

Federal Court



Cour fédérale

Date: 20201106

Docket: IMM-6622-19

Citation: 2020 FC 1038

Ottawa, Ontario, November 6, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ROBEL BERHANE ASMELASH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application for judicial review concerns a decision made by a Migration Officer (the “Officer”) that the Applicant was neither a member of the Convention refugees abroad class nor the humanitarian-protected persons abroad class. The Officer denied the Applicant’s application because they found that the Applicant was not credible.

[2] The Applicant submits that the Officer unreasonably impugned the Applicant's credibility by relying upon the following findings: the Applicant could not explain why he left Eritrea; the Applicant was inconsistent about whether he registered as a refugee with the United Nations High Commission for Refugees ("UNHCR"); and the Applicant could not identify his mother's illness. The Applicant further submits that the Officer failed to assess the Applicant's ground of persecution because the Officer failed to address the country conditions in Eritrea and the Applicant's unlawful escape from Eritrea.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is therefore allowed.

II. Facts

A. *The Applicant*

[4] The Applicant is an Eritrean national who is 24 years old and currently lives in Sudan. The Applicant's application is sponsored by the Mennonite Central Committee in Winnipeg, Manitoba.

[5] The Applicant states that his father was "taken by the government and died in the war." The Applicant's mother lives in Eritrea. She suffers from back pain and recently had malaria.

[6] As a young man, the Applicant was forcibly conscripted into the Eritrean military and taken to a training centre named Sawa. Upon arriving at Sawa, the Applicant explained to his

superiors that he needed to go home and help his mother. The Applicant's superiors beat and punished the Applicant for ten days for making that request. The Applicant was then warned that he would face severe consequences if he ever raised the issue again.

[7] Faced with indefinite military conscription, the Applicant recognized that he was unable to help his mother by staying in Eritrea. The Applicant claims that he fled Eritrea and entered Sudan in October 2016.

[8] After arriving in Sudan, the Applicant applied for refugee protection from Canada. On September 30, 2019, the Officer interviewed the Applicant to determine whether he was a member of the Convention refugees abroad class or the humanitarian-protected persons abroad class.

B. *Conditions in Eritrea*

[9] Military service is mandatory in Eritrea for all citizens between the ages of 18 and 50. Formally, the military conscription is limited to 18 months. In practice, however, conscription may last indefinitely. Punishments for deserting the Eritrean military are often carried out extrajudicially and include execution, detention for long periods in inhumane conditions, torture, and forced labour.

C. *Decision Under Review*

[10] On October 11, 2019, the Officer determined that the Applicant was neither a member of the Convention refugees abroad class or the humanitarian-protected persons abroad class pursuant to sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”). The Applicant’s application for permanent resident (“PR”) status as a privately sponsored refugee was therefore refused.

[11] The relevant provisions to the Officer’s decision are as follows:

IRPR, section 144:

The Convention refugees abroad class is prescribed as a class of persons who may be issued a permanent resident visa on the basis of the requirements of this Division.

La catégorie des réfugiés au sens de la Convention outre-frontières est une catégorie réglementaire de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

IRPR, section 145:

A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l’étranger à qui un agent a reconnu la qualité de réfugié alors qu’il se trouvait hors du Canada.

IRPR, section 146:

(1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of the country of asylum class.

(1) Pour l’application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d’un réfugié au sens de la Convention appartient à la catégorie de personnes de pays d’accueil.

(2) The country of asylum class is prescribed as a humanitarian-protected persons abroad class of persons who may be issued permanent resident visas on the basis of the requirements of this Division.

(2) La catégorie de personnes de pays d'accueil est une catégorie réglementaire de personnes protégées à titre humanitaire outre-frontières qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

IRPR, section 147:

A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

(a) they are outside all of their countries of nationality and habitual residence; and

(a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

(b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[12] The Officer denied the Applicant's claim for refugee protection because they found that the Applicant was not credible. The Officer found that the Applicant "could not explain" how leaving Eritrea or the military would help his mother who is sick.

[13] The Officer found that the Applicant was inconsistent regarding his refugee status with the UNHCR. At the interview, the Applicant claimed that he registered as a refugee with the UNHCR in Sudan. However, when the Officer told the Applicant that such information could be verified with the UNHCR, the Applicant claimed that he did not register as a refugee with the UNHCR.

[14] The Officer also found that the Applicant “could not say” what his mother’s illness was. The Applicant initially stated that his mother had malaria, to which the Officer replied, “someone cannot have malaria for a few months.” In response, the Applicant hesitated and then stated that his mother has problems with her back.

III. Issues & Standard of Review

[15] The only issue on this application for judicial review is whether the Officer’s decision is reasonable.

[16] The parties agree that the applicable standard of review for the Officer’s decision is reasonableness. I agree (*Kiflom v Canada (Citizenship and Immigration)*, 2020 FC 205 at para 10, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 17).

[17] A reasonable decision is one that is justified, transparent, and intelligible — it must be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker (*Vavilov* at paras 85, 99).

[18] Credibility determinations are entitled to considerable deference upon judicial review. Such findings lie within “the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 [*Yan*] at para 18, citing *Siad v Canada (Secretary of State)*, [1996] FCJ No 1575, [1997] 1 FC 608 (FCA) at para 24).

IV. Analysis

[19] The Applicant submits that it was unreasonable for the Officer to find that the Applicant could not explain why leaving Eritrea would assist his mother. The Applicant submits that by escaping his military conscription, he could pursue work abroad and send remittances home.

[20] The Respondent correctly identifies that the Applicant, when asked why he left Eritrea, responded that he wanted to assist his mother.

[21] In my view, it was unreasonable for the Officer to find that the Applicant “could not explain” how leaving Eritrea would help his mother. The Applicant’s explanation is clear: the Applicant is better positioned to assist his mother by leaving Eritrea and sending remittances to her from abroad than by remaining in Eritrea as a military conscript. This explanation is provided in both the Applicant’s PR application and in the Officer’s Global Case Management System (“GCMS”) notes, which form part of the reasons for the Officer’s decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19, citing *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 19).

[22] An excerpt from the GCMS notes reads as follows:

Q: Why did you leave Eritrea?

A: I have a problem. My mom always feel sick. I wanted to help my mom and this is why I crossed the border.

Q: How coming to Sudan would help your mom?

A: When I was in grade 11, I was helping my mom. Then I had to do my military service and I realized when I was there that I could not help my mom so I started to think about crossing the border.

Q: How being in Sudan would help your mom?

A: I made the decision to help my mom by working and help my family from here. When I came here, I realized that Sudan was not helping me.

Q: Do you send money to your mom?

A: It is hard. I am living for myself now. [emphasis added]

[23] In my view, there is no conflict in the Applicant's testimony. The Applicant clearly stated that Eritrea's military conscription prevented him from assisting his mother, and that he sought work in Sudan to send her money. The Officer did not question the Applicant any further to clarify the Applicant's reasons if they were unclear.

[24] The Applicant's reasons for leaving Eritrea are also reflected in his PR application. In that application, the Applicant explained that he fled Eritrea because he was prevented from leaving his military conscription that would last a "long period of time", thus rendering him "unable to help [his] mother."

[25] The Officer's finding that the Applicant "could not explain" why he left Eritrea is not justified in light of the Applicant's statements, as noted above, which the Officer seemingly misapprehended or failed to meaningfully account for (*Vavilov* at para 126). While it was open to the Officer to give little weight to the Applicant's statements or find that they are insufficient, the Officer's finding that the Applicant failed to provide a comprehensible explanation for fleeing Eritrea is made without due regard to the evidence (*Yan* at para 18).

V. Conclusion

[26] No questions for certification were raised, and I agree that none arise.

[27] I find that the Officer's decision is unreasonable and therefore allow this application for judicial review.

JUDGMENT IN IMM-6622-19

THIS COURT'S JUDGMENT is that:

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

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6622-19

STYLE OF CAUSE: ROBEL BERHANE ASMELASH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO AND WINNIPEG, MANITOBA

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JUDGMENT AND REASONS: AHMED J.

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