Federal Court  Cour fédérale

Date: 20170626

Docket: IMM-5057-16

Citation: 2017 FC 621

Ottawa, Ontario, June 26, 2017

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

FITHAWIT MEBRAHTU GEBREWLDI
YEMANE TEKESTE HAILE
FEVEN YEMANE TEKESTE
MILION YEMANE TEKESTE
NAOD YEMANE TEKESTE
NOH YEMANE TEKESTE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ms. Gebrewldi [Principal Applicant], her husband, Mr. Haile, and their minor children, all citizens of Eritrea, seek judicial review of the decision of a visa officer whereby their

application for permanent residence was denied on the basis that they were neither members of the Convention refugee abroad class, nor members of the country of asylum class, pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The officer had unanswered credibility concerns relating to Mr. Haile's military service in Eritrea.

[2] For the reasons outlined below, this application for judicial review will be dismissed.

II. Facts

[3] The Principal Applicant and her accompanying spouse are respectively 38 and 52 years old. They declared that Mr. Haile did military training and national service from January 1995 to June 1996. They stated that he avoided recall to military service during the border conflict with Ethiopia but was eventually caught in 2000 and forced to return to his previous national service work in Barentu, until December 2004, and then in Forto Sawa until April 2005.

[4] The applicants were granted United Nations High Commissioner Refugees [UNHCR] status in the Republic of Sudan.

[5] On February 12, 2014, they applied for permanent residence in Canada as members of the Convention refugee abroad class. Their claim is based on their fear of returning to Eritrea because Mr. Haile left illegally by defecting from the national service.

[6] On October 4, 2016, the Principal Applicant and her spouse were interviewed in Khartoum, Sudan, with the assistance of an interpreter fluent in English and Tigrinya.

III. Impugned Decision

[7] In rejecting the applicants' claim, the officer explained that she was not satisfied that the Principal Applicant was a member of the Convention refugee abroad class, or the country of asylum class, because answers provided during the oral interview were inconsistent with the account provided in the applicants' written application.

[8] More specifically, the applicants declared that they fear return to Eritrea because Mr. Haile left the country illegally by defecting from the national service. However, Mr. Haile provided vague explanations as to why he did not have to fulfill his national service during the periods of conflict in Eritrea. These concerns were put to Mr. Haile by the officer and he was provided with an opportunity to elucidate them. Nevertheless, the officer noted significant discrepancies between the facts presented in the written application and Mr. Haile's statements at the interview concerning both the nature of his military service and the reasons why he defected. The officer noted the following examples in the decision:

- Mr. Haile stated in his written application that he completed his national military service training from January 1995 to June 1996, whereas during the interview, he stated that he only completed his training in 2002;

- Mr. Haile stated in his written narrative that he hid to avoid recall to military service during the border conflict, whereas during his interview he stated that he was not required to go to national service during the periods of conflict as a favour by the administration; and

- Mr. Haile stated in the interview that he served in Forto Sawa, Tesseney, and Gerset; in his forms he stated that he was rather in Aligheder and Barentu.

[9] These significant discrepancies, stated the officer, reduced the applicants' overall credibility. Despite having given the applicants the opportunity, at the interview, to provide information about all the facts related to their claim, the officer found that the applicants had provided insufficient evidence to support the facts which were material to their alleged fear of return to Eritrea.

[10] As a result, the officer concluded that the applicants did not have a well-founded fear of persecution and that they were not seriously and personally affected by civil war, armed conflict or massive violation of human rights, and rejected their permanent residence application.

IV. Issues and Standard of Review

[11] The applicants have raised numerous issues in their memorandum of arguments. Whether the officer erred in her negative credibility findings is not one of them.

[12] In my opinion, the relevant issues for determination arising out of this application are the following:

A. *Did the officer err in basing her decision regarding whether the applicants qualify as permanent residents under the Convention refugee abroad class or the country of asylum class, solely on credibility findings?*

B. *Are the officer's reasons adequate?*

[13] In *Dunsmuir v New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held that an analysis of the standard of review is unnecessary in cases where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question" (*Dunsmuir*, above at para 62).

[14] It is well-established that the decision of an officer as to whether an applicant is a member of the Convention refugee abroad class or the country of asylum class is a question of mixed fact and law reviewable on the reasonableness standard (*Bakhtiari v Canada (Citizenship and Immigration)*, 2013 FC 1229 at paras 22; *Qarizada v Canada (Citizenship and Immigration)*, 2008 FC 1310 at para 15; *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25).

[15] Consequently, this Court's analysis of the officer's decision is concerned with the "existence of justification, transparency and intelligibility within the decision-making process" and with "whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above at para 47).

[16] The *Dunsmuir* criteria are met "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[17] With respect to the adequacy of the officer's reasons, this Court has stated that "[u]nless there are no reasons at all, [it] is a matter that is reviewable on a standard of reasonableness" (*Wu v Canada (Attorney General)*, 2016 FC 722 at para 70; *Newfoundland Nurses*, above at paras 20-22). As, in the present case, the applicants were provided with reasons, this issue will also be reviewed on a reasonableness standard.

V. Analysis

A. *Did the officer err in basing her decision regarding whether the applicants qualify as permanent residents under the Convention refugee abroad class or the country of asylum class, solely on credibility findings?*

[18] As indicated above, the applicants do not argue that the officer erred in her credibility analysis. Rather, they submit that she erred in the analysis of their claim. Essentially, they argue that in spite of the officer's negative credibility findings and the discrepancies between their written application and oral testimony, the officer ought to have examined and taken into consideration their UNHCR designation, as well as the general country condition documents outlining the risks associated with returning to Eritrea.

[19] In respect of the officer's analysis of whether the applicants satisfy the criteria of the country of asylum class, the applicants submit that the officer confused this analysis with that which is required to determine whether they are properly members of the Convention refugee abroad class. They argue that the officer erred in concluding that, due to credibility concerns, the applicants did not meet the requirements of the country of asylum class without conducting an independent examination.

[20] With respect, I am of the opinion that the applicants have not demonstrated that the officer's decision is unreasonable. They simply ask this Court to reweigh the evidence which was before the officer and, in doing so; disregard the negative credibility findings against them.

[21] It is well-established that where the reasonableness standard applies, as it does in this case, deference is owed to the decision-maker. This Court cannot substitute its own appreciation of the appropriate solution.

[22] The applicants provided evidence in their written application to suggest that they fear to return to Eritrea because Mr. Haile left the country illegally by defecting from the national service. After being asked a series of questions at the interview relating to when and where Mr. Haile served, as well as why he did not serve in the border conflict from 1998 to 2000, Mr. Haile provided answers relative to each point which were entirely inconsistent with those in his written application and narrative.

[23] Since the circumstances surrounding Mr. Haile's military service could not be ascertained, and it could not be established that Mr. Haile had served in the military, when he served, the nature of his service, or how he left his country of origin, the applicants' fear of return on the basis claimed could not be established by the officer.

[24] Without this possibility of a well-founded fear of persecution, the applicants cannot be Convention refugees pursuant to section 96 of the IRPA. Similarly, section 147 of the Regulations requires that the applicants have been, and continue to be, seriously and personally

affected by civil war, armed conflict, or massive violation of human rights in order to be a member of the country of asylum class. The evidence relevant to the applicants' claim was undermined by numerous inconsistencies and discrepancies. Therefore, they did not present credible material evidence from which the officer could conclude that they satisfy the requirements of either class.

[25] This Court has stated, as the respondent rightfully puts, that the failure to establish the facts upon which an application is based can lead to the rejection of the entire claim on the ground that there is a lack of credibility (*Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164 at para 13). I agree that it was reasonable to do so, in the present case. The overall lack of credibility meant that the officer could not be satisfied that the applicants meet the requirements of either class under Canadian law.

[26] Since the applicants do not contest the officer's negative credibility finding, the central question which remains to be answered is whether the officer was justified in curtailing the evaluation of the applicants' claim after reaching a conclusion that he could not establish that they were credible.

[27] The burden of proof rested upon the applicants to substantiate their claim (*Alakozai v Canada (Citizenship and Immigration)*, 2009 FC 266 at para 33). In my opinion, they have not done so. Where an officer has determined that general credibility is lacking, country condition documents alone cannot provide an adequate basis for a positive determination. The applicants would still have to demonstrate a link between their personal situation and the situation in their

country of origin (*Alakozai*, above at para 35). Since the applicants did not provide credible evidence concerning their situation, their application could not precede on the basis of country condition documents alone.

[28] As for the applicants' UNHCR status, this Court has noted that UNHCR status is not determinative and, rather, that the officer is under a duty to conduct his or her own assessment of an applicant's eligibility for refugee status in accordance with Canadian law (*B231 v Canada (Citizenship and Immigration)*, 2013 FC 1218 at para 58; *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519 at para 57; *Pushparasa v Canada (Citizenship and Immigration)*, 2015 FC 828 at para 27). The Operation Manual OP 5 "Resettlement from overseas" [Guidelines] states that visa officers should consider an applicant's UNHCR designation when considering their application for refugee status in Canada (*Pushparasa*, above at para 26; *Ghirmatsion*, above at para 56). However, the "Guidelines are not law and they do not constitute a fixed or rigid code" (*Pushparasa*, above at para 27). Therefore, an applicant's UNHCR status is not determinative of an application for refugee status in Canada.

[29] It is important to note that this Court has repeatedly stated that when examining an officer's decision, the analysis is not limited to the decision letter. Rather, the Global Case Management System [GCMS] notes also form part of the officer's reasons (*Pushparasa*, above at para 15; *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 3; *Kotanyan v Canada (Citizenship and Immigration)*, 2014 FC 507 at para 26).

[30] This Court has stated that, where an officer fails to reference an applicant's UNHCR status in both the notes and the decision, he has committed a reviewable error. Such an error is a sufficient basis on which to overturn the decision (*Ghirmatsion*, above at paras 57-59). However, this Court's decision in *Pushparasa* indicates that if, upon reading the decision and reasons as a whole, it is clear that an officer is "aware" of an applicant's refugee designation, this will be sufficient to meet the standard imposed (*Pushparasa*, above at paras 27-29). In *Pushparasa*, Justice Yvan Roy stated the following:

> The CAIPS notes are clear that the officer was aware of the UNHCR designation at the applicant's interview. A photocopy of the valid card appears at page 55 of the Certified Tribunal Record [CTR]. The record also shows email communication between an official and the UNHCR as to whether the applicant had also submitted an application to the United States (CTR at page 28). Questions were asked of the applicant during his interview with Canadian officials about the status of the discussions with the United States immigration authorities (*Pushparasa*, above at para 28).

[31] Justice Roy went on to say that the officer nevertheless found that the applicant did not meet the requirements of the IRPA and Regulations on the merits of his application, a finding which is determinative. Justice Roy concluded that the officer's decision was reasonable.

[32] In the present case, there is evidence in the Certified Tribunal Record that the officer was aware of the applicants' UNHCR status. Photocopies of the refugee identification cards from the Republic of Sudan, for both the Principal Applicant and her spouse, appear in the record. The record also shows that, in the GCMS notes, the officer recognises and refers to the refugee status of the applicants in the Republic of Sudan.

[33] Although the officer does not explicitly reference the applicants' UNHCR status in the decision letter, the decision as a whole, which includes the notes and the record, contain indicia of his awareness. According to the jurisprudence, what is required is a thorough assessment of an applicant's eligibility under Canadian law. That was done here.

[34] The officer's decision, read as a whole, establishes that she recognised the applicants' refugee status and that a comprehensive assessment of the application on its merits, in accordance with Canadian law, was conducted.

[35] Neither the UNHCR status of the applicants, nor the general country condition documents, can be a substitute for personal evidence. In light of the serious credibility concerns outlined by the officer, going to the foundation and the root of the applicants' claim, I am of the opinion that the decision falls within the range of possible, acceptable outcomes. Therefore, the officer's decision is reasonable and I see no reason to interfere with it.

B. *Are the officer's reasons adequate?*

[36] The applicants take issue with a particular portion of the decision in which the officer states that, at the interview, Mr. Haile "provided very vague explanations as to why he did not have to fulfill his national service during the periods of conflict in Eritrea".

[37] The applicants have provided very little in terms of legal submissions on this point. Rather, they reproduce portions of the interview, submitting that the officer failed to justify her conclusion, and disagree with her finding, as they are of the opinion that Mr. Haile's answers

were "very detailed and specific". On the face of their representations, it appears they argue that the reasons provided by the officer to justify her finding that Mr. Haile's answers were vague, are inadequate. Respectfully, I disagree.

[38] It is clear from the GCMS notes and the decision that the officer had concerns with the discrepancies in Mr. Haile's answers to questions relating to why he did not serve in the border conflict. In his narrative, Mr. Haile stated the following:

> …at first I tried to desert from the call in May 1998 and tried to lead a private life while hiding myself from the authorities, I was caught in December 2000 and taken to my former place of assignment in Barentu, in the Gash Barka region.

[39] Subsequently, Mr. Haile provided the following answers to questions asked by the officer at the interview:

> Q: How come you didn't go to the military in 1998-2000 when there was a border conflict?
>
> A: Because I am the one who supports the family the administration office gave me a paper to continue supporting my family because all of my family members are abroad in Canada.
>
> Q: It was my understanding that Eritrean authorities had forced conscription for everyone to be in national service during period of conflict?
>
> A: It was a favour from the administration because we had properties and other stuff. I was given a chance to stay.
>
> Q: Why would they give you this favour?
>
> A: Because I am the only one left in the house and they cannot take the only one person out and hurt the whole family.
>
> Q: But there were many families where the breadwinner was taken out of the home for national service?

> A: It depends on the administration and on the person handling your case.
>
> Q: You said that you were given a favour because you owned properties, what does that mean?
>
> A: My family owned a building in Asmara and we owned several properties in Dekemhare that mean I got a favour.
>
> Q: Why would that mean that you had a favour because you owned properties?
>
> A: Because my family gave me the papers for these properties and so I was watching over them which meant that I did not have to go to the national service, because I was the only child left in Eritrea they gave me the chance to stay and look over the properties.
>
> Q: You stated in your personal narrative that you purposefully hid to avoid recall to military service during the border conflict. Why did you say today that you were not called to national service as a favour?
>
> A: Maybe because I don't read English I don't know what was written on that paper.

[40] It is quite clear from the decision and from the interview notes that the officer was concerned with Mr. Haile's vague responses to questions relating to discrepancies between his written application and answers given during the interview. Mr. Haile did not adequately explain why the answer provided in his narrative diverges from that which he provided at the interview, beyond alleging that he did not understand the contents of his own narrative.

[41] When assessing whether the decision in question is reasonable given the outcome and the reasons provided, this Court must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, above at para 48). The Supreme Court of Canada, in *Newfoundland Nurses*, clearly stated that "[t]his means that courts should

not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome" (*Newfoundland Nurses*, above at para 15).

[42] By reading the reasons as a whole, which also include the GCMS notes, it was reasonable for the officer to find that Mr. Haile's answers were vague. Significant deference is owed to findings of the officer and the applicants have not demonstrated that the officer committed a reviewable error in concluding as such. It appears from their limited submissions on this point that the applicants are simply asking this Court to intervene because they disagree with the officer's conclusion.

[43] Since I have already concluded that the officer's decision is reasonable, and that the applicants have not demonstrated that her reasons are inadequate, I see no reason to interfere with the decision.

VI. Conclusion

[44] In light of the above, I find that it was reasonable for the officer to refuse the applicants' application on the basis of the serious credibility issues arising from their evidence. I also find that the reasons provided by the officer were adequate. Therefore, this application for judicial review ought to be dismissed. The parties did not propose any question for certification and none arises from this case.

JUDGMENT in IMM-5057-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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