Federal Court  Cour fédérale

Date: 20250625

Docket: IMM-10591-24

Citation: 2025 FC 1145

Ottawa, Ontario, June 25, 2025

PRESENT: The Honourable Justice Darren R. Thorne

BETWEEN:

TSEGEREDA TSEGAYE WIGEBRAL
NOBEL ESAYAS FISIHATSION
MELODY ESAYAS FISIHATSION

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Ms. Tsegereda Wigebral and her two children, seek judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”] of a negative pre-removal risk assessment [“PRRA”] decision dated April 26, 2024 [“Decision”].

[2] The Applicants argue that the Decision was procedurally unfair, as it failed to consider additional information which they had submitted upon the request of Immigration, Refugees and Citizenship Canada [“IRCC”].

[3] For the reasons that follow, I grant the application.

II. Facts

[4] Ms. Tsegereda Tsegaye Wigebral [the “Principal Applicant”] is a dual citizen of Italy and Ethiopia. Her two children, Nobel and Melody Esayas Fisihatsion [the “Co-applicants”], who are 19 and 17 years old respectively, are citizens of Italy.

[5] The Principal Applicant arrived in Canada in August 2014 with her two children. She subsequently made a refugee claim utilizing aliases for the family, falsely claiming they were Eritrean citizens subject to religious persecution. The Refugee Protection Division [“RPD”] of the Immigration and Refugee Board of Canada accepted their claim in April 2015, at which time the Applicants became permanent residents of Canada.

[6] However, on April 27, 2022, the Minister applied to vacate the Applicants’ refugee status, upon learning of the Principal Applicant’s false allegations of persecution and flight from Eritrea. On December 13, 2022, the RPD nullified the decision that conferred refugee status on the Applicants, and then rejected their refugee claim under subsections 109(1) and (2) of the IRPA.

[7] On December 15, 2022, the Applicants were declared inadmissible under IRPA section 40(1)(c) in a section 44(1) report, and a deportation order was issued on August 19, 2023. The Principal Applicant was informed of her right to apply for a PRRA for herself and her children, which she did on October 19, 2023, and November 14, 2023 [the "PRRA Application"].

[8] On March 18, 2024, the Applicants received a letter from IRCC, in which they were asked to submit a separate PRRA application for one of the Co-applicants, Nobel Esayas Fisihatsion ["Nobel"], as he had been a minor when his mother submitted the original PRRA, but he had subsequently turned 18 before that decision was rendered. Nobel accordingly submitted to the IRCC a separate PRRA application [the "Second PRRA Application"], which included extensive submissions, on April 8, 2024.

[9] In the April 26, 2024, PRRA Decision, a Senior Immigration Officer ["Officer"] reviewed the Applicants' file and held that they were not at risk of persecution, or subject to a danger of torture, and nor did they face a risk to their lives or a cruel or unusual punishment if they were removed to Italy. While the Applicants had alleged that they faced serious discrimination, social exclusion and abuse there, due to their race, and had alleged that they could not rely on the police or authorities for protection, the Officer determined that there was not sufficient evidence before them to substantiate those claims. Accordingly, the Applicants were not found to be Convention refugees or persons in need of protection as defined in sections 96 and 97 of IRPA.

[10] The Officer accepted that the Applicants may have been subjected to "less favourable treatment" due to their race, but found they had failed to establish that this rose to the level of

persecution. In one of the central findings, the Officer noted, in relation to mistreatment in Italy, that the Principal Applicant had provided "little to no further elaboration or evidence as to how she came to the conclusion that the Italian authorities would not help her." I also note that in the analysis section of the Decision, the Officer specified that among the most significant issues with the Applicants' allegations were the limited and vague descriptions of the events that had befallen them. The Officer also particularly noted in the Decision that, "[t]o support their PRRA application, the applicants include a written submission by the PA and no additional submissions."

[11] The Applicants now seek judicial review of the PRRA Decision.

III. Issue

[12] In seeking to judicially review the PRRA rejection, the Applicants argue that the Officer's Decision was reached in a procedurally unfair manner, since it was rendered without consideration of the further, Second PRRA Application and attendant submissions provided by the Co-applicant Nobel on April 8, 2024.

IV. Analysis

[13] Though a presumptive reasonableness standard of review would apply to the merits of the decision, it is a correctness-like standard that applies to issues of procedural fairness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56 [*CPR*]. In short, a reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair, in that it gave

the parties the right to be heard, as well as a full and fair opportunity to be informed of the case against them and to respond: *CPR* at para 56.

A. *The Applicants' Right to Procedural Fairness Was Breached*

[14] The substantive question before me is whether the Applicants' right to procedural fairness was breached. I find that it was. In my view, they have successfully established that the Officer simply did not consider the Second PRRA Application and its submissions, in coming to the Decision, despite the fact that IRCC had specifically required the Applicants to submit this additional information.

[15] Again, this issue must be assessed on a correctness-like standard of review. In particular, the Court must ask itself whether the procedure was fair in light of all the circumstances, with a particular emphasis on the completeness of the record: *CPR* at para 54.

[16] The Applicants' argument is straightforward. They submit that the Officer "completely ignored" the Second PRRA Application submitted for Nobel. They further argue that the Officer was required to consider all submissions made by a PRRA applicant, up to the point where the applicant is notified that a decision has been made, citing *Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073 at para 19 [*Chudal*]. They note that the PRRA manual echoes this requirement. The Applicants argue that the Officer's failure to consider the Second PRRA Application, and its submissions, breached their right to be heard.

[17] The Respondent concedes that the Officer's Decision plainly (and erroneously) states that in support of their PRRA Application, the Applicants had included only written submissions

from the Principal Applicant, “and no additional submissions.” Counsel for the Respondent stated that he was unsure of why this was. He posited that, despite the Second PRRA Application having been received by the IRCC on April 8, 2024, some weeks before the issuance of the Decision, perhaps the documents had not been internally processed and reached the Officer before the decision was written. It was submitted that it may have been that the Officer never saw this Second PRRA Application, as opposed to having simply ignored or disregarded the information before them.

[18] I note that the Respondent’s written materials had additionally argued that while the Applicants were instructed to submit a second PRRA application for Nobel, they had not specifically been asked for separate submissions from him in that request, and so the Officer’s failure to consider those submissions was therefore justifiable.

[19] Finally, in the hearing, counsel for the Respondent argued that the Second PRRA Application and the submissions of Nobel were immaterial, as they contained broadly the same information as had been provided by the Principal Applicant in the original Application. It was further argued that, in any event, the information in Nobel’s PRRA Application also did not establish that the treatment suffered by the Applicants rose to the level of persecution, so it would not have changed the Officer’s Decision, even if it had been considered.

[20] Despite the able, and sensitive, submissions of counsel for the Respondent, I do not find these arguments persuasive. First, the plain wording of the Decision makes it clear that the Second PRRA Application and its attendant submissions were simply not considered by the Officer in reaching the Decision, as it erroneously specifies that the Applicants had only

submitted for consideration "a written submission of the Principal Applicant **and no additional submissions**" [emphasis added]. Yet it is indisputable that the Second PRRA Application was not only submitted by the Applicants, but was also received by the IRCC, as the Certified Tribunal Record includes a copy of that application, date stamped as received on April 8, 2024. As noted, the Officer's Decision was issued over two weeks later, on April 26, 2024. I must refuse the Respondent's invitation to assume that despite being received by the IRCC, the second PRRA had somehow not reached the Officer prior to the decision being issued. This supposition is pure speculation, and no evidence was put forth in support of it.

[21] In any event, in my view, it makes little difference whether the Officer had missed, disregarded or somehow failed to have personally received the second PRRA application. The point is that the Decision clearly did not involve consideration of this information from the Applicants. While the Court has established that a decision-maker need not mention all aspects of the record and will generally be presumed to have read it all (see *Simpson v Canada (Attorney General)*, 2012 FCA 82 at para 10), this presumption may be rebutted by evidence to the contrary: *Salehpour v Canada (Citizenship and Immigration)*, 2024 FC 1265 at para 16; see also *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28. Indeed, "if the officer ignores relevant evidence pointing to an opposite conclusion and contradicting the officer's findings, it can be inferred that the officer did not review the evidence or arbitrarily disregarded it": *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18; see also *Siddiqui v Canada (Citizenship and Immigration)*, 2025 FC 305; *Brar v Canada (Citizenship and Immigration)*, 2024 FC 1664.

[22] In this matter, no such inference is necessary, as the presumption is overtly rebutted by the Officer's direct assertion that no further submissions were included, other than those of the Principal Applicant. This establishes that the Officer either completely ignored, or simply did not know that there was a Second PRRA Application for Nobel. Given that the IRCC had specifically requested this information, and that it had been received by the organization well prior to the Decision, at the very least the Decision should have addressed why the Officer had chosen to disregard those submissions, had this been done advertently.

[23] This Court has repeatedly held that "the latest relevant and significant evidence available must be considered by a pre-removal risk application [PRRA] Officer," who "has an obligation to receive all evidence which may affect the decision until the time that such decision is made": *Balazuntharam v Canada (Citizenship and Immigration)*, 2015 FC 607 at paras 14–16; see also *Chudal* at para 19; *Avouampo v Canada (Citizenship and Immigration)*, 2014 FC 1239 at para 21; *Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 16; *Mohamed v Canada (Citizenship and Immigration)*, 2023 FC 1297 at para 33.

[24] That this was not done, in this matter, undermines the Applicants' right to procedural fairness.

[25] Incidentally, I cannot accept the argument that, though the Applicants had been instructed to submit the Second PRRA Application in the IRCC letter of March 18, 2024, because that letter had not also specifically directed the Applicants to provide separate submissions, then it somehow made sense for the Officer to not consider the submissions included in that

Application. In respect of this argument, I agree with the Applicants that, in the request to send a separate PRRA application, there is an implicit – if not explicit – understanding that submissions made in that Application would be considered by the decision-maker. Further, in the context of PRRA applications, applicants are generally permitted to make additional submissions anytime prior to the issuance of the final decision in their matter, in any event.

[26] I do note that this Court has established that the failure to consider further submissions will not invariably lead to a breach of procedural fairness, as it is essential to the principle in *Chudal* that such information is "evidence which may affect the decision": *Smith v Canada (Citizenship and Immigration)*, 2023 CanLII 43707 (FC) at para 13. In other words, in such cases a breach of procedural fairness may not be found where the submissions would not have affected the outcome of the PRRA: *Trajchevski v Canada (Citizenship and Immigration)*, 2016 FC 127 at paras 15–22.

[27] The Respondent argues that this is the case in the matter at hand, stating that the submissions in the Second PRRA Application were broadly similar to information included in the initial PRRA Application, and pointing out that certain of the articles and materials in the Second Application were identical to materials in the initial one. While this is true, a review of the Second PRRA Application establishes that it also contains information that was not included in the initial Application, including multiple new country condition references and their sources. The Second Application also includes Nobel's own personal allegations of abuse that he claims to have experienced because of his ethnicity. Though the Principal Applicant's written submissions broadly mentioned that Nobel had faced discrimination, the written submissions in

the Second PRRA Application provide more detail as to these events. I also note that certain of the information in those submissions was also relevant to findings made by the Officer in the Decision. For example, new country condition evidence in the Second Application discusses the issue of racism and discrimination that is allowed or encouraged by political leaders in Italy, and questions the reliability of state protection for victims of racist crimes. Such evidence would seem directly pertinent to findings in the Decision that the Applicants had not provided elaboration or evidence in support of their beliefs that state authorities could not be relied upon for protection.

[28] Finally, the Respondent argues that even had the submissions in the Second PRRA Application been considered, they would not have altered the outcome of the Decision, since this information would not have led to the conclusion that the malign treatment allegedly suffered by the Applicants rose to the level of persecution. It is certainly possible that this belief is correct, and that this might well have been the determination of the Officer, but it is not the role of this Court to speculate on what the findings of the Officer would have been, had they considered the information in the Second PRRA Application. It is unknowable what impact this would have had on the Decision: *Agatha Jarvis v Canada (Citizenship and Immigration)*, 2014 FC 405 at para 23; *Togtokh* at paras 20, 23; see, in a credibility context, *Akram v Canada (Citizenship and Immigration)*, 2018 FC 1105 at para 21.

[29] The right to be heard is among the most basic aspects of procedural fairness. When a decision has clearly been made without considering all of the materials submitted by an Applicant, this right has been compromised. As such, I quash the Decision in this matter, and find that the application for judicial review will therefore be allowed.

V. Conclusion

[30] For these reasons, the Decision in this case is set aside and the matter is returned for redetermination by a different IRCC officer.

[31] The parties proposed no question for certification, and I agree that none arise.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Officer dated April 26, 2024, is set aside and the matter is returned for redetermination by a different immigration officer.
3. No question of general importance is certified.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10591-24
STYLE OF CAUSE:	TSEGEREDA TSEGAYE WIGEBRAL ET AL v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 15, 2025
JUDGMENT AND REASONS:	THORNE J.
DATED:	JUNE 25, 2025

APPEARANCES:

Teklemichael A. Sahlemariam	FOR THE APPLICANTS
Bernard Assan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

The Law Office of Teklemichael Ab Sahlemariam Toronto, ON	FOR THE APPLICANTS
Attorney General of Canada Toronto, ON	FOR THE RESPONDENT