Federal Court Cour fédérale

Date: 20250707

Docket: IMM-7387-24

Citation: 2025 FC 1200

Ottawa, Ontario, July 7, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

ESKINDER SERTZU TEKLAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of a Visa Officer refusing his resettlement application under the Convention Refugee Abroad Class. The Officer found that the Applicant and his spouse failed to comply with the duty of candour under subsection 16(1) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*], citing inconsistencies in the spouse's evidence.

[2] I am dismissing this judicial review application as the Officer's decision is reasonable.

I. Background

[3] The Applicant is a 39-year-old citizen of Eritrea who fled the country in 2012. He travelled through multiple countries before settling in South Africa, where he was granted refugee status. In August 2020, he applied for resettlement to Canada under the Convention Refugee Abroad Class. His spouse and two children where included in his application as accompanying family members.

[4] An Officer interviewed the Applicant and found that he had a well-founded fear of persecution, making him eligible for refugee status. Following the interview, the Officer issued a procedural fairness letter regarding his spouse's failure to disclose a previous United States visa application.

[5] The resettlement application was refused due to lack of truthfulness in the application, which affected both the Applicant's eligibility and admissibility to Canada.

II. Decision under review

[6] The April 10, 2024 decision states in part as follows:

> You were notified of the requirement for truthfulness at interview and in the procedural fairness letter sent on 15 December 2023. I am not satisfied that you and your spouse answered all questions truthfully in the application forms, at interview, and in response to the procedural fairness letter. The untruthful information affects your eligibility and admissibility to Canada. I am not satisfied that your accompanying spouse is not inadmissible to Canada.
>
> …
>
> Following an examination of your application, I am not satisfied that you meet the requirements of the Act and the Regulations for the reasons explained above. I am therefore refusing your application.

III. Relevant legislation

[7] The relevant provisions of the *IRPA* are as follows:

Application before entering Canada 11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. … Obligation – answer truthfully 16 (1) 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	Visa et documents 11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi. … Obligation du demandeur 16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents

evidence and documents that the officer reasonably requires.	et présenter les visa et documents requis.

IV. Standard of review and issues

[8] The only issue is if the decision of the Officer is reasonable. On a reasonableness review, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 15 [*Vavilov*]). 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).

V. Analysis

[9] The Applicant argues that the decision is unreasonable because the Officer applied section 16 of the *IRPA* in a formalistic and unbalanced manner and failed to consider the surrounding circumstances. He argues that the Officer did not engage with the explanations provided in response to the procedural fairness letter.

[10] The Officer's notes in the Global Case Management System (GCMS), which form part of the decision, state in part as follows:

> I am not satisfied the applicant and spouse answered all questions truthfully as required under Section 16(1) of the Act. The untruthful information affects their eligibility and admissibility to Canada. I am satisfied the applicant provided untruthful information regarding his spouse's refusal in the Schedule A, which explicitly asks for information regarding accompanying

family members for the principal applicant. I am satisfied the spouse provided untruthful information regarding her refusal, her valid passport, her time in National Service, her travel history, her immigration history, and her departure from Eritrea. I am not satisfied that any of the information she provided in the Schedule A, Schedule 2, or at interview regarding when, why, and how she left Eritrea is truthful. I am not satisfied as to her activities in Eritrea. I am not satisfied the spouse is not inadmissible to Canada. I provided the applicant and spouse the opportunity to address these concerns and have taken their responses into account. I am not satisfied the applicant and spouse meet the requirements of the Act and are not inadmissible to Canada, as required under Section 11(1) of the Act. Application refused.

[…]

Spouse has responded with a document that states she was demobilized from National Service on 31 June 2011. This is contradicted by the Schedule A which stated that she was in National Service until December 2015.

For decision after end of procedural fairness period.

[…]

Spouse was fingerprinted on 25 January 2016 in Asmara for a USA non-immigrant visa. Spouse was in possession of Eritrean passport K0242749 valid to 22 October 2020.

Spouse failed to declare this USA application in the Schedule A. Spouse declared that she was detained in Mai Sirwa until December 2015 and then was travelling outside of Eritrea beginning on 5 January 2016 to March 2016. I note that she was unlikely to have been travelling outside of Eritrea if she was physically present at the Embassy of the United States of America on 26 January 2016 after she allegedly fled the country. Moreover, it is unclear why she would have been allowed to retain her valid Eritrean passport and freely visit the embassy if she were in National Service and then detained. I note most unmarried young Eritrean citizens are not permitted to obtain valid passports while they are in National Service.

I am not satisfied spouse meets A16(1) of the Act. As such, I am not satisfied the application meets A11(1) of the Act. PFL prepared.

[11] As the GCMS notes demonstrate, the Officer identified several inconsistencies including "the applicant provided untruthful information regarding his spouse's refusal in the Schedule A", and "the spouse provided untruthful information regarding her refusal, her valid passport, her time in National Service, her travel history, her immigration history, and her departure from Eritrea."

[12] The Applicant received a procedural fairness letter and was given an opportunity to respond to the identified inconsistencies. His response referred to an unnamed third-party who allegedly assisted with the application and claimed that the failure to disclose the United States visa application was an oversight. However, these explanations did not directly address the Officer's concerns. Specifically, the Applicant did not explain the inconsistencies in his spouse's evidence, or even provide specifics on who assisted them and why the mistake occurred. It was therefore reasonable for the Officer to find that the Applicant's spouse did not comply with subsection 16(1) of the *IRPA.*

[13] The Officer considered the information in the application as well as the explanations following the procedural fairness interview, and ultimately concluded that the Applicant was untruthful contrary to subsection 16(1) of the *IRPA*. The Applicant has not identified any evidence overlooked by the Officer.

[14] The Applicant's arguments on this judicial review essentially amount to a disagreement with the Officer's findings and a request to have this Court re-weigh the evidence. That is not the role of the Court. *Vavilov* makes it clear that this Court is not to reweigh or reassess the evidence

unless there are “exceptional circumstances” (*Vavilov* at para 125). No such exceptional circumstances arise here.

[15] Furthermore, the Applicant’s submissions conflate the concepts of eligibility and admissibility. It is clear from the Officer’s reasons that, notwithstanding the Applicant’s eligibility for refugee status, the Applicant and his family members still had to establish that they were admissible. The failure to truthfully answer questions and to produce passport and visa information in relation to the Applicant’s spouse resulted in a finding that they were inadmissible under section 16 of the *IRPA*.

[16] Overall, the Officer’s decision is reasonable.

VI. Certified question

[17] At the hearing, the Applicant’s legal counsel proposed the following question for certification:

> When an overseas application for permanent residence under the Convention Refugee or Humanitarian-Protected Person Abroad class is submitted by a principal applicant and their dependents, but the entire family is found to be eligible, and the application is refused under sections 11(1) and 16(1) due to an officer's inability to determine the inadmissibility of one or more of the applicants, but no clear inadmissibility finding is made is the entire family's application refused? Or must the decision-maker conduct separate assessments for the principal applicant and other associate applicants?

[18] I decline to certify this proposed question for the following reasons. First, counsel for the Applicant did not comply with the five days' notice requirement prescribed by the *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings*. Secondly, the proposed question does not meet the criteria for certification as set out in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46. Finally, the answer to this question is clearly provided on the Application Form completed by the Applicant and the provisions of the *IRPA*.

[19] Specifically, the Application Form completed by the Applicant included his spouse and children as dependants. The consent and declaration portion of the Application Form states that "any false statement or concealment of a material fact may result in my exclusion from Canada…". This is consistent with subsection 16(1) of the *IRPA.*

[20] Accordingly, I decline to certify the proposed question.

JUDGMENT IN IMM-7387-24

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.

2. I decline to certify the question posed by the Applicant.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7387-24
STYLE OF CAUSE:	TEKLAY V MCI
PLACE OF HEARING:	TORONTO, ONTARIO
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