Federal Court Cour fédérale

Date: 20250131

Docket: IMM-4180-24

Citation: 2025 FC 208

Toronto, Ontario, January 31, 2025

PRESENT: Madam Justice Go

BETWEEN:

HUDA TAHIR ABABOR

Applicant

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Huda Tahir Ababor [Applicant], a national of Ethiopia, applied to resettle in Canada through the Convention Refugee Abroad class or as a member of the country of asylum class [resettlement application].

[2] The Applicant was born and raised in Saudi Arabia after her father fled there due to persecution in Ethiopia. In 2014, the Applicant relocated with her family to Egypt, where they were granted refugee status by the United Nations High Commissioner for Refugees [UNHCR].

[3] In 2019, while the Applicant was still a minor, her family initiated a resettlement application with Immigration, Refugees and Citizenship Canada [IRCC]. IRCC advised the family to file a new application in 2020. As the Applicant had turned 18 by then, she filed a separate resettlement application apart from her family.

[4] The Applicant and her family attended an interview at the Canadian Embassy in January 2023. The Embassy granted the Applicant's father's request that the family be interviewed together as he was the family's spokesperson. The Applicant alleges the interviewing officer primarily questioned her father, including directing a question to him about whether they had submitted prior "visa applications," to which her father responded no.

[5] On January 2, 2024, the Applicant received a Procedural Fairness Letter [PFL] from the Embassy stating that the Applicant did not disclose a "prior asylum claim" to the United States [US] and its subsequent refusal, in both her submitted application and interview, even when explicitly asked at interview and on the Applicant's application form. The Applicant submitted her response to the PFL, claiming that she understood a prior "visa application" to mean one she would have filled out independently—not a resettlement process facilitated by the UNHCR. She further attached a Notice of Ineligibility for Resettlement from the US Citizenship and

Immigration Services [Notice] which indicated that the US's denial decision had been for "no specified reason."

[6] On January 8, 2024, a migrant officer [Officer] issued a letter refusing the Applicant's resettlement application [Decision]. The Decision reiterated the Officer's concerns about the truthfulness of the Applicant's claim that she had never applied for asylum for any other country, nor did she receive a visa rejection from any other country. In refusing the Applicant's resettlement application, the Officer determined that she had "in fact withheld this material information on multiple occasions throughout [her] application process" and could not be satisfied that the Applicant is not inadmissible to Canada.

[7] The Applicant now seeks judicial review of the Decision. I grant the application as I find the Decision unreasonable.

II. Preliminary Issue

[8] The Applicant raises a preliminary issue as to whether her new affidavit evidence should be admitted by this Court on judicial review.

[9] In support of her judicial review application, the Applicant submitted an Affidavit which highlights the Applicant's background, including her refugee status from birth born to parents living in exile, the challenges her family faced that prompted their relocation to Egypt, and subsequent resettlement efforts. Furthermore, the Affidavit shows the initial inclusion of the Applicant as a dependent on her father's resettlement application, and emphasizes the subsequent

separation of her application from her father's application followed by a group family interview process in which she did not testify individually.

[10] The Applicant submits her new affidavit evidence should be admitted according to the first and second exceptions to the general rule against this Court receiving evidence in an application for judicial review, as outlined in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20.

[11] At the hearing, the Respondent confirmed they have no objection to the admission of the new evidence.

[12] With some reservation, I find much of the new evidence contained in the Applicant's Affidavit admissible, as the evidence provides general background information that might assist the Court in understanding issues relevant to the judicial process, while bringing to the Court's attention procedural defects that cannot be found in the record: *Access Copyright* at para 20.

[13] However, I find portions of the Applicant's Affidavit describing the Applicant's struggles arising from multiple relocations, her aspirations, and her achievements fall outside of the exceptions set out in *Access Copyright*. With no disrespect to the Applicant, who appears to be a highly motivated and accomplished young person, her leadership skills and her ability to overcome adversity despite all odds are not relevant to this application. As such, I decline to admit paragraphs 25 to 28 of the Applicant's Affidavit.

III. Analysis

[14] The Applicant raises several issues to argue that the Decision was both unreasonable and procedurally unfair.

[15] I find the determinative issue is the Officer's failure to consider the Applicant's explanation for not disclosing her family's US resettlement application and refusal on her resettlement application to IRCC. As the parties agree, the applicable standard of review is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] The Applicant relies on paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*], which provides that a foreign national is inadmissible for misrepresentation if they misrepresent or withhold material facts that could induce an error in the administration of the Act. The Applicant submits that the Officer failed to consider whether the Applicant's omission was due to an innocent and honest mistake and misunderstanding and failed to address whether the omission was material to the Applicant's resettlement application.

[17] At the hearing, the Respondent submitted that paragraph 40(1)(a) does not apply, as the Decision was based on subsection 16(1) of the *IRPA* which imposes a duty of candour on persons seeking to enter into or remain in Canada, and subsection 11(1) which places the onus on the Applicant to satisfy the Officer that she is not inadmissible. The Respondent cited *Almustafa v Canada (Citizenship and Immigration)*, 2024 FC 114 [*Almustafa*] in which the Court

confirmed an officer's decision to find an applicant seeking to resettle in Canada failed to meet the requirements for immigration, pursuant to subsections 11(1) and 16 of the *IRPA*. In response, the Applicant submitted that subsection 11(1) is not a self-contained provision and that it should be read in conjunction with paragraph 40(1)(a) in this case.

[18] I do not find *Almustafa* to be on point, and for different reasons, I find the Applicant's reliance on subsection 40(1) to be misplaced.

[19] As the Court explained in *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462 [*Mescallado*] at para 16, while both section 16 and section 40 have the purpose of ensuring truthfulness, they approach that issue in different ways with significantly different consequences. The Court noted in *Mescallado* at para 17: "Section 16 speaks to truthfulness in the sense of accuracy and completeness. It does not address or impose a materiality threshold although relevance is always a requirement." Subsection 40(1), on the other hand, "defines a 'misrepresentation' in specific terms:" *Mescallado* at para 18.

[20] The Court in *Mescallado* also noted the significant divergence in the consequences which flow from a breach of these provisions. In the case of section 16, the application can be refused under subsection 11(1) for not meeting the requirements of the *IRPA*, and at the time *Mescallado* was decided, a finding of misrepresentation under 40(1) would render the person inadmissible for two years. I note that the period of inadmissibility has since increased to five years.

[21] Most notably, the Court found that section 16 stands on its own criteria and consequences, and that a breach of section 16 does not cascade into a subsection 40(1) or section 41 situation: *Mescallado* at paras 20–21. Finally, the Court in *Mescallado* concluded at para 22 that there was no error in the respondent invoking section 16 and not subsection 40(1). However, the issue remained whether the decision was reasonable such as to justify denial of a permanent resident visa.

[22] Thus, while I find the Officer did not need to consider paragraph 40(1)(a), the Officer's Decision and justification for denying the Applicant's resettlement application must still be reasonable.

[23] For further reasons set out below, I find the Decision fell short of the requisite justification, transparency, and intelligibility: *Vavilov* at para 81.

[24] Specifically, I find that the Officer erred by failing to assess the Applicant's explanation in her PFL response on the basis that the Applicant did not raise any issue with the interpreter during the interview.

[25] As explained in the Applicant's Affidavit, in late 2016, when the Applicant was still a minor, the UNHCR informed the Applicant's family of a potential resettlement opportunity in the US, for which the Applicant and her family participated in a pre-screening interview. The Applicant's family did not receive any further communication on the matter until May 13, 2018,

when they received the Notice indicating that their request for resettlement in the US was refused.

[26] According to the Notice, the reason for which the Applicant was determined ineligible for resettlement in the US was indicated via a checked box beside the following text:

> OTHER REASON(S): After review of all the information concerning your case, including your testimony, supporting documentation, background checks, country conditions, and other available information, your application for refugee settlement to the United States under INA §207 has been denied as a matter of discretion.

[27] In her response to the PFL from the IRCC, the Applicant stated, among other things, that she recalled the interviewing officer asking whether she has applied or been refused for a visa application to any particular country. The Applicant stated that she answered "with all honesty," as from her understanding that they meant a visa application process that she has filled out independently, like a sponsorship form, and not a resettlement by the UNHCR which she did not reckon as a visa application. The Applicant added that she was not knowledgeable when it came to the steps taken by the UNHCR and was not aware that the resettlement interview was considered a visa application process.

[28] The Applicant further explained she has only been interviewed for a resettlement to the US and no further process was done. The Applicant also stated that while she speaks both English and Oromo fluently, she found the interviewing officer's question "vague" and "wasn't as clear" as to whether she was asking for a resettlement refusal by the UNHCR or an external and independently filled out visa application refusal.

[29] In deciding to "place less weight" on the Applicant's PFL response, the Officer cited, as reasons, that the Applicant did not raise any initial objection to the interpreter provided to her at the interview.

[30] I agree with the Applicant that this reasoning was flawed.

[31] The Applicant's PFL response did not try to explain away her omission by blaming the interpreter. The Applicant submits, and I agree, that it is not clear why the Officer hinged the Decision on the Applicant's failure to object to the interpreter when she stated that she understood the interpreter but understood the question to require something else from her.

[32] Moreover, while the Applicant had several opportunities to mention the US resettlement refusal – including in the IRCC application form – the Applicant's explanation is that she understood she was required to mention visa applications for which she had applied on her own, not through programs facilitated by resettlement agencies of which processes she had no knowledge. The Officer did not address the Applicant's explanation in the Decision.

[33] The Respondent argues that the Applicant's response did not address the Applicant's failure to disclose the prior asylum claim to the US through the UNHCR in her application form. Specifically, Question 6.c) of the Schedule A application form explicitly asks about claims for protection with the UNHCR. The Respondent notes the Applicant failed to disclose her prior claim for protection through the UNHCR on two separate occasions and did not address her

failure to do so on her application in her PFL response, despite both failures to disclose being brought to her attention in the PFL.

[34] I reject the Respondent's argument for two reasons.

[35] First, the Respondent's submission was not the reason the Officer cited for refusing the Applicant's application. The Officer did not state that they found the Applicant failed to disclose her application with the UNHCR. Rather, the Officer refused the Applicant's resettlement application because of her failure to disclose her refused "US asylum claim." Indeed, even in the PFL, the Officer stated that the Applicant did not disclose a prior asylum claim to the US and its subsequent refusal, but did not make any reference to the claim having been made "through the UNHCR" as the Respondent posits.

[36] Second, I agree with the Applicant that a question about a claim for protection with the UNHCR is not the same as that regarding an application through the UNHCR to the US for resettlement.

[37] As I find the Officer's failure to analyse the Applicant's explanation in her PFL response to be determinative of this judicial review application, I need not address the remainder of the Applicant's arguments. Upon redetermination, the Applicant would have further opportunity to address her remaining concerns, and to submit any new information she may wish to rely on.

IV. Conclusion

[38] The application for judicial review is granted.

[39] There is no question for certification.

JUDGMENT in IMM-4180-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4180-24
STYLE OF CAUSE:	HUDA TAHIR ABABOR v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	JANUARY 14, 2025
JUDGMENT AND REASONS:	GO J.
DATED:	JANUARY 31, 2025

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