ethiopian authorities: *Dessie v Canada (Citizenship and Immigration)*, 2011 FC 1497 at para 5 [*Dessie*].

[21] As regards the new evidence submitted by the Applicants to the RAD, they note that the RAD gave no reasons for rejecting the reliability of the Principal Applicant's wife's sworn evidence. If the RAD had concerns about the credibility of the evidence contained in the affidavit, it should have held a hearing.

[22] It was not open to the RAD to make a negative credibility finding based on the demeanour of the Principal Applicant where the RPD made no such finding. It was the RPD that had the advantage of observing him testify. Furthermore, a problematic witness' testimony does not necessarily lack credibility. Absent an actual negative credibility finding, the RAD's labelling of the Principal Applicant as difficult and evasive casts an unclear, nebulous cloud over the reliability of his evidence.

B. *Respondent*

[23] The Respondent concedes that the RAD erred in noting that opposition parties won numerous seats in Ethiopia's 2015 election, as well as the observation that a letter submitted by the Applicants and written by the police lacked credibility because it was dated in the Gregorian and not the Ethiopian calendar. However, it is submitted that these errors are simply mistakes that bore no impact on the assessment of the Principal Applicant's overall credibility, and do not negate the Decision as a whole: *Stelco Inc v British Steel Canada Inc*, [2000] 3 FC 282 (FCA) at para 22; *Shi v Canada (Citizenship and Immigration)*, 2011 FC 199 at paras 12-13.

[24] The Respondent argues that, contrary to the Applicants' assertions that no comments were made in the RPD's decision on the quality of the Principal Applicant's oral testimony as part of its assessment of his credibility, the RPD did in fact comment on his coherence, hesitations, inconsistencies, and that he appeared to be flustered when questioned. The RAD reviewed the evidence and the quality of the Applicants' testimony in light of the RPD's credibility finding.

[25] As regards the Principal Applicant's claimed detention, the Respondent says that the RAD's independent review of the evidence and the RPD's reasons, as well as its own pronouncement on the issue, undermine any contention that clear credibility findings in this regard were not made by the RPD. The RPD made its disbelief of the Principal Applicant's story, including his allegations of arrest and detention, clear. After finding that he lacked the credibility

to establish a profile as a political activist likely to be targeted, the RPD did not believe any allegations flowing from his claimed political profile, including any arrest and detention.

[26] If the Principal Applicant had been as active in the Blue Party as he claimed, he ought to have been able to give more specific answers about the party's objectives. It was not unreasonable for the RAD to draw a negative credibility inference here as there was an inexplicable gap in the Principal Applicant's knowledge of the Ethiopian political landscape.

[27] While neither the RPD or the RAD specifically mentioned the magazine articles submitted by the Applicants, given that they were insufficient to support a positive disposition of the claim absent credibility, it was reasonable to afford them no weight. Neither tribunal is required to refer to every piece of evidence in the record and both are presumed to have considered all of the evidence before them*: McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 71-72.

[28] The RAD acknowledged the conflicting picture created by the general documentary evidence regarding the treatment of Blue Party members, but concluded that it did not establish that membership alone was sufficient to ground a claim to a well-founded fear of persecution in Ethiopia. The Principal Applicant did not have a profile (leader, activist, demonstrator, organizer) that would put him at risk. The RAD's weighing of all of the evidence was not unreasonable: *Johal v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1760 at paras 10-11.

[29] The Respondent submits that the Applicants essentially disagree with the weight given by the RAD to certain pieces of evidence over others. This does not warrant the Court's intervention.

[30] The Respondent says that *Dessie*, above, relied on by Applicants, can be distinguished from the present situation as the RAD here did not accept the truthfulness of the Principal Applicant's story, and did not accept that he had been arrested and detained. To the extent that the Applicants may be attempting to rely on that case for the court's factual findings, every case turns on its facts and specific record.

[31] The Respondent submits that no arguable issue arises from the RAD's treatment of the Applicants' new evidence or from its failure to hold an oral hearing. The RAD gave clear and comprehensive reasons for placing little weight on the Applicants' new evidence; it simply did not find the documents sufficiently credible and trustworthy to establish the government's ongoing interest in pursuing the Principal Applicant for the reasons alleged in the claim. Furthermore, because the RAD did not have concerns about the credibility of the evidence *per se*, there was no requirement to hold an oral hearing under s 110(6) of the Act.

VIII. ANALYSIS

[32] The RAD accepted that the Principal Applicant was a card-carrying member of the Blue Party but, for various reasons, decided that he "does not have the profile of someone who would be a target for persecution by the state." The rationale for the Decision is that, while Blue Party leaders might be harassed and sometimes persecuted, "there are less than serious chances of

persecution for ordinary opposition political party members," such as the Principal Applicant. The Applicants raise various grounds of review.

A. *The Arrest and Detention Incident*

[33] At paragraph 30 of the Decision, the RAD finds as follows:

> The RPD's reasons are transparent in terms of finding that the principal Appellant was a card-carrying member of the Blue Party, and that he was only a card-carrying member since February 2013. He did not have the profile of somebody who would be targeted, and therefore the alleged incidents of arrest and detention by the authorities for five days are not credible.

[34] The Applicants now say that the RPD did not make any finding that the Principal Applicant's detention in May 2015 was not credible. This is an important issue because it could affect the assessment of profile and forward-looking risk.

[35] My review of the RPD decision reveals the following at paragraphs 11-15 and 17:

> [11] In short, the claimant did not know how many candidates the Blue party had in the recent elections, nor did he know how many were elected. He could not name any of the party's candidates except for the lone candidate in his own province. He was sure that his own candidate had been elected, although the election results indicate that no Blue party candidates were elected. He could not identify the full names of the other opposition parties who were contesting the elections, although he recalled seeing their posters and other advertising material. The claimant's explanations for not being aware of the election results were that he had been out of the country for long periods prior to the elections, but, with a single exception, he could not recall which countries he had been to or when he had been out of the country.
>
> [12] The principal claimant was asked how someone as politically active as the claimant purports to be could be so (*sic*) uninformed about the result of the 2015 elections in Ethiopia. He is

unable to explain. The panel concluded that the claimant is not an active member of the Blue party. The panel drew a negative inference as to the credibility of the claimant.

[13] The panel finds that it is likely, on a balance of probabilities, that the claimant was a member of the Semayawi (Blue) party, but that he was an ordinary member, and that he was not as politically active in Ethiopia as he maintained he was. As such, the claimant did not have the profile of a political activist who would be a target of the authorities. The panel concludes that the claimant is not at risk, on a balance of probabilities, due to his political opinions and activities if he were to return to Ethiopia.

[14] The principal claimant provided a letter from the Semeyawi Party (*sic*) attesting to his membership and participation in the party, and his "going door to door and telling people to support and recently to vote for the Blue Party". There was an inconsistency between the BOC (Basis of Claim) form and documentary evidence on the one hand, tending to show an active and committed partisan operative, and the oral testimony showing an inexplicable gap in the principal claimant's knowledge of the Ethiopian political landscape. The panel was unable to assign any weight to the letter from the Semeyawi Party (*sic*).

[15] The principal claimant provided a police summons which came from the Addis Ababa Police Commission. The letter orders the claimant to appear at a police station for questioning. There is no hint as to whether he is a suspect or a witness, nor is there any indication that he is wanted by police due to his political opinions or activities. Given the doubts that the panel had about whether the claimant was an active of serious member of the Blue party, the panel exercised caution in giving weight to the police notice. It is well-established that an applicant's overall credibility may affect the weight given to the documentary evidence. Given the numerous credibility failings of the claimant, the panel was unable to attribute significant weight to this report.

…

[17] The panel finds that the principal claimant is not credible with respect to his being sought by the authorities in Ethiopia due to his political opinions. Given the multiple findings of lack of credibility, the panel finds that it is more probable than not that the claimants would not face a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment.

[footnotes omitted]

[36] This issue was raised before the RAD which dealt with it as follows:

> [29] The Appellants submitted that the RPD erred by failing to make a clear credibility finding about the main event that gave rise to the Appellants' fears of persecution, namely the detention of the principal Appellant from May 20-25, 2015. I am not persuaded. The record shows that the RPD considered all the evidence regarding this incident and found that the principal Appellant was not credible regarding his political activities. There is no requirement on the part of the RPD to cite each and every alleged incident.

[37] The Principal Applicant's point is that:

> The RPD's finding of a lack of political profile relates to his fears of future persecution, not to his detention in May 2015. His detention in 2015 was not because of alleged political activities or profile, but because of his travels outside Ethiopia and his membership in the Blue Party.

[38] Paragraph 13 of the RPD decision clearly deals with both the Principal Applicant's allegations of past targeting as well as future risk. As regards his allegations of past experiences the RPD says:

> The panel finds that it is likely, on a balance of probabilities, that the claimant was a member of the Semayawi (Blue) Party, but that he was an ordinary member, and that he was not as politically active in Ethiopia as he maintained he was. As such the claimant did not have the profile of a political activist who would be a target of the authorities.

[39] The only allegation of past targeting was the alleged detention episode, so the RPD is saying that the Principal Applicant's profile was not such as to render this episode credible. In addition, paragraph 16 of the RPD decision specifically deals with the medical report and the specific injuries that allegedly resulted from the detention incident. It is clear, in my view, that

both the RPD and the RAD considered the detention incident and that it was not believed. I can see nothing unreasonable in this conclusion or the RAD's own assessment of the past situation and what it augurs in terms of future risk.

B. *Obvious Mistakes*

[40] It is clear that the RAD did make two mistakes (which the Respondent concedes) when it said that "Despite harassment and persecution of political leadership of several opposition parties, opposition parties won numerous seats in the assembly" (at para 28) and when it said in relation to the police letter at paragraph 33 that:

> … The RAD also notes that the letter from the police is dated in the Gregorian calendar rather than Ethiopian calendar. Government documents are dated in the Ethiopian calendar rather than Gregorian. Since the RPD had already assigned little weight to the police report, the RAD's observation does not change the weight that can be assigned to this letter.

[41] The Applicants argue that these two mistakes reveal that the RAD erred by making negative inferences based on an erroneous finding of fact that is contrary to evidence.

[42] Not all mistakes render a decision unreasonable and decisions do not have to be perfect. See *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 18.

[43] Erroneous findings of fact have to be material to the decision under review. See *Oberlander v Canada (Attorney General)*, 2015 FC 46 at para 230; *Zhan v Canada (Citizenship and Immigration)*, 2010 FC 822 at para 50.

[44] The mistake about seats won in the 2015 election was part of the discussion of the risks faced by political leaders. As such, the RAD may be underestimating the strength and success of the harassment of political leaders, but this does not affect its assessment of the risks faced by mere card-carrying members. The RPD did not make this mistake.

[45] The mistake about the calendar is also not material because, as paragraph 33 of the Decision makes clear, it is simply an "observation" that does not change the weight to be assigned to the police letter:

> [33] The Appellants submitted that the RPD did not attribute significant weight to the letter from the police. The RPD provided cogent reasons in its analysis regarding the letter from the po1ice and having considered this letter, the RAD agrees with the RPD's decision to assign it little weight. The letter provides no indication of the reason why he was requested to report to them. Similarly, the RPD assigned little weight to the medical report because it does not indicate the manner in which the Appellant incurred the injuries. The RAD also notes that the letter from the police is dated in the Gregorian calendar rather than Ethiopian calendar. Government documents are dated in the Ethiopian calendar rather than Gregorian. Since the RPD had already assigned little weight to the police report, the RAD's observation does not change the weight that can be assigned to this letter.

C. *Magazine Articles*

[46] The Applicants also say that the RPD and the RAD erred by ignoring independent evidence in the form of two magazine articles:

> 15. The RAD also erred by ignoring the independent evidence that corroborates the Applicant's detention in the form of two magazine articles. This evidence was never mentioned in the RPD reasons, and was also completely ignored by the RAD. The first article states that members of the opposition parties have become victims, and lists a number of names, one of which is "from Addis Ketema Mengistu Biftu". The second one says that: "At that time,

> we had no information about the progress and we published that Mengistu Biftu, who was nominated to become election observer, for the Addis Ketema Sub city of Addis Ababa city was arrested. Mengistu Biftu, who was arrested, suffered in prison and released on bail, entered Canada, with his family and we learnt that he has applied for political asylum." It was an error of law to completely ignore this independent evidence that corroborated the Applicant's detention. It may have been open to the RAD to find that this evidence is not persuasive or credible, and to give reasons for such a finding, but it was not open to it to completely ignore evidence that contradicts a central finding by the RAD.

[47] It is true that neither the RPD or the RAD make any specific mention of either article from the "Lisane Hizb Reporter (*sic*)" which say that:

> …Mengistu Biftu, who was nominated to become election observer, for the Addis Ketema Sub city of Addis Ababa city was arrested. Mengistu Biftu, who was arrested, suffered in prison and released on bail, entered Canada, with his family and we learnt that he has applied for political asylum.
>
> Our reporter, who received information from our sources in Canada, called Mr. Mengistu and he was not willing to give an interview.
>
> Our editorial board understands very well that why people don't want to have interview and decided to make this news public, as is.
>
> Our valued readers, in the future, we will do repetitive effort to get his interview and we promise to bring his interview, if we found him willing to have one.
>
> [errors in original]

[48] In this application, the Applicants assert vigorously that the Principal Applicant's detention in 2015 "was not because of alleged political activities or profile, but because of his travels outside Ethiopia and his membership in the Blue Party." This is at odds with the magazine articles which are about people who were involved in the 2015 election as observers

and candidates. In other words, the magazine articles are premised upon the Principal Applicant's activist political role. When dealing with the letter from the Semayawi Party, the RPD noted, at paragraph 14 of its decision:

> …an inconsistency between the BOC (Basis of Claim) form and documentary evidence on the one hand, tending to show an active and committed partisan operative, and the oral testimony showing an inexplicable gap in the principal claimant's knowledge of the Ethiopian political landscape.

Part of that documentary evidence was the two magazine articles mentioned above. I think the RPD's general comments about the inconsistency between documentary activism and oral knowledge do not require a specific mention of the magazine articles. The fact that these articles are at odds with the position the Applicants now take before the Court on the reasons for the Principal Applicant's alleged detention cast even further doubt on their reliability and weight as evidence. The magazine articles are part of the evidence offered for political activism that was found to be at odds with the Principal Applicant's oral testimony.

D. *Evidence of Harm to Ordinary Members*

[49] The Applicants say that the RAD's conclusions that only "card-carrying members" of the Blue Party are at risk in Ethiopia overlooks the evidence in the documentation that ordinary members are at risk, and this evidence should have been addressed in accordance with *Cepada-Gutierrez v Canada (Citizenship and Immigration)*, [1998] FCJ No 1425 principles because it contradicts the findings of both the RPD and the RAD. The Applicants refer me to the following documentation in this regard:

a) RIR 14 January 2010;

b) Human Rights Watch World Report 2015, Ethiopia;

c) Amnesty International, Ethiopia: Onslaught on human rights ahead of elections, 22 May 2015;

d) Amnesty International, Ethiopia: Investigative Suspicious Murders and Human Rights Violations.

[50] In this documentation, there are references to violence against "opposition party members" and "supporters of opposition political parties," but it is clear from the whole context that this doesn't mean just card-carrying members, and that profiles remain a significant aspect of what this documentation reveals about violence against opposition parties. This evidence does not contradict the general findings of the RAD and the RPD that the documentation does not suggest that the Principal Applicant is at risk as a mere card-carrying member who has no other profile.

E. *Applicants Knowledge of Blue Party*

[51] The Applicants say that the RAD drew an unreasonable inference at paragraph 24 of its Decision:

> The RPD asked the principal Appellant about the objectives and vision of the Blue Party, and the Appellant testified that he supported the Blue Party because it stood for justice and democracy. This is just a generic statement without much substance. Documentary evidence shows that the vision statement of the Blue Party reads as follows:
>
> > [t]o see an Ethiopia where all democratic rights are respected, where there is good governance and rule of law which works responsibly and accountably for the fulfillment of the wishes of the people, where economic and social prosperity reigns, that is the pride of its citizens, that contributes its own share to good relations between the world's people.

[52] The Applicants argue that the vision statement of the Blue Party cited by the RAD is itself a simple generic statement without any substance, and it is unreasonable to draw a negative inference from the Principal Applicant's testimony about the objectives and vision of the Blue Party when it is consistent with, and no more generic than, the party's actual vision statement.

[53] Paragraph 24 of the Decision cannot be read out of context. The Principal Applicant claimed to be an active member of the Blue Party but knew very little about it. He was asked "about the objectives and vision of the Blue Party," but could say no more than that he supported it because "it stood for justice and democracy." This response hardly suggested he was knowledgeable about the party and did not assist his assertions that he was an active member. No more should be read into the RAD's conclusion on this point.

F. *New Evidence*

[54] The Applicants complain about the RAD's treatment of their new evidence as follows:

> 21. It is further submitted that the RAD committed reviewable errors of law in giving no weight to the Applicants' new evidence. The RAD stated:
>
> > "However, the RAD places little weight on the affidavit and the pictures for the following reasons:
> >
> > - The affidavit does not state when the government seized the property[;]
> >
> > - There is no sworn affidavit or declaration from the neighbor about the allegations that the property of the Appellants has been seized by anybody, let alone the authorities;

- The two photographs are of a metal gate without any address or any other indicators as to the location. The photos do not establish where this gate is located;

- The pictures do not have any date stamp and thus it cannot be established when these pictures were taken;

- These pictures do not support the allegation that any furniture has been removed from the house;

- The photos show a metal gate with three pieces of plain paper posted on the gate with one word written on each piece of paper in the Amharic language, which translates to "seized". There is no government seal or any other indication as to who placed these paper slips. These do not establish that the authorities placed the signs."

22. The Applicant's submitted a sworn affidavit from the female Applicant testifying that she was informed on October 3, 2015 by her neighbour that their home was sealed by the government and their furniture and possessions were taken. She wrote that photos of her residence were sent to her by her sister Rakeb by DHL which she received on October 13, 2015, and were attached to the affidavit. A sign was placed on the gate of their compound that says "sealed" in the Amharic language. She attached a copy of the DHL envelope in which the photos arrived.

23. The RAD did not give any reasons for rejecting the credibility of the Applicant's sworn evidence. The reasons that it gave for giving this little weight do not provide any basis for disbelieving the information given in the affidavit. If the RAD had concerns about the credibility of the evidence contained in the affidavit it should have held a hearing pursuant to sub-section 110(6) of IRPA. The RAD stated that the appellants did not request an oral hearing before the RAD, but in their written submissions they wrote: "It is submitted that if there are questions about the credibility of the new evidence then the RAD should hold a hearing pursuant to sub-section 110(6) of IRPA, as the evidence is central to the decision and if accepted would justify allowing the appeal."

[footnotes omitted]

[55] My review of the evidence and the Decision suggest that the RAD gave clear and comprehensive reasons for discounting this evidence which the Court cannot second guess because it is a question of weight. See *Khosa*, above, at para 61; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 33.

[56] In addition, in accordance with the principles enunciated in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 26-27, the RAD was entitled to deal with this evidence as being a matter of weight rather than credibility:

> [26] If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
>
> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[57] In addition, s 110(3) of the Act indicates that the RAD must generally proceed without an oral hearing. An exception is carved out by s 110(6) where there is new evidence. However, the RAD is not required to hold an oral hearing simply because it admits new evidence; the criteria at s 110(6) must be met and even then, it can still opt to not hold a hearing: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 71. Under s 110(6), the RAD may hold a hearing if the new evidence raises a serious issue with respect to credibility, is central to the decision and that, if accepted, would justify allowing or rejecting the refugee protection claim. The RAD did not have concerns about the credibility of the evidence, but rather its weight. As a result, the criteria of s 110(6) were not met and it was not an error for the RAD to fail to convene an oral hearing: *Ajaj v Canada (Citizenship and Immigration)*, 2016 FC 674 at paras 19-21; *Siddiqui*, above, at paras 102-114.

G. *Demeanour*

[58] The Applicants assert that the RAD made a negative credibility finding based upon the demeanour of the Principal Applicant where the RPD made no such finding, and the RPD had the advantage of seeing the Principal Applicant testify.

[59] The RAD's reasons never mention "demeanour." The RAD listened to the audio recording and had every opportunity to make the observations it did.

H. *Conclusions*

[60] I can find no reviewable error with the Decision that would require it to be sent back for reconsideration.

[61] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MENGISTU BIFTU ADERA, MEKIDES GIRMA WARGA, HEMAN MENGISTU BIFTU, ELDAAH MENGISTU BIFTU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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