Federal Court  Cour fédérale

Date: 20230626

Docket: IMM-7987-22

Citation: 2023 FC 891

Ottawa, Ontario, June 26, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

TIGIST ABERA WOLDEMARIAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Tigist Woldemariam is an Ethiopian citizen currently living in the Republic of South Africa, where she and her husband have been formally recognized as refugees. She, her husband, and their child applied for permanent residence in Canada as sponsored members of the Convention refugee abroad class. A Migration Officer with Immigration, Refugees and

Citizenship Canada [IRCC] concluded Ms. Woldemariam and her husband did not qualify for permanent residence because they had a “durable solution” in South Africa.

[2] Ms. Woldemariam argues the Migration Officer’s decision was unreasonable, because it focused on their legal status as refugees and disregarded both general evidence of conditions in South Africa and the family’s personal circumstances, notably the killing of her brother-in-law. She also argues that the decision unreasonably ignored the family’s risk of refoulement to Ethiopia.

[3] Having considered the Migration Officer’s decision and the parties’ arguments, I conclude that the decision was reasonable. The Migration Officer reasonably considered both Ms. Woldemariam’s legal status as a refugee and the reasons she put forward to suggest that she did not have a durable solution in South Africa despite that status. As the existence of a durable solution was determinative of the application for permanent residence, the decision was reasonable and this application for judicial review must be dismissed.

II. Issues and Standard of Review

[4] Ms. Woldemariam raises the following two issues on this application:

A. Did the Migration Officer err in finding the family has a durable solution in South Africa?

B. Did the Migration Officer err in finding the family faces no risk of refoulement to Ethiopia?

[5] As the parties agree, the Migration Officer's decision is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Helal v Canada (Citizenship and Immigration)*, 2019 FC 37 at para 14. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, that is justified in relation to the facts and law that constrain the decision maker, and that adequately demonstrates the qualities of justification, transparency, and intelligibility: *Vavilov* at paras 15, 85–86, 95, 99–101; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 31–32.

III. Analysis

A. *The Migration Officer did not err in finding the family had a durable solution in South Africa*

(1) "Durable solution" under the *Immigration and Refugee Protection Regulations*

[6] Section 144 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] prescribes the "Convention refugees abroad" class as a class of persons who may be issued a permanent resident visa. Section 139 of the *IRPR* sets out a series of general requirements to qualify for a permanent resident visa in this class. The requirement relevant to this application is that set out in paragraph 139(1)(*d*), which reads as follows:

General requirements	**Exigences générales**
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	**139 (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
[…]	[…]
(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	**d)** aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	**(i)** soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,
(ii) resettlement or an offer of resettlement in another country;	**(ii)** soit la réinstallation ou une offre de réinstallation dans un autre pays;
[Emphasis added.]	[Je souligne.]

[7] Although paragraph 139(1)(*d*) of the *IRPR* refers to a "durable solution" as meaning either voluntary repatriation or resettlement in a country of nationality or habitual residence, or "resettlement or an offer of resettlement in another country," this Court has recognized that there is no precise definition of "durable solution" contained in the *IRPR*: *Kediye v Canada (Citizenship and Immigration)*, 2021 FC 888 at para 12, citing *Al-Anbagi v Canada (Citizenship and Immigration)*, 2016 FC 273 at para 17. Rather, determining whether a durable solution exists

is a forward-looking assessment that depends on the applicant's legal status and personal circumstances, as well as the conditions in the person's country of residence: *Uwamahoro v Canada (Citizenship and Immigration)*, 2016 FC 271 at para 11; *Al-Anbagi* at para 17, citing *Barud v Canada (Citizenship and Immigration)*, 2013 FC 1152 at paras 3, 12; *Kediye* at para 12. For a solution to be "durable," it need not be perfect: *Uwamahoro* at para 15; *Shahbazian v Canada (Citizenship and Immigration)*, 2020 FC 680 at para 22.

[8] As a general matter, the obligation is on an applicant for a visa to satisfy the officer reviewing the application that they meet all of the requirements for the visa: *Oladipo v Canada (Citizenship and Immigration)*, 2008 FC 366 at para 24. In the case of an applicant in the Convention refugees abroad class, this includes the onus to establish that the applicant has no reasonable prospect, within a reasonable period, of a durable solution in another country: *Karimzada v Canada (Citizenship and Immigration*), 2012 FC 152 at para 25; *Al-Anbagi* at para 16; *Uwamahoro* at para 10.

(2) Ms. Woldemariam's application

[9] Ms. Woldemariam fled Ethiopia in 2015, after being imprisoned and mistreated by Ethiopian government authorities for fighting against the suppression of the Oromo people. South Africa granted her refugee status in 2015. Ms. Woldemariam's husband had also been granted refugee status in South Africa, having fled Ethiopia with his brother a number of years before Ms. Woldemariam. The two had been childhood friends in Ethiopia. They met again in South Africa, married in 2015, and have one child, born in South Africa.

[10] Ms. Woldemariam's application for permanent residence states that although she and her husband thought South Africa would be safe, they discovered that significant xenophobia results in immigrants being robbed, tortured, and killed. The application described how the family had been the victim of xenophobia, with the husband's brother having been killed in a xenophobic attack. Ms. Woldemariam provided supporting documents confirming the death of the brother, the couple's marriage, and the birth of their child. She also provided confirmation of her and her husband's status in the Republic of South Africa, in the form of "Formal Recognition of Refugee Status in the RSA" documents.

[11] Ms. Woldemariam and her family were sponsored for permanent residence by a group of Canadian citizens and permanent residents living in Calgary that included her sister. After the sponsorship group was approved, a Migration Officer invited Ms. Woldemariam to an interview in Pretoria to assess the application and determine whether she met the criteria for admission to Canada.

(3) Evidence given at the interview

[12] In accordance with the usual practice, the Migration Officer recorded their notes of the interview in the Global Case Management System [GCMS]. There is no suggestion that these notes do not accurately reflect the contents of the interview.

[13] At the outset of the interview, the Migration Officer indicated that to approve the application, they had to assess whether Ms. Woldemariam met the requirements in the *IRPR* including, in particular, whether she had a durable solution in South Africa. During the course of

the interview, the Migration Officer sought information specifically on the question of durable solution, noting that Ms. Woldemariam had formal recognition of refugee status in South Africa, such that "on paper," she had a durable solution in South Africa and that given the formal recognition, she did not face a risk of refoulement to Ethiopia. At the same time, the officer recognized that "the reality may be different" from those rights on paper, and gave Ms. Woldemariam an opportunity to explain why she did not believe she had a durable solution in South Africa. The officer told Ms. Woldemariam that they recognized South Africa has a high level of crime, affecting everyone in the country, and that if she was going to raise the issue of crime, she should explain how her situation was different than that of a South African living in similar circumstances, or why her risk is greater than others residing in South Africa. This approach is consistent with the jurisprudence of this Court, which recognizes that a durable solution may exist despite the existence of generalized risk: *Hassan v Canada (Citizenship and Immigration)*, 2019 FC 531 at para 19, citing *Abdi v Canada (Citizenship and Immigration)*, 2016 FC 1050 at para 28.

[14] In response, Ms. Woldemariam stated that since entering South Africa, she had faced many challenges, like being robbed. She said that claims that refugees were given the same opportunities to study were not true, as refugees were not allowed into schools. She reiterated that her brother-in-law had been killed due to crime. She noted that they always heard shots and of people being killed, and that she was scared for her child. She stated that refugees could not apply to jobs "without paper[s]," and were robbed when they tried to work. While recognizing that she and her husband were currently working, she noted that neither had a permanent job.

(4) The Migration Officer's decision

[15] In a letter dated July 7, 2022, the Migration Officer refused Ms. Woldemariam's application for a permanent resident visa. After citing the relevant statutory and regulatory provisions, the letter states that Ms. Woldemariam resides in a country that is a signatory to the Geneva Convention on Refugees, and had been able to benefit from the protection of South Africa, with formal recognition of refugee status. They therefore concluded that Ms. Woldemariam did not meet the requirements of paragraph 139(1)(*d*) of the *IRPR*.

[16] The GCMS system contains additional notes from the Migration Officer, which form part of the reasons for decision: *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at para 17, citing *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 35. In the GCMS notes, the Migration Officer referred to South Africa's formal recognition of Ms. Woldemariam and her husband as having refugee status, and concluded the following:

> Having received formal recognition of refugee status in South Africa, I am satisfied that the applicant does not face a risk of refoulement to Ethiopia, has the right to study, work, access healthcare, and move freely within [South Africa], and may apply after a period for permanent residence.

[17] The Migration Officer then noted that Ms. Woldemariam had raised the issues of crime and xenophobia in her interview and application forms. In considering these concerns, the Migration Officer stated the following:

> While I note that crime is significantly more pervasive in South Africa than in Canada, I am not satisfied that the applicant does not have a durable solution as a result of crime. I note that the applicant is able to report incidents of crime to the police.

> Likewise, I accept that xenophobia may be a greater risk in South Africa than in Canada. However, I am not satisfied that there is information before me to suggest that xenophobia is such that the applicant does not have a durable solution in South Africa, nor that they do not have rights and privileges (such as employment, education, healthcare, mobility, etc.) as a formally recognized refugee.

(5) The Migration Officer's decision was reasonable

[18] Ms. Woldemariam argues the Migration Officer's decision was unreasonable because it failed to meaningfully consider the family's personal circumstances, and in particular, the death of her brother-in-law, as well as her statements about their work and schooling. I disagree.

[19] As noted above, the assessment of the existence of a durable solution is a forward-looking assessment, directed at whether there is a "reasonable prospect, within a reasonable period, of a durable solution": *IRPR*, s 139(1)(*d*); *Uwamahoro* at para 11; *Gebreselasse v Canada (Citizenship and Immigration)*, 2021 FC 865 at para 42, citing *Miakhil v Canada*, 2020 FC 1022 at para 20. Ms. Woldemariam raised her brother-in-law's death as a highly personal example of the existence of xenophobic violence in South Africa. However, a past incident of violence is not, in and of itself, a predictor of future risk. As the Minister notes, this Court has found it reasonable to conclude that a durable solution exists in South Africa even for a refugee who has himself been the subject of "seven or eight xenophobic assaults": *Hassan* at paras 4, 20–24. In Ms. Woldemariam's case, while she referred to her brother-in-law's death, she gave little detail about the event, and no evidence or explanation as to how this past incident increased the family's future risk of xenophobic violence.

[20] The Migration Officer directly considered and addressed Ms. Woldemariam's concern about xenophobic crime, concluding that the record was not sufficient to show that xenophobia in South Africa was such that she did not have a durable solution. I agree the Migration Officer's reasons could have been more detailed, and might have appropriately referred to Ms. Woldemariam's statements about the brother-in-law in particular. However, reading the reasons in light of the record, I cannot conclude that not referring specifically to the brother-in-law's death in considering the future risk of xenophobic violence renders the decision unreasonable: *Uwamahoro* at paras 17, 20.

[21] Nor did the Migration Officer fail to reasonably address the issues of education and employment. As is clear from the record, the evidence put before the officer about the family's inability to access employment and education was very limited. Ms. Woldemariam and her husband had employment, even if it was casual or not permanent. Their daughter was in school. It was reasonable in the circumstances for the Migration Officer to conclude that the information before them did not show Ms. Woldemariam and her husband did not have rights to employment and education as formally recognized refugees.

[22] Ms. Woldemariam also argues the Migration Officer's decision is unreasonable because it does not refer to available country condition evidence. I disagree. There is no indication the officer was unaware of the evidence regarding conditions in South Africa. Indeed, they referred to those conditions, albeit in a general way. Ms. Woldemariam had not put forward any particular aspect of country condition evidence for the Migration Officer's consideration. In such

circumstances, I cannot conclude it was unreasonable for the Migration Officer not to engage in a lengthy analysis of aspects of the country condition evidence that were not put before them.

[23] As the Minister points out, this Court has on a number of occasions upheld decisions by visa officers concluding that refugees, including refugees from East Africa, have a durable solution in South Africa, even where they have been victims of crime and xenophobia themselves: *Gebreselasse* at para 43, citing *Hafamo v Canada (Citizenship and Immigration)*, 2019 FC 995 at paras 23–25; *Hassan* at paras 21–23; and *Ntakirutimana v Canada (Citizenship and Immigration)*, 2016 FC 272 at para 16; see also *Uwamahoro* at paras 20–21; *Abdi* at para 28; *Barud* at paras 15–17. This, of course, does not pre-determine the outcome of any particular application for permanent residence, and does not render every decision pertaining to a durable solution in South Africa reasonable. However, it does run counter to Ms. Woldemariam's suggestion that the country condition evidence she now cites—which was not cited before the Migration Officer—shows that Ethiopian refugees in South Africa cannot have a durable solution there.

B. *The Migration Officer did not err in their findings on the risk of refoulement*

[24] Ms. Woldemariam also argues the Migration Officer's conclusion that she "does not face a risk of refoulement to Ethiopia" was unreasonable. She says this finding was made without regard to the "precarious nature" of her and her husband's refugee status, and their daughter's "lack of any immigration status in South Africa."

[25] These arguments are unpersuasive. I begin by noting that Ms. Woldemariam put no information before the Migration Officer indicating she was at risk of being returned to Ethiopia. While she and her husband stated they could not return to Ethiopia because they would be sexually harassed, detained, or killed, they did not contend that they were at risk of being removed there by South African authorities. In addition, and contrary to Ms. Woldemariam's assertion in her written argument, there is no indication in the evidence that the reason she has not applied for permanent residence is that she is afraid of refoulement and "because of lack of trust in the system."

[26] Ms. Woldemariam's arguments about the requirement to renew refugee status and to have it certified before obtaining permanent residence largely mirror those made in *Uwamahoro*. Citing South Africa's legislative recognition of the principle of non-refoulement, Justice LeBlanc, then of this Court, concluded that the need to renew one's refugee status in South Africa does not suggest a risk of refoulement, absent evidence of an actual risk of refoulement: *Uwamahoro* at paras 6, 13.

[27] There is also no evidence to substantiate Ms. Woldemariam's arguments with respect to the legal status of her daughter and, in any event, these concerns were not put to the Migration Officer. While she argues that the daughter's birth certificate is "different from the birth certificates issued to nationals of South Africa," there is no evidence to substantiate this assertion, or to connect it to a risk of refoulement.

[28] I am therefore not satisfied that Ms. Woldemariam has established that the Migration Officer's conclusion on the issue of refoulement was unreasonable.

IV. Conclusion

[29] The application for judicial review will therefore be dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-7987-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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