

Cour fédérale



Federal Court

Date: 20191029

Docket: IMM-1700-19

Citation: 2019 FC 1335

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 29, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

DANIEL TIBEBU YIMER

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered from the Bench at Montréal, Quebec on October 17, 2019.
Edited for syntax and grammar with added references to the relevant case law.)**

I. Nature of the Matter

[1] This case concerns an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], against the decision rendered on

February 19, 2019 by a member of the Refugee Appeal Division [“RAD”]. The RAD refused the applicant’s claim for refugee protection, thereby upholding the decision of the Refugee Protection Division [“RPD”] dated March 10, 2017. The RAD found that the applicant was neither a Convention refugee, under section 96 of the *IRPA*, nor a person in need of protection, under section 97.

II. Relevant Facts

[2] The applicant is a citizen of Ethiopia. He stated that in September 2014, he joined the Semayawi Party, an Ethiopian political party also known as the Blue Party. He supported the party because he liked its vision, and was of the view that the government of the day was neither good nor democratic. The evidence showed three different dates as to when he joined the Semayawi Party—July 2014, September 2014 and December 2014. The applicant claims that on or about October 4, 2016, when he was at sea aboard a ship on which he was working, he received a call from his mother. She was in tears and told him that because of his political affiliation, his brother and sister had disappeared and that people were looking for him. Although the applicant claims that he was aboard a ship when he received the news that caused him to seek refugee protection, other documentary evidence suggests that he left his country because of the situation in Ethiopia. This claim is not consistent with the evidence that he worked as a commercial sailor at sea and as a teacher when he was ashore in Ethiopia.

III. Decisions under Judicial Review

[3] The RPD found that the applicant lacked credibility regarding his identity as a member of the Semayawi Party for the following reasons. First, the evidence as to the date the applicant joined the Semayawi Party was contradictory. Second, the quality of the Semayawi Party's letter in support of the applicant's claim and his membership card were debatable. Third, the applicant was unaware of the presence of a group that supported the Semayawi Party in Washington in the United States. Fourth, responses to recent requests for information indicated that the Semayawi Party did not regularly issue membership cards to its members and only rarely issued letters of support to their supporters to establish their membership or participation in the party. Lastly, the letter from the applicant's mother lacked a statutory declaration and was not accompanied by a piece of identification.

[4] On appeal, the RAD found that the RPD did not commit any errors. First, with respect to the party's letter and membership card, the RAD found the RPD had identified factors that allowed it to question their authenticity and asked the applicant to provide explanations. The RAD determined that those explanations had in no way diminished the RPD's doubts. Second, the RAD upheld the RPD's finding that the applicant's explanation with regard to the various dates on which he joined the party, namely that the membership card was issued prior to him officially becoming a member, was not reasonable. Third, the RAD found that the RPD committed no error in concluding that the applicant's lack of awareness about the presence of a group that supported the Semayawi Party in Washington undermined his credibility. Fourth, the RAD noted that the RPD had allowed the applicant to make submissions with regard to the recent requests for information that cast doubt as to the authenticity of the party's letter of support and membership card, but he failed to do so. Fifth, in the RAD's view, the presumption

of truthfulness did not apply to the letter from the applicant's mother because it was not accompanied by a solemn affirmation and because it made reference to facts which had already been deemed not to be credible.

[5] The RAD also found two additional grounds to doubt the applicant's credibility based on its own analysis of the case. First, the applicant failed to mention the activities in which he participated as a member of the Semayawi Party in his refugee protection claim form, which, for the RAD, was a significant omission that undermined his credibility. Furthermore, the letter of support from the party indicates that the applicant had left the country because of the conditions in the country, whereas the applicant's refugee protection claim form and testimony indicated that his problems started when he was at sea.

IV. Relevant Provisions

[6] The relevant provisions of the *IRPA* are sections 96 and 97 and are set out in the appendix to this decision.

V. Issues

[7] The applicant raises three issues for the Court's consideration:

1. Did the RAD err in its assessment of the applicant's credibility, in particular with regard to his membership in the Semayawi Party?
2. Did the RAD err in failing to consider the applicant's fear of returning to Ethiopia as a failed refugee claimant?

3. Did the RAD breach the principles of procedural fairness by adding two new grounds for doubting the applicant's credibility, without providing him with an opportunity to respond?

VI. Analysis

A. Applicant's Arguments

[8] With respect to the first issue, the applicant asserts that the RAD committed three errors in its assessment of his credibility. First, the applicant submits that the RAD failed to rule on the credibility of his testimony, which is presumed to be truthful since that it was given under oath. Second, it was unreasonable for the RAD to find that the applicant's unawareness of his political party's presence in Washington undermined his credibility because he could not, as a refugee protection claimant, travel outside Canada. Finally, the documentary evidence showed that family members of persons accused of being part of the opposition are targeted and subject to surveillance by the government. However, the RAD made no finding as to the arrests of members of the applicant's family, nor did it consider the effect that the surveillance may have had on his mother's ability to have her letter sworn under oath.

[9] With regard to the second issue, the applicant argues that the RAD failed to consider the documentary evidence about the possibility that he could be persecuted by Ethiopian authorities if he was to return as a failed refugee claimant.

[10] As for the third issue, the applicant claims that the RAD erred in adding two new grounds for refusing the applicant's refugee claim based on its own review of the case without providing him with an opportunity to respond. The two conclusions are the following: (1) although the applicant testified as to the activities through which he was involved in the Semayawi Party, the omission of this information in his refugee protection claim form undermined his credibility; and (2) the party's letter of support indicated that the applicant had left the country because of the conditions in the country, whereas the applicant's refugee protection claim form and testimony indicated that his problems started when he was at sea. The RAD did not notify the parties about these new grounds, which would have provided them with an opportunity to respond. For the applicant this amounts to a breach of procedural fairness. He cites *Ojarikre v Canada (Citizenship and Immigration)*, 2015 FC 896 at para 22, 37 Imm LR (4th) 56; *Husian v Canada (Minister of Citizenship and Immigration)*, 2015 FC 684 at para 10; *Tan v Canada (Minister of Citizenship and Immigration)*, 2016 FC 876; *Akram v Canada (Citizenship and Immigration)*, 2018 FC 785; *Kwakwa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 600, 45 Imm LR (4th) 263 [*Kwakwa*]; *Ugbekile v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1397, 48 Imm LR (4th) 34).

B. *Standard of Review*

[11] RAD credibility findings are reviewable on a reasonableness standard (*Oluwaseyi Adeoye v Canada (Citizenship and Immigration)*, 2018 FC 246 at para 8 [*Oluwaseyi*], citing *Majoros v Canada (Citizenship and Immigration)*, 2017 FC 667 at para 24; *Shabab v Canada (Minister of Citizenship and Immigration)*, 2016 FC 872 at para 16; *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2016 FC 763 at para 14).

[12] The standard of reasonableness governs the issue as to whether the RAD erred in failing to consider an argument (*Ghuri v Canada (Minister of Citizenship and Immigration)*, 2016 FC 548 at para 22, 42 Imm LR (4th) 30 [*Ghuri*]; *Murugesu v Canada (Minister of Citizenship and Immigration)*, 2016 FC 819 at para 15 [*Murugesu*]; *Liu v Canada (Citizenship and Immigration)*, 2017 FC 736 at para 17 [*Liu*]).

[13] The standard of correctness governs whether the RAD relied on findings that were not before the RPD and were not raised by the parties on appeal (*Oluwaseyi* at para 9, citing *Kwakwa* at para 19; *Ortiz v Canada (Citizenship and Immigration)*, 2016 FC 180 at para 17, 44 Imm LR (4th) 301).

- (1) Did the RAD err in its assessment of the applicant's credibility, in particular with regard to his membership in the Semayawi Party?

[14] I am of the view that the RAD was reasonable in its assessment of the applicant's credibility. The RAD clearly explained its rationale with respect to the applicant's credibility. Its reasons for upholding the RPD's findings are justified, transparent, and intelligible. Moreover, in reviewing the case, the conclusions at which the RAD arrived with regard to the discrepancies in the evidence and their effects on the applicant's credibility fall within the range of possible, acceptable outcomes that are defensible in respect of the facts and law. In my opinion, this Court should not intervene (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[15] I am not persuaded by the applicant's grounds for justifying the intervention of this Court. First, the RAD did not fail to rule on the credibility of the applicant's testimony. The

RAD considered the applicant's testimony in conjunction with the documentary evidence. For example, it considered the explanations provided by the applicant during his testimony as compared to the quality of the documents in support of his claim and the date he joined the Semayawi Party. After having considered the explanations provided during his testimony, the RAD found them to be unreasonable. It is not enough that the applicant disagrees with these findings; deference is owed to them. Furthermore, deference is owed to the RAD's finding that the applicant's lack of awareness of his party's presence in Washington undermined his credibility. In my view, the effect of this lack of awareness on the applicant's credibility is negligible. However, the RAD's decision must be read as a whole. When considered in its entirety, the RAD's decision is reasonable. Accordingly, even though I do not agree with that conclusion in particular, it is not enough, on its own, to warrant the intervention of this Court. Lastly, the applicant commits an error of logic in claiming that it was an error on the RAD's part to not consider the documentary evidence indicating that family members of persons accused of being part of the opposition are targeted and monitored by the government. For such evidence to be relevant, the RAD would first have to determine whether the applicant had proved his identity as a member of a political party targeted by the government. In this case, the applicant had not proven his membership in the Semayawi Party.

- (2) Did the RAD err in failing to consider the applicant's fear of returning to Ethiopia as a failed refugee claimant?

[16] I am of the view that the RAD did not err in this regard. A review of the appellant's memorandum submitted to the RAD shows that no ground of appeal was made regarding the applicant's fear of returning to Ethiopia as a failed refugee claimant. It is the responsibility of an

appellant to raise any grounds of appeal that arise from the decision of the RPD; the RAD is not responsible for reviewing other grounds (*Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 39, 60 Imm LR (4th) 31, citing *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 321 at paras 18–20, 476 FTR 314; *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103, 39 Imm LR (4th) 185; *Ghauri* at paras 33–34; *Murugesu* at paras 25–27; *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14; *Liu* at para 25).

- (3) Did the RAD breach the principles of procedural fairness by adding two new grounds for doubting the applicant's credibility, without providing him with an opportunity to respond?

[17] The RAD did not breach the principles of procedural fairness. In this case, the RPD's findings and the grounds of appeal before the RAD concerned the applicant's credibility. Where the applicant's credibility is already in issue before the RPD, it is not a breach of procedural fairness for the RAD to find an additional basis to question that credibility using the record that was before the RPD. The applicant knew that credibility was a live issue given the RPD's original decision. Credibility is listed in his grounds of review to the RAD. Accordingly, findings regarding the applicant's credibility based on the RAD's independent analysis of the do not constitute "new issues" giving rise to a right to be given notice and an opportunity to respond (*Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 at paras 13–15 [*Corvil*]; *Oluwaseyi* at para 13; *Sary v Canada (Minister of Citizenship and Immigration)*, 2016 FC 178 at paras 27–32; *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 380 at paras 21–30). I acknowledge that my conclusion and the case law cited are not in agreement with the decision in *Palliyaralalage v Canada (Citizenship and Immigration)*, 2019 FC 596.

[18] As in *Corvil* at paragraph 16, even leaving aside the RAD's two independent findings with respect to the applicant's credibility, the RAD's decision remains reasonable. In this case, the RAD upheld the conclusions at which the RPD arrived regarding the applicant's credibility, which was reasonable. The upholding of those conclusions is sufficient to warrant the dismissal of the applicant's appeal.

VII. Conclusion

[19] For these reasons, the RAD's decision rejecting the applicant's claim for refugee protection and finding that he was neither a Convention refugee, nor a person in need of protection, is reasonable. In addition, there was no breach of procedural fairness in arriving at that conclusion. Accordingly, the application for judicial review is dismissed.

JUDGMENT in IMM-1700-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and there is no question to be certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

APPENDIX

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Convention refugee

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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.

Person in need of protection

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

Définition de réfugié

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) 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) 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.

Personne à protéger

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

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

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

(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,

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

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

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture ;

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

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

(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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is

Personne à protéger

(2) A également qualité de

a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1700-19

STYLE OF CAUSE: DANIEL TIBEBU YIMER v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 17, 2019

**JUDGMENT AND REASONS,
JUDGMENT DELIVERED
FROM THE BENCH:** BELL J.

DATED: OCTOBER 29, 2019

APPEARANCES:

Stéphanie Valois FOR THE APPLICANT

Isabelle Brochu and FOR THE RESPONDENT
Annie Flamand

SOLICITORS OF RECORD:

Valois & Associés FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec