Federal Court  Cour fédérale

Date: 20220928

Docket: IMM-5847-21

Citation: 2022 FC 1358

Ottawa, Ontario, September 28, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

SABELA YARED FISEHAYE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant applies for judicial review of a decision by a visa officer (the "Officer"), rejecting her application for Canadian permanent residence as a Convention refugee abroad or Humanitarian-Protected Person Abroad class.

II. Background

[2] The Applicant, Sabela Yared Fisehaye, is a 34-year-old woman from Eritrea who had refugee status with the United Nations High Commissioner for Refugees ("UNHCR") in Ethiopia.

[3] Eritrea's military has mandatory service, commonly referred to as "National Service." The Applicant's father and brother are currently serving in the National Service.

[4] In addition to her brother, the Applicant has five sisters. One of her sisters lives in Holland, three are in Eritrea, and one is in Ethiopia.

[5] The Applicant married in January 2008 to avoid the National Service. She and her husband had two children together, Henos Amanuel Asefaw (age 12) and Essey Amanuel Asefaw (age 9). After living with her husband for approximately four years, the Applicant and her children moved in with her parents. The couple separated in 2014 but never formally divorced. The Applicant received legal custody of her children in 2013 before she and her husband separated. The family struggled financially and the Applicant's relationship with her husband was abusive. The Applicant's husband illegally left his position in the National Service and fled the country. He now lives in Germany.

[6] After her husband left Eritrea, the authorities visited the Applicant three or four times at her parents' house seeking information on her husband's whereabouts. During the visits she

alleges that the authorities aggressively hassled her, threatened her, interrogated her, and intimidated her. The Applicant claims the authorities' visits caused her to become fearful. Additionally, the authorities took the Applicant's coupons for supplies and services such as groceries and oil. The coupons also allow the Applicant's children to attend school. The Applicant says she attended the military offices and asked for her coupons back but they refused. As a result, the Applicant says she was unable to register her children for the school year beginning in September 2018.

[7] The Applicant and her children illegally left Eritrea and crossed the border into Ethiopia in September 2018. Upon arrival, the Applicant and her children went to the Endabaguna Refugee screening center and were assigned to the Adi Harush refugee camp. They lived in the camp until November, then she and her children moved to Addis Ababa. The Applicant struggled to support her children as she was unable to find employment and relied on money from her sister in Holland. On the Applicant's request, her mother took the children back to Eritrea in February, 2019.

[8] The Applicant originally planned to move to Germany where her husband was, however, those plans never materialized. After communicating with her cousin who resides in Canada, the Applicant decided to move to Canada and submitted her application in June, 2019. Her cousin arranged for five people to sponsor her for permanent residence in Canada in the Convention Refugees Abroad class. The sponsorship application received approval on February 3, 2020.

[9] The Applicant contacted her mother and requested she bring the children back to Addis Ababa from Eritrea.

[10] On July 13, 2021, the Applicant and her children attended the office of the International Organization for Migration Transit Centre in Addis Ababa for a resettlement interview.

[11] On July 29, 2021, the Officer determined that the Applicant did not meet the definition for a Convention refugee as set out in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and rejected her application.

[12] I will dismiss this application for the reasons that follow.

III. Issues

[13] The Applicant's submissions raises two issues:

A. Did the Officer fail to observe principles of procedural fairness?

B. Whether the Officer's decision is reasonable.

IV. Standard of Review

[14] The standard of review of a decision of an immigration officer is reasonableness. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 23 [*Vavilov*], "where a court reviews the merits of an

administrative decision ... The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness."

[15] As for the standard of review for procedural fairness, the standard of review is, essentially, correctness. As Justice Little succinctly summarized in *Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321:

> [48] On issues of procedural fairness, the standard of review is correctness. More precisely, whether described as a correctness standard of review or as this Court's obligation to ensure that the process was procedurally fair, judicial review of procedural fairness involves no margin of appreciation or deference by a reviewing court. The ultimate question is whether the party affected knew the case to meet and had a full and fair, or meaningful, opportunity to respond: see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 (Rennie, JA) ("*CPR*"), esp. at paras 49, 54 and 56; *Baker*, at para 28. In *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, de Montigny JA said "[w]hat matters, at the end of the day, is whether or not procedural fairness has been met" (at para 35).
>
> [Emphasis added]

V. Analysis

A. *Applicant's Submissions*

[16] The Applicant submits that this Court should quash and remit the Officer's decision on two grounds.

[17] First, the Applicant argues the decision is procedurally unfair and the Officer breached procedural fairness because:

a) the Officer was biased in their approach to the interview and the Officer lacked familiarity with the relevant country condition information, and
b) the translator was not competent.

[18] Second, the Applicant argues the Officer's decision is unreasonable because the Officer:

a) ignored material evidence regarding the husband's military desertion, which led to unreasonable findings regarding the Applicant's prospective risk,
b) did not consider the Applicant's UNHCR status, and
c) did not adequately assess the Applicant's risk due to her illegal departure from Eritrea.

B. *Procedural Fairness*

(1) Officer's Alleged Bias – Interview and Country Condition

[19] On the issue of procedural fairness, the Applicant submits the Officer's conduct gave rise to a reasonable apprehension of bias or caused the interview process to be unfair. The Applicant argues the Officer focused on testing the Applicant's credibility rather than understanding the Applicant's story. The Applicant points to examples that she says makes it obvious the Officer had a reasonable apprehension of bias or unfairness. One example given by the Applicant is an exchange where the Officer raised concerns about the Applicant's statements regarding her residence and whether she was "always" living with her parents. The Applicant argues this exchange led the Officer to focus on credibility rather than trying to understand her whole story.

The Applicant suggests that, without inquiring further about the evidence that might suggest a risk of persecution, the line of questioning was procedurally unfair.

[20] The Applicant also takes issue with the Officer's questions regarding the Applicant's custody of the children. The Applicant submits these concerns show the Officer had the impression the Applicant's evidence on this point was inconsistent. The Applicant states that these concerns led the Officer to undermine the Applicant's evidence of the authorities targeting her because her husband deserted his position with the National Service.

[21] The Applicant argues the Officer did not record a significant amount of her evidence and accused her of lying. The Applicant contends the omitted evidence revealed a risk of persecution. She also submits the Officer accused her of lying about the authorities' visits to her home by saying "They wouldn't do that" because she was separated from her husband. She explains the omitted evidence and Officer's comment demonstrates bias, as well as a lack of understanding of the conditions in Eritrea.

[22] Procedural fairness requires that a decision be free from a reasonable apprehension of bias: see *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) at paragraph 45 [*Baker*].

[23] The genesis for the modern formulation of the reasonable apprehension of bias test is contained in the dissenting judgment of Justice de Grandpré in *Committee for Justice & Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, 1976 CanLII 2 (SCC) at 394. The

apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, the test of "what would an informed person, viewing the matter realistically and practically—conclude?" The words of the Supreme Court were adopted by the Federal Court of Appeal in *Patanguli v Canada (Citizenship and Immigration)*, 2015 FCA 291 at paragraph 49. The test is: "what would an informed person, viewing the matter realistically and practically - and having thought the matter through – conclude?"

[24] In *Alcina Rodriguez v Canada (Citizenship and Immigration)*, 2018 FC 995, Associate Chief Justice Gagné said:

> [35] An allegation of bias must be supported by convincing evidence and cannot be made lightly. The burden of proof is on Mr. Rodriguez, and the threshold to be met is high (*Fouda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1176 at para 23). In essence, he must demonstrate that the decision-maker was closed-minded and not open to persuasion.

[25] I do not agree with the Applicant that the Officer's questions and Global Case Management System ("GCMS") notes would lead a reasonable person to believe there was an apprehension of bias. Although this line of argument is argued as bias, practically, this is a reasonableness argument. Regardless, this argument fails as applicants must raise procedural concerns at the earliest available opportunity. Otherwise, a failure to object to the procedural defect below amounts to waiver (*Irving Shipbuilding Inc v Canada (AG)*, 2009 FCA 116 at para 48).

[26] Even if the Applicant's argument is correctly characterized as a procedural fairness issue, there is no evidence to support this high threshold. The Officer did not have a closed mind. The record shows the Officer did ask questions and allow responses such as asking the Applicant questions about the location of her residence. Likewise, the Officer's questions regarding the Applicant's custody papers do not demonstrate a closed mind or assumptions about the legal systems of Eritrea. The Officer's questioning on these points does not demonstrate bias.

[27] The Applicant submits the Officer breached fairness or exhibited a closed mind by failing to ask further questions when her statements suggested a risk of persecution. In actuality, the Applicant did not put her best foot forward regarding her own evidence. At several points, the Officer explained they were struggling to understand how the Applicant was at risk of persecution and at one point the Officer's GCMS notes indicate they had the following exchange with her:

> Officer: TELL THE PA THAT THE DANGERS OF SENDING THEM BACK DO NOT SEEM TO OUTWEIGH THE REASONS FOR FLIGHT.
>
> Applicant: YOU ARE RIGHT. BUT WHY I DID NOT GOT BACK, I COULDN'T GO BACK BECAUSE I KNEW I WOULD GET ARRESTED. MY MOTHER SUFFERED TO BRING THEM HERE AND IT WAS NOT EASY FOR US. AND ALSO AFTER MY MUM TOOK THEM, SHE WAS HIDING THEM IN HER HOUSE.
>
> Officer: DO YOU HAVE ANYTHING ELSE TO ADD?
>
> Applicant: I AM TELLING YOU THE TRUTH, MY CHILDREN ARE NOT ATTENDING SCHOOL HERE AND I AM STRESSING OUT HERE. I COULDN'T SEND MY CHILDREN TO PRIVATE SCHOOL BECAUSE IT IS VERY EXPENSIVE HERE.
>
> Officer: ADVISE PA AGAIN THAT ECONOMIC REASONS FOR FLEEING HER COUNTRY DO NOT CONSTITUTE A

> WELL FOUNDED FEAR OF PERSECUTION BASED UPON YOUR RACE, RELIGION, NATIONALITY, OR MEMBERSHIP IN A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION.

[28] This exchange shows the Officer giving the Applicant an opportunity to explain her fear of persecution based upon her race, religion, nationality, or membership in a particular social group or political opinion. In my opinion, it demonstrates the opposite of a closed mind and shows the Officer attempting to elicit the relevant facts.

[29] The Applicant points to the Officer's comment, which doubted the military personnel's visits and interrogation about her husband's whereabouts, as evidence of bias. I view this comment as a part of the conversational fact-gathering process rather than the Officer possessing a closed mind. As to the Applicant's reference to *Abasher v Canada (Citizenship and Immigration)*, 2019 FC 1591 at paras 22-23 [*Abasher*], I do not doubt the Applicant is in a vulnerable position and her circumstances are sympathetic. However, unlike in *Abasher*, the Officer did not base their decision on negative credibility findings or inconsistencies in the Applicant's story and instead based their findings on her being an economic migrant and not meeting a well-founded fear of persecution based race, religion, nationality, or membership in a social group or political opinion.

[30] I am not persuaded the Officer asked questions or exhibited conduct that showed a closed mind toward the Applicant. I am satisfied that, when viewed as a whole, the interview process provided the Applicant with a fulsome opportunity to put her full story before the Officer. Accordingly, I find no bias, unfairness, or reasonable apprehension of bias.

(2) Adequacy of the Translation

[31] The Applicant raises concerns with the interpretation services and alleges unfairness because

a) she had difficulty understanding the translator;

b) she was required to ask the translator to use different words;

c) what the translator said to the Officer seemed much shorter than what the Applicant said to the translator;

d) the translator was using different Tigrinya; and

e) according to the Officer's notes, the Applicant said two terms she would not have used.

[32] The Applicant submits she did not waive her right to raise the issues surrounding the interpretation. The Applicant says she was stressed and did not realize she could request a new interpreter or reschedule the interview. She states that some of the issues with the translation did not become apparent until the Applicant noticed a lack of detail and terminology errors in the Officer's notes. On this point, the Applicant relies on *Umubyeyi v Canada (Citizenship and Immigration)*, 2011 FC 69. The Applicant submits that some of the errors in the translation caused the Officer to form negative opinions of the Applicant.

[33] The Applicant says that towards the end of the interview, she was reiterating the dangers of returning to Eritrea when the interpreter gestured to the Applicant to stop talking without providing an explanation. The Applicant submits this may have prevented her from fully presenting the evidence and constitutes a breach of fairness.

[34] However, there are several reasons as to why a translator would do this. This gesture could be interpreted as having her stop a long explanation in order for the translator to translate concurrently with the Applicant. It is common knowledge that translators prefer shorter blocks of information to translate rather than allowing a long explanation and then having to translate. In *Lo v Canada (Citizenship and Immigration)*, 2020 FC 684, the interpreter was only able to translate short sentences, where Justice Elliott found the translation adequate. However, the applicant contributed to several of the translation issues in that case. Regardless, the Officer is used to working with translators and if the translator had in fact not allowed an applicant from finishing their story, the officer would have intervened. Even if the Applicant was interrupted, I find that she had sufficient opportunity explain her story. As such, I find the translator's gesture immaterial to the outcome.

[35] I turn next to the adequacy of the interpretation. In *Singh v Canada (Minister of Citizenship & Immigration)*, 2010 FC 1161 at paragraph 3, Justice Lemieux summarized the principles enunciated in *Mohammadian v Canada (Minister of Citizenship & Immigration)*, 2001 FCA 191 [*Mohammadian*], governing the required quality of interpretation:

> a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
>
> b. No proof of actual prejudice is required as a condition of obtaining relief.
>
> c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
>
> d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.

> e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
>
> f. If the interpreter is having difficulty speaking an applicant's language and being understood by him it is a matter which should be raised at the earliest opportunity.

[36] The matter of waiver must be addressed before considering the quality of the interpretation. I find that the Applicant should have raised her concerns about the interpretation with the Officer. The Applicant says at paragraph 5 of her affidavit of October 22, 2021, "[a]t the interview, there were instances where I was unsure of the completeness of what was being communicated." At paragraph 8, the Applicant says, "…there were many occasions when I did not understand what the translator was saying and I asked her to repeat, and then she would try using different words until I understood". The Applicant's assertion that "I did not think I could request a new translator or reschedule the interview" is not persuasive given her statement that "I know that the officer told me that I should tell them if I was having problems with the translation […]". At no time do the Officer's GCMS notes reflect any problem with the translation and certainly there is no mention in the notes that the Applicant did not understand the dialect spoken.

[37] The Applicant explains that where errors in translation are only discernable by reading the written reasons the obligation to object simply does not arise in respect of that portion of the translation and that is why she did not raise it at the interview.

[38] This argument fails as applicants are required to raise concerns regarding interpretation at the earliest opportunity. The Applicant's failure to raise the issue before the Officer is fatal on

this claim. However, if I am mistaken, her claim regarding interpretation fails on a consideration of the other *Mohammadian* factors.

[39] The Applicant points to several instances in the GCMS notes where there is an issue with the interpretation. In particular, the Tigrinya word for "**river**" which appears to have been improperly interpreted as "**sea**" and "**desert**". The Applicant submits these errors led the Officer to form a negative impression of the Applicant and believe she was embellishing her story. However, the notes and reasons demonstrate the Officer's decision did not rely on these errors in interpretation, nor draw a negative credibility finding against the Applicant.

[40] After the Officer asked about the mother's method of transport to get across the border, the GCMS notes show the Applicant informed them that her mother walked and used the bus. The GCMS notes state:

> Officer: IN ASMARA HOW DID SHE MANAGE TO GO BACK?
>
> Applicant: SAME WAY, SHE HAD TO TRAVEL THROUGH **MOUNTAINS** AND **DESERTS**
>
> [Emphasis added]

[41] This questioning pertained to the mother's mode of transportation when she took the children back to Eritrea from Ethiopia and then brought the children back to Ethiopia. Later in the interview she was asked about her two small children's travel back and forth over a border that has been closed and opened partially. The Applicant explained that "It was very difficult for them. They were very thin and they had nightmares for a long time remembering the **sea** they had to cross. It was not as easy as it seems." (Emphasis added).

[42] In the context of the interview and the Officer's findings, it would not make any difference whether the mother crossed a sea or desert or river. It was immaterial to the Officer's findings what entity was crossed. So if this was a translation error it does not go to the heart of the matter nor does it affect the decision's outcome.

[43] The case law submitted by the Applicant deals with instances where an error in interpretation led the decision-maker to make a negative credibility finding against the Applicant. In *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258 [*Dalirani*], the applicant sought refugee protection based on his conversion to Christianity. The finding concerning whether the applicant was a genuine practitioner of the Christian faith was an important consideration in the decision reached by Refugee Protection Division (the "RPD"). At the hearing, the interpreter said the applicant was testifying that he was not Lutheran when in reality the applicant was testifying that he was not Catholic (at para 21). Both the RPD and the Refugee Appeal Division, based on the mistaken interpretation, found this significant in their assessment of the applicant's credibility. The context and the importance of the weight placed on the incorrect information in *Dalirani,* is fundamentally different from the importance and relevance of the mistaken interpretations in the Applicant's case.

[44] The errors in interpretation are not a basis to conclude the Applicant received interpretation that fell short of the *Mohammadian* requirements. Though apparently the translation was not perfect, perfection is not the required standard. The translator saying sea and desert when the Applicant meant river does not affect the Officer's reasoning and is not the crux

of the determination. I therefore find no breach of procedural fairness arising from the adequacy of the interpretation that would justify interference with the Officer's decision.

C. *Reasonableness of the Decision*

(1) Alleged Failure to Consider Husband's Desertion Consequences

[45] The Applicant argues the Officer failed to consider whether she faced a risk of persecution based on her husband's military desertion. She explained that there are consequences for family members of military deserters in Eritrea. The Applicant submits the Officer did not address evidence regarding her belief that she would be arrested if she returned to Eritrea and whether that evidence established a risk of persecution. The Applicant suggests the Officer did not deal with this evidence because they believed she left Eritrea for economic reasons. The Applicant says that due to the centrality of this evidence, the Officer was required to address the evidence expressly in their reasons. The Applicant alleges the Officer further erred in assuming she would face prosecution in accordance with international norms and the Officer was required to articulate a more detailed consideration of the specific repercussions to the Applicant if she returned to Eritrea.

[46] The Applicant's position was that, by failing to ask follow up questions about her fear of returning to Eritrea, the Officer was procedurally unfair. She says there are well-documented consequences for family members of military deserters and for those who leave Eritrea without permission. As a result, the Applicant submits the Officer's failure to inquire about these risks was a breach of fairness.

[47] Though the Applicant argued this as procedural unfairness issue it is really one of reasonableness. It is therefore addressed as such.

[48] The reasons in the GCMS notes are clear that overall there was "….insufficient information given regarding persecution or fear of persecution during in person interview." The GCMS notes also explain that "You stated clearly that you left your country for a better life and education for your children and that you initially hoped their father in Germany was going to help you to there that is why you left your country."

[49] The onus is on applicants to advance their own case (*Guerilus v Canada (Citizenship and Immigration)*, 2010 FC 394 at para 14 citing *Rahmatizadeh v Canada (Minister of Employment and Immigration)*, 48 ACWS (3d) 1427, [1994] FCJ No 578 (QL) at para 10). Accordingly, if the Applicant had fears about returning to Eritrea, the obligation to raise these fears lay with her. The GCMS notes corroborate the Officer's findings: "My husband left the country, they used to come to my house and ask me where he was but I didn't know where he was. When I told them I didn't know they took all my coupons…"

[50] The Officer did follow up on the Applicant's fear of persecution. The Officer tried to understand how the Applicant would be targeted in light of the fact that she was already separated from her husband for some time when he left and she lived with her parents. Her response was "When he filled out his form he filled out the address where we were living together. They went there and the people told them I was living with my parents. And they asked me where my husband was and I told them I didn't know, and they came 3 or 4 times after that."

The Officer's finding that there was a lack of sufficient evidence has a good foundation and the Officer's findings considered the totality of the available evidence.

[51] It is not for the Officer to search for evidence or to follow up further especially in light of the factual circumstances. In the interview the Applicant said she was never going to reconcile with her husband in Germany. This, combined with the evidence she gave of leaving for economic reasons, makes the Officer's findings a reasonable view of the evidence, rather than "… persecution based on her race, nationality, religion, particular social group, or political opinion." In the GCMS notes, the Officer tells her of their concerns and explains why. Yet, when the Applicant had the chance to respond to the Officer's concern, she gave further evidence regarding her fear of her 12 year old son becoming a soldier, and not wanting that life for him. The Applicant's evidence and the Officer's findings that she was an economic migrant meant that the Officer did not have to deal with the fear of persecution any further than what the Officer did in their reasons.

[52] The Officer's reasons do not suggest they did not believe the Applicant that the authorities had visited her and confiscated her coupons, or found her to be untruthful. Rather, the Officer concluded the Applicant had not articulated and demonstrated a well-founded fear of persecution if she were to return to Eritrea.

[53] In light of the Officer's reasons, I find the Officer's decision reasonable. The Officer properly cited the criteria and definition for refugee status under the *IRPA,* weighed the relevant

evidence available to them, and came to a conclusion that fell within a range of possible, reasonable outcomes in light of the facts and law (*Vavilov*, at para 86).

(2) Alleged Failure to Recognize the Applicant's UNHCR Status

[54] The Applicant submits the Officer's decision does not satisfy the requirement in *Pushparasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 828 [*Pushparasa*], to conduct a "rigorous assessment" of the application and explain why they disagreed with the UNHCR's determination that the Applicant and her children were refugees. The Applicant states that in light of Justice Heneghan's decision in *Haile v Canada (Citizenship and Immigration)*, 2020 FC 375 [*Haile*], the Officer's failure to do so renders the decision unreasonable.

[55] I do not find the Officer's treatment in this case as being unreasonable given that after acknowledging that the UNHCR recognized the Applicant as a refugee, the Officer proceeded to assess the Applicant's evidence of forward looking risk. The Officer based their decision on the evidence presented to them in the application and the interview, which is what is required by the test for refugee status under the *IRPA*.

[56] On these facts, the Officer's reasons satisfy the requirement described in *Haile* at paragraph 25, to provide an explanation for their determination that the Applicant does not satisfy the criteria for a Convention refugee under the IRPA despite her status as a UNHCR refugee. Similarly, to the officer's decision in *Pushparasa* (at paras 28-30), the GCMS notes are clear that the Officer was aware of the UNHCR designation and the reasons show the Officer

concluded that the Applicant lacked a well-founded fear of persecution, and as such, was not a member of the Convention refugee abroad class.

(3) Alleged Failure to Assess Risk due to Illegal Departure from Eritrea

[57] I do not accept the Applicant's submission that the Officer did not consider whether the Applicant would be at risk of persecution due to having left Eritrea illegally. Unlike in *Ghirmatsion v Canada (Minister of Citizenship & Immigration)*, 2011 FC 519 at paragraphs 100-108, the Officer's notes and reasons show they specifically asked the Applicant about the risk of persecution.

[58] I agree with the Respondent that the Applicant's lack of sufficient evidence is similar to the applicant's situation in *Del Carmen Marrero Nodarse v Canada (Minister of Citizenship & Immigration)*, 2011 FC 289 at paragraphs 38-43. The Applicant did not provide the Officer with evidence that any prosecution she would face would not be neutral or that she would be subject to harsh and unusual treatment upon her return to Eritrea. She provided no evidence at all even though the burden was on her to do so. Without sufficient evidence to find the Applicant's fear of imprisonment was well founded, the Officer was reasonable in concluding that the risk of imprisonment in Eritrea did not amount to persecution under s 96, or risk of cruel and unusual treatment under s 97.

[59] No question for certification was presented and none arose from the hearing.

JUDGMENT IN IMM-5847-21

THIS COURT'S JUDGMENT is that:

1. I will dismiss the application

2. There is no question for certification.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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