

Federal Court



Cour fédérale

Date: 20190724

Docket: IMM-4642-18

Citation: 2019 FC 980

Ottawa, Ontario, July 24, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

GEBREKIRSTOS TESHAMARIAM OKUBU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a visa officer (the “Officer”) in Addis Ababa, Ethiopia, wherein the Officer determined that the Applicant was neither a Convention refugee abroad nor a member of the country of asylum class pursuant to section 145 and section 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicant, Gebrekirstos Tesfamariam Okubu, is a citizen of Eritrea. He fled Eritrea in order to avoid forcible recruitment into the armed forces. Upon arrival in Ethiopia, he applied for a permanent resident visa in Canada as either a member of the Convention refugee abroad class or as a member of the humanitarian-protected person abroad designated class. The Officer who interviewed the Applicant identified contradictions and inconsistencies between the Applicant's narrative on file and oral testimony. As a result, the Officer refused the Applicant's application based on credibility concerns.

[3] The Applicant disputes the Officer's credibility findings. Additionally, the Applicant argues that the Officer erred in law by failing to consider his circumstances in view of the country conditions in Eritrea.

[4] I find that the Officer's credibility findings were unreasonable. The Officer was under an obligation to consider the totality of the evidence. Instead, the Officer focused selectively and improperly on minor inconsistencies. The objective country condition evidence before the Officer unambiguously demonstrated the Applicant's risk profile. The Officer wholly neglected to consider this aspect of the Applicant's claim. The Officer's analysis was unduly selective and does not fall within the range of outcomes defensible in respect of the facts and the law. This application for judicial review is allowed as I find the Officer's decision is unreasonable.

II. **Facts**

[5] The Applicant is 22 years old, a citizen solely of Eritrea. Along with his elder brother, he shouldered the burden of assisting his family with their farm while completing secondary school. This responsibility prevented the Applicant from regularly attending school. As a result, he

failed to pass the tenth grade. According to the Applicant, instead of allowing him to repeat the tenth grade, the school authorities ordered him to participate in national service and join the Eritrean armed forces. The Applicant resisted the attempts by the school authorities to forcibly recruit him into the armed forces. Eritrean soldiers arrived at his family's home on the night of March 2nd, 2015 and brought him to a prison called Gergera.

[6] The Applicant spent five months imprisoned at Gergera at which point he was informed by soldiers that he was to begin military training. Reluctantly, the Applicant acquiesced to this demand. He felt that he had no other choice and that he would be subjected to severe punishment if he refused. While being transported to the camp where his military training would take place, the Applicant leapt from the car and ran for his safety. In due course, the Applicant fled Eritrea, evading national service, and entered Ethiopia where he is living presently.

[7] The Applicant submitted an application in 2017 for a permanent resident visa in Canada as a member of the Convention refugee abroad class or as a member of the humanitarian-protected persons abroad designated class. He was interviewed on April 23, 2018 in Addis Ababa, Ethiopia by the Officer.

III. **Decision Under Review**

[8] The Officer sent the Applicant a refusal letter on July 27, 2018 denying the application. The Officer determined that the Applicant was neither a member of the Convention refugee abroad class nor the humanitarian-protected persons abroad designated class. The Officer identified the Applicant's credibility as the central concern, stating that:

I am not satisfied that you are a member of any of the classes prescribed because of the contradictions and inconsistencies noted in your application. Your narrative on file and your testimony at interview did not match. Specifically, there were differences on the dates and length of imprisonment and the reasons of flight from your country among other inconsistencies. This led me to doubt the credibility of your application. I put my concerns to you but your responses did not alleviate my concerns.

IV. **Issue and Standard of Review**

[9] The primary issue to be determined in the present case is whether the Officer's decision was reasonable. A standard of reasonableness applies to a visa officer's assessment of an application for permanent residency (*Safdari v. Canada (Citizenship and Immigration)*, 2016 FC 1357 at para 14) [*Safdari*].

V. **Analysis**

[10] The Applicant challenges the Officer's credibility findings. According to the Applicant, the Officer focused excessively on the inconsistent dates on the immigration forms. This, he said demonstrates a selective and improper focus on one aspect of the application. Moreover, the Applicant emphasizes that he did not personally fill out the immigration forms.

[11] There is a presumption that an applicant is telling the truth (*Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302 at para 5, [1979] FCJ No 248 (CA). This presumption, however, may be rebutted where an applicant's testimony is inconsistent with evidence on the record (*Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at para 11).

[12] This Court recognizes that there are inconsistencies in the Applicant's claim. In the interview, the Applicant stated that he was targeted because the authorities could not locate his father who had absconded from military service. Later in the interview, the Applicant stated that he had been randomly selected for recruitment. In his application, however, the Applicant alleges that he was ordered by the authorities of his school to join the military due to his failure to pass the tenth grade. There were also inconsistencies in relation to the dates of imprisonment.

[13] The presence of inconsistencies does not liberate the Officer from the obligation to assess the entirety of the evidence (*Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 at para 52). If the Officer had properly conducted an examination of the evidence, he or she would have discovered evidence that fits the Applicant neatly into a risk profile in Eritrea. Specifically, the Officer would have found that the Applicant faces a risk based on his desertion from the Eritrean military and his illegal departure into Ethiopia.

[14] The Officer mentioned the inconsistent dates and noted the presence of other inconsistencies. What does make the Decision unreasonable, however, was the Officer's failure to look beyond the inconsistencies and consider the entirety of the evidence.

[15] The Applicant argues that the Officer erred by failing to properly consider country condition information. Specifically, the Applicant submits that the Officer failed to consider that illegal departure and evasion of military service are both valid grounds to fear persecution by the Eritrean government. In support of this argument, the Applicant relies on the decision in *Safdari*. In that decision, my colleague Justice Russell found that the visa officer unreasonably refused an

application for permanent residence due to inconsistencies in the applicant's testimony without properly considering the applicant's well-founded fear based on ethnicity (*Safdari* at para 39).

[16] The Applicant's reliance on *Safdari* is appropriate. An important aspect of that decision was that the visa officer did not make a general non-credibility finding. In this regard, Justice Russell stated that the visa officer's "findings on a lack of credibility relate solely to the discrepancies in the Principal Applicant's answers as to why he had left Afghanistan and feared to return. It does not appear to me that the Visa Officer made a general non-credibility finding or that he doubted that the Principal Applicant was of Hazara ethnicity" (*Safdari* at para 33). In the case at bar, the Officer does not appear to have made a general non-credibility finding either. Accordingly, it was necessary for the Officer to examine the Applicant's fear of persecution based on his evasion of military service and departure from Eritrea.

[17] The Respondent argues that *Gebrewldi v Canada (Minister of Citizenship and Immigration)*, 2017 FC 621 [*Gebrewldi*] applies to this case. In *Gebrewldi*, Justice Gagné examined a decision by a visa officer to reject the applicants' applications for permanent residence based on credibility concerns. The applicants did not take issue with the officer's credibility findings and instead argued that the officer should have considered the country conditions in Eritrea (*Gebrewldi* at para 18). Justice Gagné held that "Where an officer has determined that general credibility is lacking, country condition documents alone cannot provide an adequate basis for a positive determination" (*Gebrewldi* at para 27). The same logic does not apply to the case at bar because the Officer did not determine that general credibility is lacking.

VI. **Certified Questions**

[18] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[19] The Officer correctly identified inconsistencies in the Applicant's application. These inconsistencies, however, did not relieve the Officer from the obligation to assess the Applicant's application in its entirety. It was a reviewable error for the Officer to selectively rely on inconsistencies in order to reject the application without fully assessing the Applicant's fear of persecution. For these reasons, the application for judicial review is allowed

JUDGMENT in IMM-4642-18

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4642-18

STYLE OF CAUSE: GEBREKIRSTOS TESFAMARIAM OKUBU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MAY 7, 2019

JUDGMENT AND REASONS: AHMED J.

DATED: JULY 24, 2019

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