

Federal Court



Cour fédérale

Date: 20210809

Docket: IMM-1051-20

Citation: 2021 FC 824

Ottawa, Ontario, August 9, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

MARTIN ALEXANDER WALU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Martin Alexander Walu [Mr. Walu], seeks judicial review of the October 10, 2019 decision of an immigration officer [the Officer]. Pursuant to section 96 the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and sections 139, 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], the Officer refused Mr. Walu's application for a permanent residence in Canada as a member of the

Convention Refugee Abroad class or as a member of the Humanitarian-Protected Persons Abroad class.

[2] Mr. Walu submits that the Officer made unreasonable credibility findings, failed to consider his refugee status as recognized by the United Nations High Commissioner for Refugees [UNHCR] and failed to assess his fear of persecution or his eligibility for the Convention Refugee Abroad Class, Country of Asylum Class or Source Country Class.

[3] For the reasons that follow, the Application is dismissed. The Officer's credibility findings are reasonable and are owed deference.

[4] I do not agree with Mr. Walu that the Officer was overzealous in interviewing him or microscopically probed his responses. The Officer's approach to the interview reflected the relevant guidelines. The Officer's questions were clear. The Officer repeated the questions several times. The Officer identified the credibility concerns for Mr. Walu and identified the concerns about his responses. While nervousness may account for some of Mr. Walu's unresponsive or confused responses, overall, there were many inconsistencies in his evidence.

[5] Mr. Walu's status as a UNHCR refugee is not determinative of his refugee status in Canada. The Officer was required to determine Mr. Walu's eligibility for refugee protection, which included consideration of why he left Eritrea and his entire narrative of his claim for protection. The Officer reasonably concluded, based on finding that his evidence was not credible and not being satisfied that there was a serious possibility that Mr. Walu had a well-

founded fear of persecution, that he was not eligible for refugee protection. Mr. Walu will be disappointed by this outcome, given that he and his sister were being sponsored by other family members to Canada. However, the Court finds no reason to disturb the Officer's findings.

I. Background

[6] Mr. Walu claims that in December 2014, he was arrested in Eritrea by agents of the state and accused of collaborating with the Democratic Movement of the Liberation of Eritrean Kunamas [DMLEK]. He claims that he was beaten and detained for three months in poor conditions and was denied food, water and access to medical care.

[7] Mr. Walu recounts that in July 2015, he fled Eritrea to Sudan with the help of smugglers. He arrived at the Wed-Sherefay refugee camp but relocated a few days later to the Shegerab refugee camp.

[8] Mr. Walu recounts that in February 2016, he left the camp and then stayed with family in Khartoum. He returned to the Shegerab camp to register as a UNHCR refugee. The records of the UNHCR indicate that his registration was completed in January 2018.

[9] In his affidavit submitted in support of this Application, Mr. Walu attests that he was unable to register as a UNHCR refugee upon first arriving at the refugee camp in 2016, because of the insecurity in the camp and because there was a long waiting list for registration.

[10] Mr. Walu's sister and brother-in-law in Alberta were approved to sponsor him and another sister to Canada as refugees. Mr. Walu and his sister separately applied for refugee protection around April 5, 2018. They were interviewed together by the Officer on October 2, 2019, in Khartoum. The interview was conducted in English with translation to Tigrinya. Mr. Walu now submits that Kunama is his native language but that Immigration, Refugees and Citizenship Canada did not provide translation into Kunama.

II. The Decision

[11] The Officer's decision letter and notes as set out in the Global Case Management System [GCMS] constitute the decision and reasons.

[12] The letter notes that Mr. Walu was interviewed in English with translation to Tigrinya. The letter refers to the relevant statutory provisions, including: subsection 16(1) of the Act, regarding the duty to answer truthfully; section 96 of the Act, regarding the definition of convention refugee; and, sections 139, 145 and 147 of the Regulations, regarding the requirements to obtain a permanent resident visa pursuant to the convention refugee abroad class, country of asylum class and source country class.

[13] The Officer was not satisfied that Mr. Walu was a member of any of the prescribed classes. The Officer notes that Mr. Walu stated at his interview that he left Eritrea in 2015 and registered with the UNHCR upon arrival in Sudan, which is inconsistent with the records of the UNHCR, which indicate that he registered in 2018. The Officer notes that Mr. Walu was given several opportunities to explain the inconsistency, but failed to do so. The Officer also notes that Mr. Walu changed his narrative several times, failed to provide details about his detention and the events that caused him to leave Eritrea and, more generally failed to overcome the Officer's

credibility concerns about his reason for leaving Eritrea. The Officer was not satisfied that there was a serious possibility that Mr. Walu had a well founded fear of persecution or that he had been and continues to be seriously and personally affected by civil war, armed conflict, or massive violation of human rights.

[14] The GCMS notes indicate, as the summary, that Mr. Walu's application was rejected because:

Pa (sic) did not appear truthful and his story was not credible. Based on the lack of details provided by PA at interview and discrepancies between information on file and information provided at interview, I am not satisfied the facts PA presented at interview and on file about the reasons for leaving Eritrea are credible.

III. Standard of Review

[15] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23 [*Vavilov*]).

[16] According to *Vavilov*, the Court should begin by examining the reasons for the decision with respectful attention, seeking to understand the reasoning process followed by the decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–110). The Court does not assess the reasons against a standard of perfection (*Vavilov* at para 99).

[17] In *Vavilov*, at para 100, the Supreme Court of Canada noted that decisions should not be set aside unless there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” and that “[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” .

[18] It is also well established that the decision-makers that hear the testimony and review the evidence are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA). The credibility findings of the decision maker should be given significant deference: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

[19] In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 41-46, [2012] FCJ No 369 (QL) [*Rahal*], Justice Mary Gleason (as she then was) summarized the key principles from the jurisprudence regarding credibility assessments, reiterating that the decision-maker is best placed to make such findings. Justice Gleason explained that the Court’s role in reviewing credibility findings is very limited because “the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks.”

IV. Preliminary Issue; Improper Affidavit Evidence

A. *Mr. Walu's affidavit*

[20] The Respondent objects to several paragraphs of Mr. Walu's affidavit noting that it includes information that was not before the Officer and, therefore, cannot be relied on by the Court on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 19 [*Access Copyright*]). The Respondent points to paragraph 4, which states that Mr. Walu is a member of the Kunama ethnic minority, and paragraphs 9–12, which allege that the insecurity of the refugee camp led Mr. Walu to leave the camp and return later to register. The Respondent also points to paragraph 19, which alleges that the Officer's interview technique did not provide him with an opportunity to provide certain information. The Respondent submits that these paragraphs should be struck or given no weight.

[21] Mr. Walu disputes that the information contained in paragraph 4 is new. He submits that this information was included in Schedule 2 to his refugee application. He also submits that similar information to that included at paragraphs 9-12 is set out in the country conditions regarding Sudan. In addition, he notes that his written application states that that he had been living in Khartoum since 2016.

[22] Mr. Walu submits that he was not given an opportunity to provide an explanation about why he left the camp due to the Officer's aggressive interview methods. He adds that the same information about the insecurity of the camp is reflected in the GCMS notes but was not clearly communicated due to the interview method.

[23] Mr. Walu submits that he could not have submitted the information in paragraph 19 to the Officer as it relates to the process of the interview. He explains that he was afraid to say that he did not understand the Officer and that the interpretation “was not working” for him, and that he was nervous because the Officer viewed him as untruthful. He claims that he did not confirm that he understood the interpretation.

[24] It is well established that evidence not before a decision-maker cannot be relied upon in judicial review, unless it falls under an exception as described in *Access Copyright*. The exceptions include where the evidence is relevant to an allegation of a breach of procedural fairness or a jurisdictional error, or where it provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review.

[25] I do not agree with Mr. Walu that the information in paragraph 4 of his affidavit was included in Schedule 2 of his refugee application. Schedule 2 states that he was suspected of collaborating with the DMLEK, but does not state that he is a member of the Kunama ethnic minority.

[26] A careful review of the GCMS notes does not support Mr. Walu’s suggestion that the statements made in paragraphs 9–12 are reflected in the GCMS notes. Mr. Walu noted in Schedule 2 that the camps were “uncomfortably close to Eritrea” and that to travel in those areas was to risk capture by Eritrean government agents. He did not indicate in Schedule 2 or at his interview that he delayed registering with UNHCR due to insecurity within the camp. This information appears to be an attempt to counter the Officer’s credibility assessment regarding his inconsistent responses about when he was at the camp and why he waited until 2018 to register

with the UNHCR. However, the reasonableness of the Officer's credibility findings can only be assessed based on the record before the Officer and the reasons, which include the GCMS notes of the Officer's repeated questions and Mr. Walu's responses.

[27] Although Mr. Walu alleges that the Officer's interview technique was improper, he does not directly allege a breach of procedural fairness. Regardless, the information in his affidavit does not support any breach of fairness. The information in paragraph 19 has, however, been considered as background information to assist the Court in understanding the issues raised by Mr. Walu on this Application.

B. *The Officer's affidavit*

[28] Mr. Walu objects to the affidavit of the Officer, filed by the Respondent in response to Mr. Walu's affidavit, in particular regarding his allegations about the Officer's interview methods. Mr. Walu argues that the Officer's recollection of Mr. Walu's demeanor at the interview should be viewed with caution given that the Officer's affidavit was sworn 20 months after the interview. He submits that the Officer is improperly supplementing the reasons by stating that he was uncooperative.

[29] Mr. Walu further submits that the Officer's statement that Mr. Walu was able to respond easily to questions that were not related to his flight story or UNHCR registration is misleading because these questions were put to both Mr. Walu and his sister. He suggests that his sister may have answered. He submits that it is not credible that the Officer would now remember who answered these questions.

[30] While a decision-maker cannot generally supplement their reasons for a decision with affidavit evidence, in the present case, the Officer was responding to the assertions of Mr. Walu. I also note that Mr. Walu did not cross-examine the Officer to test the Officer's recollection of Mr. Walu's demeanor, understanding or who answered the basic questions.

[31] In any event, the Court need not consider the Officer's affidavit as it is clear from the GCMS notes that, although the Officer rigorously questioned Mr. Walu, the Officer followed the guidelines for interviewing refugees (as noted below), verified that Mr. Walu understood the interpreter, repeated questions several times, alerted him to the credibility concerns several times, and alerted him to concerns about his inconsistent responses.

V. The Applicant's Submissions

[32] Mr. Walu submits that the Officer's credibility findings are not reasonable and led the Officer to ignore the merits of his claim. He submits that he had trouble with the interpretation and was clearly confused, as reflected by the need for the Officer to repeat the questions several times. He also submits that given the interview occurred 4 years after the events, the details were not fresh in his mind.

[33] Mr. Walu also argues that the Officer was confrontational and overzealous, contrary to the applicable guidelines for interviewing refugees. Among other things, he notes that the Officer ignored that the trauma of his detention and torture could account for his difficulty providing the details and the sequence of events.

[34] Mr. Walu notes that the IRCC guidelines for interviewing refugees state that:

- 1) The Applicant should be given the benefit of the doubt;
- 2) Officers should be well informed when evaluating credibility;
- 3) Officers should clearly identify areas where credibility is in question;
- 4) Officers should address the applicant with credibility concerns;
- 5) Officers should not show eagerness in attempting to find contradictions and should not be over-vigilant by microscopically examining the applicant, especially where an interpreter is being used; and
- 6) Officers should avoid relying on demeanour as a measure of credibility.

[35] Mr. Walu submits that he never wavered in stating that he arrived at the refugee camp in 2015, stayed at the camp until February 2016, and then left the camp to live with family members.

[36] Mr. Walu submits that whether he arrived at the camp before or after his sister is not relevant to his separate claim. He now suggests that he stated that he was “at the camp” in 2015, not that he registered in 2015. He explains that he waited to register because he was staying with relatives and had to return to camp to register, but never stated that he continued to live at the refugee camp.

[37] With respect to his yellow registration card, Mr. Walu submits that his statement that he returned to register in late 2017 is reflected on his yellow card; although the UNHCR registration is dated January 16, 2018, the other side of the card notes that verification by Sudan occurred in late 2017. He submits that he should not be expected to distinguish verification from registration.

[38] With respect to his claim of persecution in Eritrea, Mr. Walu submits that he responded to the Officer's question, stating that he was arrested in 2014, but did not know why. He submits he should not be expected to know why he was suspected of involvement with DMLEK. He argues that the Officer should have probed the events rather than relying on his lack of emotion regarding his treatment in detention to make a negative credibility finding.

[39] Mr. Walu also submits that the Officer failed to provide an explanation for finding that his account was not straightforward, contrary to *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519 at para 65 [*Ghirmatsion*].

[40] Mr. Walu further submits that the Officer erred by failing to consider that he was recognized as a refugee by the UNHCR and failing to explain the disagreement with the UNHCR's determination (*Ghirmatsion at para 58; Haile v Canada (Citizenship and Immigration)*, 2020 FC 375 at para 24; and *Rubaye v Canada (Citizenship and Immigration)*, 2020 FC 665 at paras 27–30).

[41] Mr. Walu argues that the Officer focussed only on the timing of his registration, which is not relevant, as opposed to the fact that he had registered in 2018, and this resulted in the Officer failing to properly assess the merits of his claim.

[42] Mr. Walu further argues that even if there were credibility concerns, the Officer erred by not considering the future risk he faced if returned to Eritrea due to his illegal exit (*Weldesilassie v Canada (Minister of Citizenship and Immigration)*, 2011 FC 521 at para 56-57

[*Weldesilassie*]). He submits that information on Eritrea's treatment of those who leave the country without a valid exit visa is well documented in the country condition documents.

[43] Mr. Walu now submits that he told the Officer that he was of Kunama ethnicity, which made him the target of government intelligence officers. He argues that the Officer should have assessed whether he is Kunama and whether Kunamas are targets of the Eritrean government.

[44] Mr. Walu further argues that the Officer also erred by not assessing his eligibility in the country of asylum class. He submits that the Officer simply concluded that he would not be affected by armed conflict or civil war.

VI. The Respondent's Submissions

[45] The Respondent submits that the Officer's credibility findings are reasonable. The Respondent adds that Mr. Walu's lack of credibility affected all aspects of his claim.

[46] The Respondent notes that Mr. Walu was advised that he would be interviewed and to be truthful. The Respondent submits that the Officer was not confrontational or overly zealous. The Officer's approach was consistent with the applicable interview guidelines. The Respondent notes that Mr. Walu accepted the language of interpretation, the Officer confirmed that Mr. Walu understood the interpreter and Mr. Walu did not raise any concerns at the time of the interview or immediately following the interview. The GCMS notes convey that the Officer repeated questions for Mr. Walu, clearly noted the credibility concerns and gave Mr. Walu repeated opportunities to explain, which he failed to do.

[47] The Respondent argues that Mr. Walu provided inconsistent answers regarding several important matters, including why he left Eritrea, when he first arrived in Sudan, when he registered with the UNHCR, when he was in the refugee camp and when he left. The Respondent argues that Mr. Walu's narrative shifted over the course of the interview.

[48] The Respondent argues that the Officer's finding that Mr. Walu's story about the lack of details regarding his detention in Eritrea was reasonable, noting that the Officer repeated her questions about what occurred while in detention three times, Mr. Walu's responses were lacking in detail and he showed no emotion when responding.

[49] The Respondent notes that the GCMS entries clearly indicate that the Officer was aware of Mr. Walu's UNHCR status. However, UNHCR status is not determinative of refugee status by Canada. The Respondent submits that where credibility is at issue, there is no need for the Officer to provide an explanation why UNHCR status does not weigh in favour of granting refugee status (*Gebrewldi v Canada (Minister of Citizenship and Immigration)*, 2017 FC 621 [*Gebrewldi*] para 5 and *Abreham v Canada (Citizenship and Immigration)*, 2020 FC 908 at para 22 [*Abreham*]).

[50] The Respondent further submits that the Officer's credibility findings are dispositive of Mr. Walu's country of asylum eligibility. Mr. Walu failed to establish his flight story with credible evidence and as a result, there is no basis for this claim.

VII. The Officer's Decision is Reasonable

[51] The Officer's credibility findings focus on two aspects of Mr. Walu's evidence;

- His inconsistent and contradictory answers about when he registered with the UNHCR and his time at the refugee camp; and,
- The lack of details and inconsistency with his written application about why he was arrested and detained, his treatment in detention and his exit from Eritrea.

[52] With respect to Mr. Walu's allegation that the Officer was overzealous and looked for inconsistencies rather than giving him the benefit of the doubt, the GCMS notes reflect that the Officer applied the relevant guidelines. The Officer posed relevant questions clearly, repeated the questions as needed, identified the responses that led to the credibility concerns and put the credibility concerns squarely to Mr. Walu. The Officer was not eager to find contradictions; rather the contradictions emerged from Mr. Walu's responses.

[53] As noted above, credibility findings are owed deference, but they must be reasonable. In the present case, the Officer interviewed Mr. Walu and probed his account of his exit from Eritrea, his time in the refugee camp, and his registration with the UNHCR. There were inconsistencies and contradictions in his account. His responses to the Officer's questions, often repeated, did not satisfactorily explain the contradictions.

[54] Mr. Walu now seeks to explain the contradictions. However, the role of the Court is not to re-make the credibility findings but to determine whether the Officer made reasonable credibility findings and reached a reasonable decision.

[55] In *Rahal* at paras 41-46, Justice Gleason set out examples of what will justify credibility findings, including:

- Contradictions in the evidence, particularly in the Applicants' testimony, will provide a reasonable basis for finding the claimant to lack credibility, but such contradictions must be real and more than trivial or illusory.
- The decision-maker may consider the demeanor, including hesitations, vagueness and changes or elaboration of the story in assessing credibility, but it is preferable if there are also other objective facts to support the credibility findings.
- The decision-maker must make clear credibility findings with sufficient particulars.

[56] The Officer's credibility findings are based on these well-established indicia and are set out with particularity. Although the Officer noted Mr. Walu's demeanor - as showing no emotion when recounting his detention - the Officer's credibility findings are primarily based on the lack of detail regarding his detention, in contrast to his more detailed written claim.

[57] The GCMS notes indicate, among other things that:

- The Officer verified that Mr. Walu and interpreter understood each other.
- The Officer explained obligation to tell the truth.
- Mr. Walu was interviewed about his claim separately from his sister.
- Mr. Walu first stated that he left Eritrea in 2015 but arrived in Sudan after his sister. When the Officer noted that Mr. Walu's sister arrived in December 2015, Mr. Walu then stated that he arrived before his sister, in June 2015.
- When first asked if he registered with the UNHCR right away, he responded yes.

- When repeatedly asked why the UNHCR records state that he registered in 2018, Mr. Walu responded the he was “in the refugee camp” from 2015 to 2017. When asked again why the UNHCR records state that he registered in 2018, he then stated that he registered lately in Shegarab. When asked why he said he registered when he first arrived, he did not respond. He then stated that he first arrived in Shegarab in July 2015 after staying at another camp for a few days. Mr. Walu did not provide an explanation when the Officer again noted credibility concerns.
- With respect to the yellow registration card issued in 2018, the Officer asked Mr. Walu why he stated that he had obtained the yellow card in 2015. Mr. Walu did not provide a direct response, but indicated that he went to Shagarab in 2015 and did not register right away because he was living with relatives.
- When asked why he left the camp in July 2016 (rather than in February 2016, which appears to be the Officer’s misstatement), Mr. Walu did not respond at all.
- In response to the Officer’s statement that the issue of concern was that Mr. Walu was not answering the questions, Mr. Walu then stated that he was “at the camp” until 2016. The Officer again asked why he registered in 2018, two years after he left the camp. Mr. Walu responded that he returned to the camp to register. When asked why he waited to register, Mr. Walu then stated that he lost his yellow card and he went back to register again. He then stated that he obtained his yellow card before 2018. In response to the Officer’s statement that the interview would not continue if he were untruthful, he then stated that he registered in 2018.
- When probed, Mr. Walu stated that he returned to the camp to register in late 2017. The Officer asked him three times why it was important for him to register at that time and whether it was because of his Canadian immigration application. He stated that it was important for his life in Sudan. He did not respond to the Officer’s question why it was not important for his life in Sudan in 2016 or 2017.
- In response to the Officer’s question why he left Eritrea, Mr. Walu stated that he was arrested by soldiers because they thought he was a member of the Democratic Movement of Liberation of Eritrea. He stated that he did not know why the police suspected him. He did not mention his Kunama ethnicity. In response to the Officer’s question about why he was not required to perform his

national service, he stated that he was still in school, although he was 19 years of age at that time.

- The Officer repeated the question about Mr. Walu's treatment in detention three times. Mr. Walu responded that he was beaten in his fingers and nose and that he was in an underground cell. The Officer noted concerns about this account and that the Officer would review the written application. Mr. Walu did not respond further.

[58] Mr. Walu questions why his sister's evidence was accepted and his was not, given their similar circumstances. Although they both recounted that they left Eritrea in 2015 but registered with the UNHCR only in 2018 and had lived with relatives for some period before registering at the refugee camp, Mr. Walu's evidence was inconsistent and contradictory, and he failed to explain the contradictions to the Officer's satisfaction. His sister's evidence about why she left Eritrea, which differed from that of Mr. Walu, and when she registered was consistent.

[59] Although Mr. Walu did not raise concerns about the interpretation at the time of the interview or immediately after, he now argues that his own native language differed and no interpretation was available in that language. However, the Officer confirmed that Mr. Walu understood the interpreter and the interpreter understood him. His claim that it is not clear whether it was he or his sister who confirmed that they understood the interpreter is not persuasive; he does not clearly attest that his sister made this confirmation or that his sister had different language abilities. If Mr. Walu did not understand the questions or if the interpretation was problematic, it was incumbent on him to speak up at the time – regardless of being nervous. He was advised that he would be interviewed and that he should be truthful. He had set out his claim in written form and should have been able to recount the same information.

[60] Mr. Walu relies on *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, where the Court noted that credibility determinations in immigration matters cannot be based on a microscopic examination of minor inconsistencies or issues peripheral to an applicant's claim. In the present case, the Officer did not rely on minor inconsistencies or on peripheral issues. Mr. Walu's reason for leaving Eritrea and his registration with the UNHCR were central to his claim for refugee status in Canada.

[61] Although Mr. Walu was generally consistent about when he first arrived in Sudan, when he was at the refugee camp and when he left the camp, he was not consistent about why he fled Eritrea or when he registered. His current submission that he may have confused his claim for asylum upon arrival at the camp with the UNHCR registration is not persuasive, as he was clearly aware of the importance of having the yellow card for his life in Sudan. He also claimed that he had obtained a yellow card, but lost it.

[62] Although the Officer may have mistakenly asked why Mr. Walu left in July 2016 rather than in February 2016, Mr. Walu failed to respond at all, rather than indicating that he left in February 2016 to reside with family.

[63] Mr. Walu's submission that it is not relevant when he registered with UNHCR, only that he was recognized as a UNHCR refugee, misses the point that the Officer was concerned about his credibility due to his contradictory responses. It is apparent from the GCMS notes that the Officer was attempting to determine if Mr. Walu had left Eritrea as he stated in 2015, the reason he left, and his conduct in seeking refugee protection upon fleeing Eritrea. The Officer also

asked him if he registered only for the purpose of his sponsorship to Canada. Mr. Walu's entire narrative, including his registration with the UNHCR is relevant to his claim for refugee protection.

[64] The Officer also had credibility concerns about Mr. Walu's claim of persecution including his exit from Eritrea, the reason for his arrest and detention and his treatment in detention. The GCMS notes support the Officer's finding that Mr. Walu's responses lacked detail. The Officer noted that Mr. Walu's written material would be reviewed and that there were discrepancies between the two accounts.

[65] Mr. Walu's suggestion that he should not be expected to recall the sequence of events or the details of his detention after four years or due to trauma, is not persuasive and does not render the Officer's finding that his account lacked detail unreasonable. While trauma can certainly have an impact on recollection, Mr. Walu was able to describe his arrest and detention in his written application. Given that he was advised that he would be interviewed and would have had access to his application, the Officer could reasonably expect Mr. Walu to recount the same events.

[66] Mr. Walu's reliance on *Ghermatsion* at para 65 in support of his argument that the Officer erred by basing a credibility finding on his failure to provide details of his detention, is misplaced. In *Ghermatsion*, Justice Snider noted,

65] As I have described above, the determinative finding by the Officer, in this case, was that of credibility. One of the two conclusions by the Officer was that she did not believe that the Applicant had ever been in detention. This finding appears to have

been based firstly on a general finding that the Applicant was unable to provide, to the Officer's satisfaction, details of his imprisonment. There is absolutely no explanation of what the Officer found to be lacking in his description of his detention or in his responses to questions on the subject. The CAIPS notes do not reflect questions about his detention that the Applicant was not able to answer. There is no justification for this general finding.

[67] Unlike *Ghermatsion*, the GCMS notes reflect that the Officer asked Mr. Walu several times about the reason for his arrest and the conditions of his detention and that his responses were vague and there were discrepancies with the description in his written application.

[68] The Officer's finding that Mr. Walu failed to establish his claim with credible evidence about when and why he left Eritrea, his arrest and detention, when he arrived at the camp, when he left and when he registered undermined all aspects of his refugee claim.

[69] Contrary to Mr. Walu's argument that the Officer failed to consider his UNHCR status or explain why it was not followed, the Officer thoroughly canvassed his UNHCR status. Mr. Walu's inconsistent answers about when he registered, and his changing story about losing his yellow registration card, which he clearly never had before 2018, were the basis for one of the Officer's key credibility findings. The Officer accepted that Mr. Walu ultimately obtained UNHCR status in 2018. However, UNHCR status is not determinative of eligibility as a refugee in Canada. If it were, there would be no need for the Officer to assess eligibility and the criteria in the Act would be redundant.

[70] Mr. Walu relies on *Weldesilassie* at para 33, where Justice Snider noted the importance of the UNHCR designation and found that the Officer should have "explained why her assessment

did not concur with that of the UNHCR. She was not under any obligation to blindly follow the UNHCR designation; however, she was obliged to have regard to it”. Justice Snider added at para 34;

This error by the Officer is a sufficient basis on which to overturn the decision. I wish, however, to repeat that the UNHCR determination is not determinative; the Officer must still carry out her own assessment of the evidence, including the evidence of the UNHCR Refugee status. [My emphasis]

[71] In *Gebrewldi* at para 28 , Justice Gagne reiterated this, noting,

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.

[72] In *Gebrewldi*, the Court found that the officer did not err by failing to explain why the UNHCR status was not determinative and the Officer was justified in curtailing the evaluation of the applicants’ claim based on finding that they were not credible.

[73] In *Abreham v Canada (Minister of Citizenship and Immigration)* 2020 FC 908 [*Abreham*], Justice Southcott made a similar finding, noting at para 22,

[22] Applying the principles identified in this jurisprudence, I find no basis to interfere with the Officer's decision. The Officer's GCMS notes refer to the Applicants' UNHCR status. Consistent with the analysis in *Gebrewldi*, it is clear that the Officer was aware of that status. The Applicants argue that the Officer was additionally required to explain why that status was not being followed (see *Ghirmatsion* at para 58). However, I consider the Officer's credibility analysis to represent that explanation.

[74] In the present case, the Officer accepted Mr. Walu's UNHCR refugee status, but was not under an obligation to "blindly follow" this designation. The Officer's finding that key elements of Mr. Walu's claim lacked credibility was sufficient to explain why Mr. Walu's UNHCR status did not pave the way for finding that he met the criteria for refugee protection in Canada.

[75] The Officer was not required to further assess whether Mr. Walu had a well-founded fear of persecution. In *Gebrewldi* at para 27 Justice Gagne noted;

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).

[76] Justice Gagne concluded at para 35 of *Gebrewldi*;

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.

[77] Similarly in *Abreham*, Justice Southcott found at para 23,

The Applicants also submit that the Officer erred in failing to consider all grounds of persecution that could apply based on the conditions in Eritrea, as well as the country of asylum class applicable under the Act. However, I agree with the Respondent that a claim for Convention refugee status cannot succeed solely based on the unfavourable human rights conditions in the country of origin. Claimants must establish a link between themselves and persecution in that country (see, e.g., *Krishnapillai v Canada (Minister of Citizenship and Immigration)*, 2007 FC 563 at para 14). Having found the Applicants' evidence surrounding their personal circumstances not credible, it was reasonable for the Officer not to be satisfied that they met the requirements of the Convention refugee abroad class.

[78] In Mr. Walu's case, his UNHCR status is not determinative of his refugee claim in Canada. The general country conditions in Eritrea cannot be the basis for his claim for protection without credible personal evidence. Given that the Officer found that Mr. Walu's evidence about what happened to him in Eritrea was not credible, the Officer was not required to proceed to assess his eligibility in the country of asylum or source country class.

[79] The Officer did not err by failing to assess whether Mr. Walu is of Kunama ethnicity or whether his Kunama ethnicity would make him a target of the Eritrean government. Contrary to Mr. Walu's submission, the GCMS notes do not reflect that Mr. Walu ever stated that he was of Kunama ethnicity or that he was targeted for this reason. Rather he stated that he did not know why he was suspected of being involved in the DML of Eritrea. *Weldesilassie at para 56-57*, relied on by Mr. Walu, can be distinguished because in that case, the officer accepted the applicant's reason for fleeing Eritrea but erred by failing to consider the fear of persecution he raised on this ground. The Officer found that Mr. Walu's evidence regarding his reason for leaving Eritrea was not credible.

[80] In conclusion, the Officer's decision bears the hallmarks of reasonableness. The Officer's reasons set out a coherent and rational chain of analysis, the record supports the Officer's credibility findings, and the outcome is justified, transparent and intelligible.

JUDGMENT in file IMM-1051-20

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

“Catherine M. Kane”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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