

Federal Court



Cour fédérale

Date: 20250102

Docket: IMM-7282-23

Citation: 2025 FC 14

Ottawa, Ontario, January 2, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

GHEBREMEDHIN YTFESSAH YTBAREK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a citizen of Eritrea and a resident of Angola. In 2019, he applied for permanent residence in Canada as a Convention refugee abroad. The applicant included his spouse, Sanait Mirach Merzez, who is also a citizen of Eritrea, and their two children on the application as dependents. (A third child, who was born in March 2023, was added later.) The application was sponsored by an Eritrean church in Vancouver.

[2] The applicant and Ms. Merzez were interviewed by a Migration Officer with Immigration, Refugees and Citizenship Canada on January 26, 2023. As evidence of his identity, the applicant provided the officer with an Eritrean national identity card as well as a refugee identity card he obtained while living temporarily in Sudan. To establish Ms. Merzez's identity, the applicant provided the officer with an Angolan refugee card in her name and bearing her photograph. After the officer raised some concerns about the card, however, the applicant admitted that someone had helped them procure it irregularly. The applicant maintained that the document was genuine but, if it was not, they were unaware of this.

[3] The officer refused the application for permanent residence in a decision letter dated May 9, 2023. As will be set out in more detail below, the officer refused the application because of the applicant's reliance on a fraudulent document to establish Ms. Merzez's identity and the consequences that followed from this.

[4] The applicant now applies for judicial review of the officer's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). He submits that it was made in breach of the requirements of procedural fairness and that it is unreasonable.

[5] As I will explain, the applicant has not established any basis for interfering with the officer's decision. This application for judicial review must, therefore, be dismissed.

II. BACKGROUND

[6] The applicant was born in Eritrea in January 1984. In his permanent residence application, he states that he was imprisoned there from January 2008 until November 2008 for opposing the open-ended national service imposed by the government. After escaping from prison, the applicant fled Eritrea and eventually made his way to Sudan, where he lived for four years. The applicant sought refugee protection from the United Nations High Commission for Refugees and received a refugee card issued by Sudan. In December 2012, the applicant left Sudan for Angola. He sought refugee protection there as well but, as of the time of his application for permanent residence in Canada, that claim was still pending.

[7] As noted above, the applicant included Ms. Merzez and their children on his application for permanent residence. The applicant and Ms. Merzez were married in Khartoum, Sudan in August 2015. At the time, Ms. Merzez was living in Eritrea. The marriage had been arranged by their families. The applicant returned to Angola with Ms. Merzez two weeks later, entering the country irregularly. They have three children. According to the birth certificates submitted in connection with the application for permanent residence, all of the children were born in Angola.

[8] The application for permanent residence states that Ms. Merzez was born in Eritrea in January 1995. She did not have any Eritrean-issued identification, however. Instead, when they were interviewed on January 26, 2023, as evidence of her identity, the applicant and Ms. Merzez presented the Migration Officer with an Angolan refugee card in her name. They also presented

the officer with an Angolan police clearance certificate for the person named on the refugee card, the serial number of which is mentioned in the certificate.

[9] During the interview, the officer asked the applicant if all the documents he had presented were genuine. The applicant confirmed that they were. The officer informed the applicant that the Angolan refugee card raised several concerns for the officer: the card identified Ms. Merzez as someone Angola had recognized as a Convention refugee, which the applicant acknowledged in the interview was not the case; the card stated that Ms. Merzez had entered Angola on October 2, 2009, which was also not correct (by their own account, she had entered Angola with the applicant shortly after their wedding in Sudan in August 2015); the card stated that it was issued on April 16, 2016, which cannot be the case because Angola had stopped issuing such documents in 2015; and the applicant admittedly had obtained the refugee card only recently in order to obtain the police clearance document they needed for the application for permanent residence. (The police clearance document is dated January 10, 2023.)

[10] The officer also told the applicant that, since the refugee card had been used to obtain the police clearance certificate, the concerns about the identity card also raised concerns about the genuineness of the police clearance certificate. The officer explained to the applicant and Ms. Merzez that their reliance on these documents raised concerns about whether they had been truthful in their application for permanent residence and during the interview. It also raised concerns about whether they had established that they were not inadmissible.

[11] As already noted, the applicant initially stated during the interview that the Angolan refugee card was genuine; however, when pressed, he simply maintained that he and his wife did not know it was fake.

[12] At the conclusion of the interview, the officer said they required some time to think about the application. The officer's Global Case Management System (GCMS) notes reflect that the officer did not decide to refuse the application until May 8, 2023. A decision letter was issued the next day.

III. DECISION UNDER REVIEW

[13] The decision letter explains that the application for permanent residence had been refused because of the officer's concerns with respect to three issues. The concerns all flowed from the officer's finding that the applicant and Ms. Merzez had submitted a "fraudulent, altered, or improperly-obtained" Angolan refugee card and a fraudulent police certificate. First, subsection 16(1) of the *IRPA* states that a person who makes an application "must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires." Given their reliance on fraudulent documents, which they had initially confirmed were genuine, the officer was not satisfied that the applicant and Ms. Merzez had "answered all questions truthfully at the interview or in the application forms." Second, the officer had "concerns that [Ms. Merzez] may have submitted a fraudulent police certificate due to possible criminal inadmissibility." Third, paragraph 42(1)(a) of the *IRPA* states that a foreign national (other than a protected person) is inadmissible if their accompanying family member is inadmissible. The officer had concerns

that the applicant “may be inadmissible to Canada” if an accompanying family member – namely, Ms. Merzez – is inadmissible to Canada.

[14] For these reasons, the officer was not satisfied that the applicant and his accompanying family members met the requirements of the *IRPA* to be granted permanent resident visas. Accordingly, the application was refused.

[15] The same reasons are articulated in the officer’s Global Case Management System (GCMS) notes from the day before the decision letter was issued. Those notes also state: “I am not satisfied as to the spouse’s personal identity; I am not satisfied as to who she is.” Later in the notes, however, the officer states that they were “willing to accept that both the applicant and spouse are citizens of Eritrea.” The notes appear to suggest that the officer’s concern was not so much Ms. Merzez’s identity as the potential inadmissibility of both Ms. Merzez, for having failed to establish that she is not inadmissible and for having failed to answer all questions truthfully, and the applicant, if he has an inadmissible family member. The officer also raises concerns about the genuineness of the children’s birth certificates but those concerns do not appear to have figured in the decision.

IV. ANALYSIS

[16] The applicable standards of review are not in dispute.

[17] With respect to the grounds for review relating to procedural fairness, strictly speaking, no standard of review is implicated. Rather, I must determine whether the applicant knew the

case he had to meet in seeking permanent residence and had a full and fair opportunity to do so (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[18] On the other hand, the substance of the officer's decision is reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). To establish that the decision should be set aside because it is unreasonable, the applicant must demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[19] Looking first at the alleged breach of the requirements of procedural fairness, the applicant contends that the officer should have sent him a procedural fairness letter setting out the officer's concerns with the applicant's documents and giving the applicant an opportunity to address those concerns before refusing the application.

[20] I do not agree.

[21] As set out above, during the interview, the officer raised several specific concerns about the Angolan refugee card as well as the Angolan police clearance certificate that had been obtained using the refugee card. Confronted with these concerns, the applicant admitted that the

refugee card had been obtained irregularly because Ms. Merzez did not have any other identification, they were desperate, and this was the only way they could obtain the police clearance certificate they required for the application for permanent residence.

[22] As reflected in the GCMS notes of the interview, the officer's concerns were clearly expressed to the applicant during the interview. The applicant was given an opportunity to respond to the concerns during the interview. The applicant admitted that the identity card had been obtained irregularly, although he insisted they did not know it was not genuine. It does not appear from the notes that the applicant seriously contested the officer's suggestion that the refugee card is not genuine; rather, he attempted to persuade the officer that they believed it was genuine. On this application for judicial review, the applicant has not challenged the accuracy of the interview notes or the quality of the interpretation between English and Tigrinya provided during the interview.

[23] At the conclusion of the interview, the officer told the applicant that they would take some time to think about the application. The application was not refused until almost four months later. Despite having the opportunity to do so between the interview and when the decision was eventually made, the applicant did not provide the officer with any additional information concerning the refugee card or the police clearance certificate. Importantly, the officer's decision did not raise any new concerns about the identity card or the police clearance certificate that had not been raised at the interview. On this application for judicial review, the applicant has not provided any evidence that he did not understand the officer's concerns at the time, nor has he even attempted to show that there is additional information or evidence

concerning the refugee card or the police clearance certificate that he would have provided to the officer if only he had understood the officer's concerns better before the decision was made.

[24] In short, the applicant's submission that the officer should have sent him a procedural fairness letter before rejecting the application puts form over substance. The applicant has not established that he was prejudiced by the manner in which the officer proceeded. While the outcome was unfortunate for the applicant, it was not unfair. On the record before me, the applicant knew the case he had to meet and he had a full and fair opportunity to meet that case. This ground for review must, therefore, be rejected.

[25] Turning to the substance of the decision, the applicant submits that the decision is unreasonable because the officer appears to find that the applicant and his spouse are inadmissible to Canada without actually stating this in the decision and, furthermore, there is no reasonable basis for such findings.

[26] I am unable to agree, essentially because I do not agree that the officer made these findings in the first place or that the decision depends on such findings having been made.

[27] The decision letter refers to the officer's "concerns" that the applicant "may be inadmissible to Canada if your family member [is] inadmissible to Canada." The same "concerns" are reflected in the GCMS notes. While the officer's reasons in this regard could certainly have been expressed more directly, I do not agree that the decision rests on findings that the applicant and Ms. Merzez are inadmissible, as the applicant submits.

[28] Reading the decision in light of the requirements of the *IRPA* and against the backdrop of the interview, including the applicant's acknowledgement that the Angolan refugee card was obtained irregularly, the officer's reasoning is clear. The application was being refused because, among other things, the applicant had failed to satisfy the officer that he is not inadmissible, as required by subsection 11(1) of the Act. The applicant had failed to do so because he failed to establish that a family member, Ms. Merzez, is not inadmissible due to criminality, as required by paragraph 42(1)(a) of the *IRPA*. And he had failed to establish this because the only evidence on this point – the Angolan police clearance – had been fraudulently obtained. In short, the decision rests on a finding that neither the applicant nor Ms. Merzez had satisfied the officer that they were not inadmissible, and not that they are, in fact, inadmissible.

[29] As *Vavilov* states, for a decision to be reasonable, a reviewing court “must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived” (*Vavilov*, at para 102, internal quotation marks and citation omitted). This is the case here.

[30] That being said, I agree with the applicant that it was speculation on the officer's part that Ms. Merzez “may have submitted a fraudulent police certificate due to possible criminal inadmissibility.” This, however, was not central to the officer's analysis. The key point was that the applicant had failed to provide reliable evidence that Ms. Merzez is not criminally inadmissible, as he was required to do.

[31] Furthermore, and in any event, the officer's conclusion that the applicant and Ms. Merzez had not been truthful in making the application for permanent residence, including during the interview, was a sufficient basis on its own to refuse the application, separate and apart from any issue of inadmissibility.

[32] The Angolan refugee card was presented as a genuine document, something the applicant confirmed (at least initially) when asked about this directly during the interview. The officer concluded that the document was not genuine. This conclusion was reasonably open to the officer given the applicant's admission that it had been obtained irregularly and given the obvious problems with the document, including that it represented Ms. Merzez as having a legal status in Angola that they knew she did not have. Having reached this conclusion, which the applicant does not contest on its merits, the officer was required to refuse the application under subsection 11(1) of the *IRPA* because the applicant had not met the requirements of the Act, including the requirement to be truthful under subsection 16(1) of the *IRPA*. This alone is a sufficient basis on which to uphold the decision as reasonable.

[33] Accordingly, the applicant's contention that the decision is unreasonable must also be rejected.

V. CONCLUSION

[34] For these reasons, the application for judicial review will be dismissed.

[35] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-7282-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"John Norris"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7282-23

STYLE OF CAUSE: GHEBREMEDHIN YTFESSAH YTBAREK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 10, 2024

JUDGMENT AND REASONS: NORRIS J.

DATED: JANUARY 2, 2025

APPEARANCES:

Teklemichael Sahlemariam FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

The Law Office of Teklemichael Ab Sahlemariam FOR THE APPLICANT
Barrister, and Solicitor, and
Notary Public
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario