

Federal Court



Cour fédérale

Date: 20220705

Docket: IMM-6492-20

Citation: 2022 FC 990

Ottawa, Ontario, July 5, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

DADI TESHAYE BEYENE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Ethiopia, seeks judicial review of a decision of the Refugee Appeal Division (RAD), dated November 30, 2020, denying his refugee claim. The Applicant argues that the RAD erred in its credibility analysis and failed to consider the totality of the evidence.

[2] For the reasons that follow, I have concluded that the decision of the RAD is reasonable and therefore this judicial review is dismissed.

I. Background

[3] The Applicant is an Oromo citizen of Ethiopia, and former professional athlete. He states that in 2016, his family's land was taken and given to one of the leaders of the Ethiopian People's Revolutionary Democratic Front (EPRDF). His family was left with only a small portion of the land.

[4] The Applicant says that in 2017, security forces came to his father's home and ordered him to leave. When he refused, his family was detained. When the Applicant went to the police station, he was also detained. He was accused of being anti-government and beaten. He was also accused of having connections to the Oromo Diaspora, and another Ethiopian athlete, Ebisa Mergawho sought asylum in Canada.

[5] The Applicant came to Canada on November 21, 2017 and claimed refugee protection. On December 4, 2017, the Applicant's wife, who is still in Ethiopia, informed him that she was given a summons for him to appear at a security office.

A. *RAD Decision Under Review*

[6] After the Refugee Protection Division (RPD) denied his claim, the Applicant appealed to the RAD. The determinative issue for the RAD was credibility.

[7] The RAD held the RPD erred in some of their credibility findings, but agreed with their overall credibility conclusion. The negative credibility findings upheld by the RAD were as follows:

- The Applicant provided three supporting witness letters that made an identical mistake in the dates of the Applicant's detention, stating that he was detained from October 3 or 6 to October 11. In contrast, the Applicant stated he was detained from October 31 to November 7. The RAD held it was "very unlikely that three truthful witnesses would all make the same mistake in wrongly saying when they thought his detention happened [...] The RAD therefore draws a substantial negative inference as to the appellant's credibility as a witness and about the central allegations, and it dismisses all three letters as reliable proof of the central allegations".
- The Applicant's Basis of Claim and oral testimony indicated he had seven siblings, but his Temporary Resident Visa (TRV) application indicated he only had two – a brother and sister. The RAD noted the Applicant had travelled extensively, so was not unsophisticated, and rejected the explanation that it was his agent's mistake.

[8] The RAD went on to conclude that, "the appellant is not a credible or trustworthy witness".

[9] Though the RAD found the RPD erred in failing to consider the summons, and placed “positive weight on the summons as proof of the central allegations”, the RAD held this did not overcome the credibility concerns.

[10] As a result, the RAD dismissed the appeal.

II. Issues

[11] The Applicant raises the following issues on this application:

- A. Did the RAD err in denying the appeal, after overturning most of the RPD’s credibility findings?
- B. Did the RAD fail to consider the totality of the evidence?

III. Standard of Review

[12] The parties agree that the standard of review on these issues is reasonableness.

[13] In reviewing a decision on a reasonableness standard, the Court must determine whether the decision is justified, transparent, and intelligible (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Further, “[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it”, however, it is not the role of the reviewing Court to reweigh the evidence that was before the decision maker (*Vavilov* at paras 125-126).

IV. Analysis

A. *Did the RAD Err in Denying the Appeal, After Overturning Most of the RPD's Credibility Findings?*

[14] The RAD overturned a number of the RPD credibility findings, and the Applicant argues that the two remaining negative credibility findings made by the RAD are not sufficient to support a finding of a general lack of credibility.

(1) Supporting Letters

[15] With respect to the support letters, the Applicant argues it was unreasonable for the RAD to find that the Applicant was not credible on the basis that the supporting letters written by others were found to be unreliable. The Applicant relies upon *Tung v Canada (Minister of Employment and Immigration)*, (1991) FCJ No 292 (FCA) [*Tung*] and *Levtchenko v Canada (Minister of Citizenship and Immigration)*, (1998) FCJ No 1260 (FC) [*Levtchenko*].

[16] In *Tung* the Court held “I cannot see that anything said by the Board in the course of its decision either expressly or impliedly rejected the appellant’s credibility as a witness on his own behalf”. However, that is not the situation here where the RAD provided a detailed explanation of the reasons for finding the Applicant not credible. In other words, the RAD did not base its credibility finding solely on the supporting letters.

[17] Likewise, *Levtchenko* is of no assistance to the Applicant. In *Levtchenko*, the panel stated it believed the claimants had “made up a story involving persecution”, without explaining

why it preferred the documentary evidence over the claimant's testimony (at para 2). Here, however the RAD explained its negative credibility inferences against the Applicant and explained the reasons for the rejection of the supporting letters, as well as its reasons for rejecting the Applicant's explanations for the inconsistencies.

[18] The RAD weighed the evidence provided by the Applicant and noted serious inconsistencies. The RAD concluded that the support letters did not assist the Applicant. The RAD reasonably found that the support letters provided by the Applicant himself, were inconsistent on the dates of detention.

[19] Overall, the RAD provided a reasonable explanation for rejecting the supporting letters.

(2) TRV

[20] The Applicant also argues that the error in the TRV application is not central to his claim, and therefore cannot support a finding that he is not credible, citing *MM v Canada (Minister of Employment and Immigration)*, (1991) FCJ No 1110 (FCA) [MM].

[21] In *MM*, the Court noted the panel made negative credibility findings because of inconsistencies that were not central to the claim. In *MM* the panel accepted that the appellant had been detained, abused by soldiers, that she had a subjective fear of persecution, and that the Indian army had visited her home on a regular basis. Given this, and given the panel did not find a total absence of credibility but ignored important parts of her case, the Court declared the appellant to be a Convention refugee. This case is factually distinct.

[22] Here, the Applicant testified at the RPD hearing that his father, stepmother, and two brothers were arrested. However, on his TRV application, the Applicant only indicated that he had one brother and one sister. Given that the arrest of the Applicant and his family members was core to the Applicant's claim for protection, it was reasonable for the RAD to rely upon the inconsistencies in the Applicant's TRV application to make a credibility finding. This factor cannot be characterized as a peripheral or a non-important aspect of the Applicant's claim.

B. *Did the RAD Fail to Consider the Totality of the Evidence?*

[23] The Applicant argues the RAD failed to assess his claim by considering all of the evidence and, in particular, his links to Ebisa Merga and the issuance of the police summons. The Applicant relies on *Ahangaran v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8128 to argue that the failure to consider the totality of the evidence constitutes an error of law.

[24] Although the Applicant refers to an "affidavit" of Ebisa Merga, the document is not an affidavit, but rather a handwritten letter. The letter merely states that the Applicant told Ebisa Merga that he had been detained. A handwritten note reiterating what the Applicant told the author is not of such importance that it would require specific mention by the RAD (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17).

[25] The police summons indicates the Applicant is accused of defamation, however an allegation of defamation, does not support the Applicant's claim that he is at risk of persecution.

In any event, the RAD explicitly considered the summons, but found the summons alone was not sufficient to overcome the credibility findings.

V. Conclusion

[26] This judicial review is dismissed as the decision of the RAD is reasonable. There is no question for certification.

JUDGMENT IN IMM-6492-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no certified question.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6492-20

STYLE OF CAUSE: DADI TESFAYE BEYENE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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