

Federal Court



Cour fédérale

Date: 20230912

Docket: IMM-8309-22

Citation: 2023 FC 1232

Ottawa, Ontario, September 12, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MUSSIE BELAY TEKLU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mussie Belay Teklu, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada dated June 28, 2022, refusing his application for permanent residence through the Convention Refugee Abroad Class or the Country of Asylum Class (Humanitarian-Protected Persons Abroad) program, pursuant to

sections 144 and 145 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”).

[2] On the basis of a virtual interview, the Officer drew negative credibility findings from the Applicant’s inconsistent responses to several questions and found insufficient credible information to substantiate the Applicant’s claims.

[3] The Applicant submits that the Officer’s credibility findings were based on misapprehensions of the evidence and that the Officer failed to account for key aspects of the Applicant’s circumstances and evidence.

[4] For the reasons that follow, I find that the Officer’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 33-year-old citizen of Eritrea. He resides in Addis Ababa, Ethiopia.

[6] During his early childhood in Ethiopia, the Applicant and his family were allegedly deported to Eritrea during the Eritrean-Ethiopian War, which took place from May 1998 to June 2000 and during which large numbers of Eritreans were displaced from Ethiopia. The Applicant continued his primary and secondary school education in Eritrea.

[7] The Applicant claims that in order to complete his last year of secondary school, he was required to attend the Sawa Defence Training Center (“Sawa”), a military training academy. The Applicant allegedly participated in six months of intensive military training at this facility, while completing his studies. Unable to meet the score requirements to be eligible for college, the Applicant pursued a certificate in accounting at a vocational training center within Sawa.

[8] The Applicant was assigned to a role in the national service as a forensic expert at a police station in Asmara, Eritrea, which allegedly provided nominal pay and no prospect for resigning from the national service sector. The Applicant claims that despite caring for his father, who suffered from a chronic illness, he never received responses to his numerous applications to demobilize from national service on family grounds.

[9] The Applicant claims that in or around September 2015, he became frustrated with the inability to leave the national service. He claims that in practice, national service in Eritrea is indefinite. He stopped working at the police station and began working as a taxi driver in private, in order to better support his family. The Applicant claims that the local Eritrean authorities sent a letter to his family home informing him that he should return to active duty or he would be imprisoned.

[10] Allegedly fearing for his life, the Applicant fled Eritrea and sought refuge in Ethiopia in June 2019. He eventually arrived at the United Nations High Commissioner for Refugees (“UNHCR”) office at Endabaguna in Ethiopia. He was registered as an Eritrean refugee with the UNHCR on June 17, 2019.

[11] Later in 2019, the Applicant's friends and family organized a private refugee sponsorship for the Applicant, in order to facilitate his application for permanent residence. His sponsorship was organized through the Kidanemhired Ethiopian Orthodox Church in Calgary, Alberta, which is a Canadian Sponsorship Agreement Holder. The Resettlement Operations Centre in Ottawa, Ontario granted first stage approval in November 2019, after which the application was sent to a visa office for processing.

[12] On June 23, 2022, the Applicant visited the International Office of Migration in Addis Ababa, where he was interviewed by the Officer via videoconference.

[13] The Applicant's permanent residence application was refused in a decision letter dated June 28, 2022, which also included written reasons for the refusal.

B. *Decision under Review*

[14] The Officer explained that several of the Applicant's responses to the interview questions on June 23, 2022, were inconsistent, contradictory or unreasonable, and therefore raised negative credibility concerns.

[15] The Officer found that although the Applicant initially testified that he did not receive weapons training nor receive a weapon during his military training, he later changed this answer to state that he had been issued a weapon and did participate in basic weapons training.

[16] The Officer drew a negative credibility finding from the Applicant's responses regarding his commanding officers at the police station. The Officer found that although the military table in the Applicant's file stated that his commanding officers included two majors and a colonel, the Applicant stated in his interview that he did not report to a major. In response to the Applicant's explanation that the person who filled out the table must have misunderstood the question, the Officer found it reasonable to expect that anyone in the military would understand the definition of a commanding officer.

[17] The Officer further noted that the Applicant initially stated that he did not like his role at the police station because they were widely disliked by the public, partly due to their brutal treatment of civilians. When asked why he remained there for three years without trying to leave sooner, the Applicant replied that people who left were imprisoned or beaten and he was afraid. The Officer drew the Applicant's attention to the fact that he *did* eventually leave. The Applicant responded that when he did eventually leave the service, he did so to provide for his family and particularly his ailing father, but that this was stressful because he had to keep this hidden from the authorities for nearly four years. The Officer noted that as a taxi driver, he worked in the same vicinity and was fully exposed, which is inconsistent with the Applicant's claim that he feared being caught or for his safety.

[18] The Officer suggested that the Applicant appeared to have had an arrangement with his commanding officers to openly work as a taxi driver and not be captured, as is the norm for those who desert national service. The Applicant then admitted that he had the consent of his

superiors, who allowed him to leave and work outside the national service for nearly four years, until just before he fled Eritrea and he learned that the local authorities demanded his return.

[19] The Officer explained that when these three specific concerns were raised to the Applicant and he was provided with an opportunity to respond to these concerns, he first suggested that the interpretation had been poor, before restating his claims. The Officer informed the Applicant that his explanations did not compensate for the credibility concerns and that there was ultimately insufficient credible information to support his claims. The Officer therefore refused his application.

III. Issue and Standard of Review

[20] The sole issue raised in this application for judicial review is whether the Officer's decision is reasonable. Although the Applicant also raises a procedural fairness argument, I find that this issue lacks merit in this case and I therefore do not address it.

[21] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[22] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[23] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[24] The Applicant submits that the Officer’s credibility findings were based on misapprehensions of the evidence and did not account for central aspects of the Applicant’s circumstances, his explanations, and the country condition evidence. In my view, the Applicant has not raised a reviewable error in the decision, which bears the hallmarks of reasonableness as per *Vavilov*.

[25] Regarding the Officer’s finding that the Applicant provided inconsistent responses about whether or not he received weapons training or was issued a weapon, the Applicant submits that the Officer unreasonably failed to meaningfully assess the actual evidence provided on this point.

The Applicant submits that in the interview, he reasonably explained that he did not receive advanced weapons training because he had injured his back and could only receive basic training. The Applicant submits that the Officer ignored this explanation and did not provide adequate reasons for finding that this explanation was not reasonable.

[26] Concerning the Officer's credibility finding regarding the Applicant's responses about his commanding officers, the Applicant submits that the Officer failed to engage with his evidence and explanations for this discrepancy, namely that the individual helping him to fill out the form did not adequately explain whether "commanding officer" referred to the person leading the station or his direct boss. The Applicant further submits that this conclusion is also inconsistent with the documentary evidence regarding Eritrea, which draws a distinction between civilian positions in the national service and positions in the military.

[27] Lastly, with regards to the Officer's finding that the Applicant's visible employment as a taxi driver in the same vicinity as the police station did not accord with the Applicant's stated fear, the Applicant submits that this raises several issues with the Officer's reasoning. First, the Applicant submits that the Officer misconstrued the evidence by finding that his commanding officers gave him permission to desert the national service to be a taxi driver, when actually he stated that they simply "turned a blind eye." Second, the Applicant submits that the Officer failed to consider whether the Applicant's explanations were reasonable in the specific context of Eritrea, which raises doubts about whether the relevant country condition evidence was considered at all. The Applicant submits that the country condition evidence detailing the circumstances surrounding the national service provides necessary insight and weight to his

explanations. Third, the Applicant submits that the Officer failed to consider whether his fear was well founded on the basis of his particular profile: a registered refugee with UNHCR.

[28] The Respondent maintains that the Officer's decision is reasonable. The Respondent submits that the majority of the Applicant's submissions seek that this Court reweigh the evidence that was before the Officer, which is not this Court's role on reasonableness review. The Respondent further notes that the Applicant's arguments are microscopic and involve the kind of "puzzling over every possible inconsistency, ambiguity or infelicity of expression" that this Court has warned against on reasonableness review (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, [2007] 1 FCR 490 (FCA) at para 15).

[29] In response to the Applicant's contention that the Officer's decision was unreasonably bereft of consideration of country condition documents regarding Eritrea, the Respondent submits that the Officer's decision is based on negative credibility findings drawn from inconsistencies in the Applicant's responses to questions about his own narrative, not implausibilities in the context of Eritrean national service.

[30] The Respondent further submits that the Applicant's status as a UNHCR-registered refugee is not determinative of his application. The Respondent contends that the Officer is not obligated to find that this status overcomes or compensates for the numerous credibility concerns arising from his application.

[31] I agree with the Respondent. The Respondent rightly notes that a bulk of the Applicant's submissions attempt to reassess the evidence that was before the Officer and request that this Court assign different degrees of weight to certain evidence. However, reweighing the evidence is not the purpose of reasonableness review (*Vavilov* at para 125).

[32] Reviewing the decision holistically, the Officer's negative credibility findings are based on transparent and justified assessments of the Applicant's responses to the interview questions. The Officer cogently explained the nature of these inconsistencies and evolutions in the Applicant's narrative and why they are central to the Applicant's claim. The transcript of the interview demonstrates the several opportunities provided to the Applicant to explain these inconsistencies or provide further insight into key aspects of his claim. It is open to the Officer to find that these explanations were not reasonable in the Applicant's particular circumstances, or that they did not compensate for the credibility concerns.

[33] I further agree with the Respondent that the Officer was not obligated to find that the country condition documents or the Applicant's status as a UNHCR-registered refugee cured the inconsistencies in his application. The Applicant did not raise country conditions in Eritrea in his explanations for the inconsistencies when probed about them and, in any event, the Officer's reasons clearly explain that the negative credibility findings were drawn from inconsistencies in the Applicant's responses to questions in the interview. Overall, the Officer's decision is reasonable in light of the facts and evidentiary record (*Vavilov* at para 126).

V. Conclusion

[34] This application for judicial review is dismissed. The Officer's decision is justified, intelligible and transparent, in light of the facts and evidence (*Vavilov* at para 86). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-8309-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8309-22

STYLE OF CAUSE: MUSSIE BELAY TEKLU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 15, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: SEPTEMBER 12, 2023

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