

Federal Court



Cour fédérale

**Date: 20250122**

**Docket: IMM-10084-23**

**Citation: 2025 FC 132**

**Ottawa, Ontario, January 22, 2025**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**DERJE SULORO MEKENGU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Derje Suloro Mekengo, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada dated June 29, 2023 refusing his application for permanent residence through the Convention Refugee Abroad Class or Country of Asylum Class (Humanitarian-Protected Persons Abroad) program, pursuant to sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicant submits that the decision is unreasonable, as the Officer made credibility findings without regard to the Applicant's personal circumstances. The Applicant further submits that his procedural rights were breached due to the inadequacy of the interpretation provided during his interview.

[3] For the reasons that follow, I find that the Officer's decision is reasonable and was made in a procedurally fair manner. This application for judicial review is dismissed.

## II. **Facts**

[4] The Applicant is a citizen of Ethiopia.

[5] The Applicant alleged that he joined the Coalition for Unity and Democracy ("CUD") to address "ethnic-based injustices" and was subsequently detained for one month. He claimed that, following the 2004-2005 election in Ethiopia, he was arrested and tortured for his activism. He states that he fled to South Africa upon his release. The dates for these events are unclear from his application form, although he stated that he commenced work in South Africa in 2017.

[6] In 2020, the Applicant applied for Convention status from outside of Canada. IRCC requested that the Applicant attend an interview for his application.

[7] The interview took place in June 2023. At the outset of the interview, the Officer confirmed that the Applicant understood the interpreter and advised the Applicant to inform the Officer if, at "any time during interview...[he did] not understand, or...[was] having any

difficulties.” The Officer then raised a number of credibility concerns about when the Applicant left Ethiopia, the Applicant’s membership in the CUD, and the Applicant’s activities and whereabouts in the 12 years he stayed in Ethiopia following his first alleged arrest.

[8] In a decision letter dated June 29, 2023, the Officer refused the Applicant’s application due to inconsistencies in his evidence regarding his departure from Ethiopia and involvement in the CUD. This is the decision that is presently under review.

### III. **Issues and Standards of Review**

[9] The parties submit that the applicable standard of review for the merits of the Officer’s decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[10] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 (“*Canadian Pacific Railway Company*”); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada’s decision in *Vavilov* (at paras 16-17).

[11] 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).

[12] 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).

[13] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

#### IV. Analysis

##### A. *There was No Breach of the Duty of Procedural Fairness*

[14] The Applicant submits that his procedural rights were breached due to inadequate interpretation during his interview. The Applicant alleges that he did not know whether to provide dates in the Ethiopian or Gregorian calendar, preventing him from fully presenting his case. The Applicant submits that procedural unfairness arising from the inadequate translation constitutes a breach of his rights under section 14 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “*Charter*”).

[15] The Respondent submits that the Applicant has not furnished sufficient evidence that the interpretation was inadequate. The Respondent further submits that there was no breach of the duty of procedural fairness, as the Applicant failed to raise the issue of interpretation at the earliest opportunity. As a result, the Applicant’s *Charter* allegations are baseless.

[16] I agree with the Respondent. Interpretation need not be perfect; it “must be continuous, precise, competent, impartial and contemporaneous” (*Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191 at para 4, cited in *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 27 (“*Paulo*”). As stated by my colleague Justice Gascon, applicants bear the onus of demonstrating “that the alleged translation error was serious and non-trivial, that it hindered [their] ability to present [their] allegations and to answer questions and that it was material to the [decision maker’s] findings” (*Paulo* at para 32).

[17] The Applicant’s evidence does not meet this threshold. The Applicant’s evidence consists of vague references to “miscommunication” and a bare assertion that he received

inadequate translation services. The Applicant does not elaborate on the interpretive difficulties he allegedly faced, merely stating that he was confused about whether the Gregorian or Ethiopian calendar was being used. However, the Applicant clearly and repeatedly stated during the interview that he was referring to dates in the Ethiopian calendar, including when presented with options for dates in both calendar systems. The interview transcript does not indicate that the Applicant misunderstood which calendar he was referring to, nor that any such misunderstanding could be attributed to inadequate interpretation (*Paulo* at para 32). The Applicant's bald statements to the contrary do not establish a breach of procedural fairness.

[18] Furthermore, the Respondent correctly notes that the Applicant failed to raise this issue at the earliest opportunity. The Officer confirmed at the beginning of the interview that the Applicant understood the interpreter. The Officer also advised the Applicant to state if there were any issues with the interpretation. I thus agree with the Respondent that the Applicant ought to have raised issues with interpretation during the interview itself. His failure to do so "suggests a waiver on [his] part" (*Guerrero Jimenez v Canada (Citizenship and Immigration)*, 2021 FC 175 at para 26).

[19] *Calixte v Canada (Citizenship and Immigration)*, 2021 FC 55 ("*Calixte*") does not assist the Applicant on this issue. Relying on *Calixte*, the Applicant asserts that he is raising his allegations of inadequate interpretation at "the earliest practical opportunity," as he does not speak English and therefore could not have known that the interpretation was inadequate until he received the Officer's decision (*Calixte* at para 17 [emphasis added]). However, the Applicant indicated in his application forms that he does speak English. I therefore find that the earliest

practical opportunity to raise issues with the interpretation was during the hearing itself. The Applicant's failure to bring these allegations during the hearing preclude him from doing so now.

[20] The Applicant submits the Officer ignored clear signs that he was unable to respond to questions due to trauma. The Applicant asserts that, as in *Ozturk v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1219 ("*Ozturk*"), his inability to answer questions on a number of occasions "rais[ed] a doubt on his capacity to understand the nature of the proceedings" (*Ozturk* at para 14). However, the applicant in *Ozturk* did not challenge the officer's credibility findings (at para 3). He only challenged the denial of his request for a medical adjournment (*Ozturk* at para 3). The Applicant here did not request a medical adjournment. *Ozturk* therefore does not apply.

[21] As the Applicant has not established interpretation issues or a breach of his procedural rights, his *Charter* argument must also fail.

B. *The Decision is Reasonable*

[22] The Applicant submits that the decision is unreasonable given the Officer's disregard for the Applicant's memory issues stemming from past trauma.

[23] The Respondent submits that the decision is reasonable, as the Applicant failed to provide medical documentation substantiating his trauma.

[24] I agree with the Respondent.

[25] It is well-established that, when considering testimony, decision makers in refugee claims “should take into account the age, culture, background and prior social experience of the witness,” including “the psychological condition of the witness” if there is “a lack of coherence in testimony” and the psychological conditions have been “been medically established” (*Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4). The Applicant in this case did not provide medical evidence of any psychological issues, never mind one sufficiently serious to prevent him from remembering events such as when he left Ethiopia. Consequently, the Officer was not obliged to consider his alleged trauma in assessing the Applicant’s credibility.

[26] The Officer nonetheless did so, providing the Applicant with opportunities to clarify his responses after the issue of trauma was raised. For instance, when the Applicant stated that he could not remember when he left Ethiopia due to trauma, the Officer instead asked the Applicant to specify the month and year when he was last in Ethiopia. The Applicant replied that he could “only remember the year, not the month.” The Officer listened to the Applicant’s response, and then reiterated their concerns given that the Applicant had provided “three very different years.” The Officer repeated these years to the Applicant, prompting the Applicant to confirm: “It was 2006 Ethiopian.” The Applicant again raised the issue of trauma at the conclusion of the interview, stating that he experiences “huge trauma” and “sleepless nights.” The Officer asked the Applicant: “What trauma?...What people, what place? What are we discussing?”

[27] This questioning, in my view, demonstrates that the Officer considered the Applicant’s trauma and reasonably determined that it was insufficient to cure the Applicant’s credibility issues. It was fully within the ambit of the Officer to draw this conclusion, as “matters of credibility are

at the very heart of’ refugee decision makers’ responsibilities (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 60).

[28] The Applicant submits that the Officer failed to account for his level of education, which was evident in his inability “to recall even the most fundamental details of his high school education.” However, the Applicant did not explain how his educational background would affect his ability to recall dates about his own life. Furthermore, the Officer compared the Applicant’s testimony to evidence the Applicant himself provided in his application forms. The Officer cannot be faulted for such an analysis, as “inconsistency” is one of the “cornerstones of adverse credibility findings that often lead to the rejection of refugee claims” (*Clermont v Canada (Citizenship and Immigration)*, 2019 FC 112 at para 30).

[29] In my view, the Applicant is seeking to have the Court reweigh the evidence before the Officer. This is not the Court’s role on reasonableness review (*Vavilov* at para 125).

## V. Conclusion

[30] For these reasons, this application for judicial review is dismissed. The Officer’s decision is reasonable in light of the evidentiary record (*Vavilov* at para 126). The Applicant has not demonstrated a breach of his procedural rights. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-10084-23**

**THIS COURT’S JUDGMENT is that:**

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

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-10084-23

**STYLE OF CAUSE:** DERJE SULORO MEKENGU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 9, 2025

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 22, 2025

**APPEARANCES:**

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