

Federal Court



Cour fédérale

**Date: 20241126**

**Docket: IMM-8838-23**

**Citation: 2024 FC 1899**

**Ottawa, Ontario, November 26, 2024**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**MESERET CHERU ASEFA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Asefa is seeking judicial review of the denial of her application for permanent residence based on spousal sponsorship. The application was denied because she was found to be inadmissible based on her membership in Ginbot 7, a group engaged in the subversion by force of the government of Ethiopia.

[2] I am dismissing Ms. Asefa's application. The officer reasonably relied on her statements made at the port of entry, finding her subsequent denial of any involvement with Ginbot 7 not credible. The initial statements were a sufficient basis for the membership finding. Moreover, the officer did not breach procedural fairness.

I. Background

[3] Ms. Asefa, a citizen of Ethiopia, came to Canada in 2019 and claimed refugee protection, after living in the United States for a few years. Her refugee claim and subsequent application for pre-removal risk assessment [PRRA] were dismissed for reasons unrelated to the present application.

[4] Ms. Asefa married a Canadian citizen. Sponsored by her husband, she then applied for permanent residence. The officer who reviewed her application noticed that, when she entered Canada, she had declared that she had been a member of Ginbot 7 from 2015 to 2019, while she was in the United States. Ginbot 7 is an organization that resorted to armed force to topple the Ethiopian government. The officer was therefore concerned that Ms. Asefa was inadmissible to Canada, for being a member of an organization that engaged in the "subversion by force of any government," contrary to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[5] The officer disclosed this concern to Ms. Asefa and invited her to attend an interview. At the interview, which took place in May 2023, Ms. Asefa denied any involvement with Ginbot 7. She asserted that: (1) she was nervous and desperate to remain in Canada, which led her to

exaggerate her story; (2) she had confused Ginbot 7 with the Coalition for Unity and Democracy [CUD, also known as Kinijit] and the Unity for Democracy and Justice Party [UDJP], which she admits supporting; and (3) she struggled with English expression and was not assisted by an interpreter during the interview, which contributed to her mistake.

[6] After giving Ms. Asefa a further opportunity to make submissions, the officer found her inadmissible for being a member of Ginbot 7 and dismissed her application for permanent residence. The decision was based on the statements Ms. Asefa made in 2019, as the officer did not believe her retraction of those statements during the 2023 interview. The detailed reasons the officer gave for preferring the 2019 statements are analyzed below. Based on Ms. Asefa's 2019 statements, the officer then assessed the nature, degree of commitment, frequency and duration of her support for Ginbot 7. They determined that the activities described by Ms. Asefa in 2019 "traditionally constitute membership," and had furthered Ginbot 7's objectives over the span of four years. Thus, she was considered a member of Ginbot 7 for the purposes of section 34 of the Act.

[7] Ms. Asefa is now seeking judicial review of the finding of inadmissibility and the rejection of her application for permanent residence.

## II. Analysis

[8] I am dismissing Ms. Asefa's application. Her submissions with respect to the substance of the decision amount to an invitation to reassess the officer's factual findings and to a challenge to the sufficiency of the officer's reasons. Yet, with respect to factual findings, the

Court only intervenes “where the decision maker has fundamentally misapprehended or failed to account for the evidence before it”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653 [*Vavilov*]. The officer made no such error.

[9] Moreover, the officer’s reasons “must not be assessed against a standard of perfection” and must be read in light of the record and the submissions of the parties: *Vavilov*, at paragraphs 91 and 94. They need not contain “an explicit finding on each constituent element, however subordinate, leading to [the] final conclusion”: *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708; *Vavilov*, at paragraph 91. Several aspects of Ms. Asefa’s submissions are simply a request for more detailed reasons. Yet, the reasons are sufficient to understand why the officer made the decision. In other words, the lack of detail does not render the decision unreasonable.

#### A. *Credibility*

[10] Ms. Asefa’s main challenge to the decision is that the officer unreasonably preferred her 2019 statements to her 2023 retraction. In my view, however, the officer reasonably found her 2023 retraction not credible, and properly based the decision on the information provided in 2019, as well as information provided during the 2023 interview that did not directly contradict the 2019 statements.

[11] In brief, the officer found that it was unlikely that Ms. Asefa had confused Ginbot 7 for another political group given her acute understanding of Ethiopian politics, as demonstrated in an affidavit she subscribed in 2012 in support of her US asylum claim. The record also

demonstrated that she had a degree of fluency in English that was not consistent with a failure to understand the questions put to her at the port of entry in 2019 and, in any event, she waived her right to an interpreter. Moreover, she did not satisfactorily explain why she would have fabricated an association with Ginbot 7 specifically, nor why she omitted to declare her membership in Ginbot 7 and CUD when filling out subsequent application forms in 2020 and 2022.

[12] On their face, these are acceptable reasons for assessing Ms. Asefa's credibility and preferring her earlier statements to more recent ones. Nevertheless, Ms. Asefa submits that these findings are unreasonable, for a number of grounds analyzed below.

(1) Either-or Approach

[13] Ms. Asefa first argues that the officer failed to explain why they found the 2019 statements to be credible, other than disbelieving their retraction. If I understand her argument correctly, she questions how the officer could state, during the interview, that they did not know which version to believe, and then go on to prefer one version to the other. This would be an unreasonable "either-or" approach to assessing the credibility of separate statements.

[14] I do not detect any logical fault in the officer's reasoning. In the circumstances of this case, it is difficult to see how the statements made in 2019 and 2023 could be both true or both false. Saying that one does not know which version to believe was a polite way of signalling the lack of credibility of the retraction. Moreover, the officer provided cogent reasons for finding that Ms. Asefa told the truth in 2019.

(2) Separate but Related

[15] According to Ms. Asefa, the officer contradicted themselves when they described two organizations as separate and then as related.

[16] The context is as follows. The CUD, which ran in the 2005 election, was dissolved in 2007. The next year, some of its leaders created the UDJP, which participated in subsequent elections. Other CUD leaders created Ginbot 7 at the same time.

[17] In the 2023 interview, Ms. Asefa asserted that she only supported the CUD and UDJP and mistakenly thought that UDJP had changed its name to Ginbot 7. In the decision, the officer dismisses this explanation because the objective evidence clearly showed that UDJP and Ginbot 7 were distinct entities. Later in the decision, when assessing Ms. Asefa's membership in Ginbot 7, the officer relied on her previous support for the CUD, because they were "related opposition groups," as Ginbot 7 was founded by CUD's former leader.

[18] Ms. Asefa asserts that in making these statements, the officer is "having it both ways" and is "picking and choosing" among the evidence. I disagree. The officer demonstrated their understanding of the evolution of Ethiopia's political parties and opposition groups. It was not a contradiction for the officer to state that it was unlikely that Ms. Asefa would confuse separate groups, while finding that her support for one of them rendered more plausible her support for the other. Put simply, there is nothing unusual in political groups being separate yet related.

### (3) Speculation

[19] In concluding on the credibility issue, the officer stated that “[d]uring her port of entry examination in 2019, [Ms. Asefa] made her statements candidly, in the spur of the moment and without knowing the repercussions her admissions may have.” Ms. Asefa now submits that this amounts to unreasonable speculation on the officer’s part, because it would imply that she had changed her narrative after learning of the consequences of membership in a subversive organization, while the evidence does not show how and when she became aware of those consequences. This submission has no merit. The officer was simply buttressing their conclusion with the fact that common sense suggests a motive for her attempt to retract her 2019 statements. The officer’s statement does not render the decision unreasonable. The officer was not required to inquire as to when Ms. Asefa gained knowledge of her potential inadmissibility.

### (4) PRRA Decision

[20] Lastly, Ms. Asefa argues that the officer disregarded the dismissal of her PRRA application, which would have been based on a finding that she did not belong to any Ethiopian opposition group. This, however, is a misreading of the PRRA decision.

[21] In her PRRA application, Ms. Asefa relied on her membership in CUD and her support for UDJP. The PRRA officer held a hearing and it appears that Ms. Asefa then mainly expressed fear of a group called the National Oromian Youth Movement due to her ethnicity and political opinions. The officer, however, found that there was little evidence that this group would want to harm her.

[22] Moreover, the officer found that in light of the recent regime change in Ethiopia, she would not be perceived as a member of a group opposed to the current government and hence would be of little interest to that government. Far from holding that Ms. Asefa never had any political involvement, the PRRA officer found that her involvement no longer gave rise to a risk of persecution given recent political changes in Ethiopia. Thus, nothing in the PRRA decision contradicts the decision currently under review. It was therefore reasonable for the officer to omit any discussion of the PRRA decision.

#### B. *Membership in Ginbot 7*

[23] The issue then becomes whether Ms. Asefa's 2019 statements can reasonably support a finding there are reasonable grounds to believe that she was a member of Ginbot 7.

[24] The principles governing this determination are well known and they are not in dispute in the present case. The concept of membership should be given a wide and unrestricted meaning, instead of a narrow and formalistic one: *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paragraphs 27–29, [2005] 3 FCR 487. Where membership is admitted, no further inquiry is needed: *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 at paragraph 59, [2015] 2 FCR 63; *Darwisheh v Canada (Citizenship and Immigration)*, 2024 FC 98 at paragraph 11 [*Darwisheh*]. Where membership is not admitted, the officer may infer membership based on “the nature of the person’s involvement in the organization, the length of time involved, and the degree of the person’s commitment to the organization’s goals and objectives” : *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 at paragraph 29.



[25] Here, the officer did not treat Ms. Asefa's answer on the BOC form as conclusive, but considered this answer together with the answers she gave when interviewed at the port of entry and concluded as follows:

The Applicant's earliest statements to immigration officials suggest that she engaged in activities which traditionally constitute membership such as attending meetings and events, promoting the organization, fundraising and recruiting members. I find that these specific activities listed by the Applicant are likely to have furthered Ginbot 7's objectives. The duration of her involvement with Ginbot 7 is listed on her Schedule A as January 2015 to May 2019, what I would consider a significant amount of time. In addition, the Applicant previously supported related opposition groups in Ethiopia, particularly the CUD, which is an organization previously led by the founder of Ginbot 7, Berhanu Nega. While there is no evidence before me to establish the Applicant was registered as a formal member of Ginbot 7, I determine that the nature and duration of the Applicant's activities demonstrates a degree of commitment that amounts to membership in the organization within the meaning of A34(1)(f).

[26] In my view, this finding is reasonable, as it is based on the evidence and conforms to the principles established by the case law.

[27] To challenge this finding, Ms. Asefa mainly argues that her 2019 statements are insufficient to support a conclusion of membership. Indeed, the portion of the port-of-entry interview devoted to this issue merely consists of a few questions and answers. Nevertheless, it was reasonable to rely on these answers, especially because a finding of inadmissibility need only be based on reasonable grounds to believe, not on proof on a balance of probabilities. Thus, for example, it was reasonable to rely on Ms. Asefa's statement that she raised funds for Ginbot 7, even though we do not know the frequency of these activities, the amount of money raised or

the identity of the contributors. Moreover, Ms. Asefa's stance at the 2023 interview prevented the officer from obtaining more precise information.

[28] Ms. Asefa also faults the officer for creating a "presumption of membership" that is not grounded anywhere in the case law. The impugned statement is found in the portion of the reasons where the officer states their conclusions regarding credibility. If I understand correctly, the officer used the language of presumption to convey the idea that Ms. Asefa's 2019 statements were presumptively true and that she did not provide convincing grounds for the officer to disregard them. This has nothing to do with the assessment of Ms. Asefa's involvement with Ginbot 7 according to the *B074* test. While perhaps unfortunate, the mention of a "presumption" does not reveal a fault in logic nor a departure from the principles established by the case law.

[29] Lastly, I am not persuaded that the officer treated membership in CUD as a "proxy" for membership in Ginbot 7.

### C. *Procedural Fairness*

[30] Ms. Asefa also submits that the process leading to the decision was unfair. She complains that the procedural fairness letter the officer sent to her after the interview did not spell out precisely what inferences the officer intended to draw from the answers she gave.

[31] I am unable to agree. In my view, the process was fair. It bears repeating that Ms. Asefa was given notice that the purpose of the interview was to discuss her involvement in Ginbot 7 and that this raised an issue of inadmissibility. When, at the interview, she recanted her 2019

statements, the officer gave her notice that this gave rise to a credibility issue. The officer also provided her with an opportunity to explain why she would have made inaccurate statements in 2019. Then, after the interview, the officer sent Ms. Asefa a procedural fairness letter [PFL], summarizing the statements made in 2019 and adding that she recanted them at the interview. Ms. Asefa then provided a written reply, essentially reiterating the points she made at the interview.

[32] In this context, procedural fairness entitled Ms. Asefa to know the “case to meet,” in other words, the substance of the allegations made against her, so as to enable her to provide a meaningful answer: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 22; *May v Ferndale Institution*, 2005 SCC 82 at paragraphs 117–118, [2005] 3 SCR 809.

[33] I acknowledge that in the context of misrepresentation findings made in visa applications, this Court has stated that procedural fairness may require a certain degree of precision in the description of the concerns: *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 809 at paragraph 42; *Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at paragraph 27. One should bear in mind, however, that no hearing is held in such applications, and the PFL is the applicant’s only source of information regarding the officer’s concerns. Here, in contrast, an interview was held at which Ms. Asefa was made aware of the officer’s credibility concerns, and she was provided with a further opportunity to respond to these concerns. In my view, a more appropriate comparator is a situation where the Refugee Appeal Division [RAD] makes additional negative credibility inferences where the applicant’s credibility is already in

issue. In doing so, the RAD is not raising a new issue and does not need to give notice to the appellant: *Savit v Canada (Citizenship and Immigration)*, 2023 FC 194 at paragraph 17.

[34] In this context, procedural fairness did not require the officer to provide Ms. Asefa with a detailed description of the negative inferences they intended to draw from the evidence. In effect, this would amount to a requirement to provide an advance copy of the officer's reasons.

Procedural fairness does not go as far.

[35] More specifically, Ms. Asefa submits that the officer should have given her notice that they intended to rely on her 2012 affidavit to impeach her credibility. Procedural fairness, however, does not require that Ms. Asefa be provided with every piece of evidence that the officer relies upon: *Darwisheh*, at paragraph 14. What matters is that she be made aware of the gist of the case against her, so as to enable her to provide a meaningful answer. Here, the gist of the case against her was that she stated in 2019 that she supported Ginbot 7 and that her retraction of those statements did not appear credible. She had adequate notice of this and she was able to provide her answer. It is difficult to see how her ability to respond would have been materially increased had she known that the officer had consulted her 2012 affidavit.

### III. Disposition

[36] For these reasons, the officer's finding that Ms. Asefa is inadmissible because of her membership in Ginbot 7 was reasonable and was reached in a procedurally fair manner. Accordingly, her application for judicial review will be dismissed.

**JUDGMENT in IMM-8838-23**

**THIS COURT'S JUDGMENT is that:**

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

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8838-23

**STYLE OF CAUSE:** MESERET CHERU ASEFA v THE MINISTER OF  
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**DATED:** NOVEMBER 26, 2024

**APPEARANCES:**

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