

Federal Court



Cour fédérale

Date: 20240227

Docket: IMM-3869-23

Citation: 2024 FC 316

Ottawa, Ontario, February 27, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**AMINA ADAM MOHAMMED
MERYM MOHAMMEDSANI
SARA MOHAMMEDSANI
ALARETH MOHAMMEDSANI
ALIHUSSIEN MOHAMMEDSANI
ALI MOHAMMEDSANI
AMAL MOHAMMEDSANI**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by a Senior Immigration Officer (“Officer”) dated February 8, 2023, denying the Applicants’ Pre-Removal Risk Assessment

(“PRRA”) application pursuant to section 112 of *the Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The Officer was not satisfied that the Applicants would be subject to a risk to their lives, or a risk of persecution, torture, or cruel and unusual treatment or punishment if returned to Ethiopia.

[2] The Applicants submit that the Officer failed to grapple with contradictory evidence and consider the Applicants’ risk profile, and erroneously relied upon the decision of another decision-maker.

[3] For following reasons, I find that the Officer’s decision is unreasonable. This application for judicial review is granted.

II. Analysis

A. *Background*

[4] Amina Adam Mohamed (the “Principal Applicant”) and her six children are citizens of Ethiopia who came to Canada in 2017. On March 10, 2022, the Applicants submitted a PRRA application. In a decision dated February 8, 2023, the Officer refused this application.

[5] The Officer first found that the thirty-one pieces of evidence proffered by the Applicants in support of their claims was not “new” evidence pursuant to section 113(a) of the *IRPA*. The Officer further found that the Applicants had many opportunities to present their risk and that it would be unreasonable that the Principal Applicant would not be aware of her husband’s

political activities. The Officer considered the allegation about the risks the Principal Applicant's daughters faced but found that it could have been presented to the Refugee Protection Division. The Officer concluded that the documents provided in support of the alleged detention of the Principal Applicant's brother, due to her father's political activism, were illegible and bore inconsistencies between the originals and translations. The Officer further found that the evidence, even if presumed to be true, did not establish that the Applicants were at risk owing to the political activities of the Principal Applicant's husband and father. Additionally, the Officer found that the Applicants had not led evidence to rebut the RAD's finding that the Applicants could return to Ethiopia and relocate elsewhere.

[6] The Officer thus concluded that the Applicants were not at risk in Ethiopia.

B. *Issue and Standard of Review*

[7] The sole issue in this application is whether the Officer's decision is reasonable.

[8] The parties agree the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("*Vavilov*"). I agree.

[9] 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).

[10] For a decision to be unreasonable, the 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).

C. *The Officer committed several reviewable errors*

[11] The Applicants submit that that the Officer misapprehended several pieces of contradictory evidence and also erred in failing to indicate the risk profile the Applicants would be subjected to (*Nekenkie v Canada (Citizenship and Immigration)*, 2023 FC 271 (“*Nekenkie*”) at para 23). Additionally, the Applicants submit that the Officer failed to conduct a *sur place* refugee claim and unduly relied upon reasoning in the decision regarding the Applicants’ humanitarian and compassionate application.

[12] The Respondent submits that the Officer reasonably based the findings upon relevant evidence about the Principal Applicant’s family and their political activism. The Respondent submits that the Applicants’ reliance on *Nekenkie* is misplaced, that the Applicants’ *sur place*

arguments are meritless, and that the Officer did not err in relying upon similar findings from the H&C decision.

[13] I agree with the Applicants. The Officer's decision is unintelligible, as well as unjustified in relation to its legal and factual constraints (*Vavilov* at paras 15, 99-101).

[14] In my view, the Officer committed the same error as the officer in *Mohamed v Canada (Citizenship and Immigration)*, 2022 FC 637 ("*Mohamed I*"). I agree with my colleague Justice Zinn that the Officer's failure to inquire about the apparent discrepancy in dates between the Principal Applicant's brother's original police/arrest records and the translations thereof, is unreasonable (*Mohamed I* at para 43), as is the Officer's skepticism of the bail amount between the original document and its translation (*Mohamed I* at para 41). I find that this conclusion accords with the requirements that decision-makers be sensitive to foreign documents potentially following different customs, traditions, and conventions than Canada and that decision-makers not base their evidentiary findings upon trivial considerations (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paras 23-24).

[15] But the Officer found the Applicants did not face a risk, even accepting this evidence to be true. I find this unreasonable. Where there is material evidence that contradicts an officer's factual finding, an officer must provide reasons as to why the evidence was not considered relevant or trustworthy (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 50 at para 25, citing *Ramirez Chagoya v Canada (Citizenship and Immigration)*, 2008 FC 721 (CanLII) at para 19, *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667

(FC), [1998] F.C.J. No. 1425 (QL), and *Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074 (CanLII) at para 64). Justice Zinn ruled that the evidence of the brother's arrest was "central to the Applicants' claim" regarding their alleged risk (*Mohamed I* at para 20). But here, the Officer failed to provide any cogent reasons as to why this evidence, presumed as true, did not establish that the Applicants would be at harm owing to the father's political activism. This finding from the Officer is unintelligible, as well as unjustified in relation to the decision's legal and factual constraints (*Vavilov* at paras 15, 99-101).

III. **Conclusion**

[16] The application for judicial review is granted. The Officer's decision is unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3869-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is granted, the decision under review is set aside and the matter is referred back for redetermination by a different officer.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3869-23

STYLE OF CAUSE: AMINA ADAM MOHAMMED, MERYM MOHAMMEDSANI, SARA MOHAMMEDSANI, ALARETH MOHAMMEDSANI, ALIHUSSIEN MOHAMMEDSANI, ALI MOHAMMEDSANI AND AMAL MOHAMMEDSANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2024

JUDGMENT AND REASONS: AHMED J.

DATED: FEBRUARY 27, 2024

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