Federal Court  Cour fédérale

Date: 20250821

Docket: IMM-15509-23

Citation: 2025 FC 1400

Ottawa, Ontario, August 21, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

ESEYAS GHEBREMICHAEL KETEM, LWAM HABTESLASE HAYLE, ELIANA ESEYAS GHEBREMICHAEL, HYAB ESEYAS GHEBREMICHAEL, and AMEN ESEYAS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of an immigration officer's decision to refuse the permanent residence [PR] application of Mr. Eseyas Ghebremichael Ketem [Principal Applicant]. The Principal Applicant's spouse, Ms. Lwam Habteslase Hayle, and their three children, Eliana Eseyas Ghebremichael, Hyab Eseyas Ghebremichael and Amen Eseyas Ghebremichael, applied as his dependants [Dependant Applicants, and together with the Principal Applicant, the Applicants].

[2] This judicial review is granted. In the particular circumstances here, the Officer's total silence on the fate of the Dependant Applicants is unreasonable. The matter is remitted to a different immigration officer for redetermination in accordance with this Court's reasons.

[3] The Applicants' proposed certified question is premature.

II. Background

[4] The Principal Applicant is a citizen of Eritrea. He and his spouse sought to escape Eritrea due to the exploitation, deprivation of religious freedom, and other rights violations they experienced. Although the Principal Applicant had successfully obtained an Eritrean passport and exit visa in 2012, his spouse was denied an exit visa. Therefore, they fled Eritrea by foot in December 2012. They escaped first to Sudan where two of their children were born. They resided in Sudan until August 2019 when escalating turmoil led them to seek refuge in Ethiopia, where they had their third child. In both countries they obtained refugee status.

[5] In 2020, the family applied for PR in Canada through the Convention Refugees Abroad class, or as members of the Humanitarian-Protected Persons Abroad class.

[6] In connection with their PR applications, the family attended an interview with an immigration officer [Interviewing Officer] on June 27, 2023. During this interview, the Principal Applicant answered "no" to the following questions:

a) Have you ever held a passport?
b) Applied for immigration/protection to any other country?
c) Applied for immigration/work/study/visit to Canada or any other country?

[1] The Global Case Management [GCMS] notes entered on June 30, 2023, at 14:21 show the Interviewing Officer decided that the PA met the definition of a Convention Refugee. The notes state:

> SELECTION DECISION: Information provided consistent with written application and credible according to country of origin information. PA does not have, in my opinion, a reasonable prospect, within a reasonable period of time, of a durable solution in a country other than Canada, including internal flight, repatriation, local integration, or resettlement in another country. I am satisfied PA will have, with assistance, a reasonable possibility to adapt successfully to Canada, and to become self-sufficient within reasonable period of time. … I have considered the totality of the applicant's circumstances, and I am satisfied that there are reasonable grounds to believe that the pa has a well founded fear of persecution based on imputed political opinion and therefore meets the definition of a convention refugee as described in A96 of IRPA. Positive seldec entered today. Explained that am satisfied that PA meets definition of refugee eligibility passed.

[7] Separate entries on the same date (June 30, 2023) at 14:21 and 14:36 note that the Principal Applicant had in fact applied for a non-immigrant visa to the United States and a study permit to Canada. In addition, the Principal Applicant held an Eritrean passport from 2012-2017. The Principal Applicant failed to disclose any of these facts when asked directly.

[8] On July 4, 2023, the Principal Applicant was sent a procedural fairness letter [PFL], requesting an explanation for his answers in the interview and his failure to disclose.

[9] By letter dated July 30, 2023, the Principal Applicant made submissions and provided supporting documents in response to the PFL. The Principal Applicant explained that he was told by the person who assisted him in filling out his PR application forms that questions about prior applications referred only to "resettlement" applications for a PR visa, rather than all types of

temporary and permanent resident applications. This is why he answered “no” to the questions about prior visa applications on his application form and at the interview. He further explained how he obtained his Eritrean passport, Eritrean exit visa, and detailed his 2015 visa applications to the United States and Canada.

[10] An immigration officer [PR Officer] refused the Principal Applicant’s PR application by letter dated November 27, 2023.

[11] The refusal letter notes that s. 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] requires an applicant to truthfully answer all questions, as well as produce a visa and all relevant evidence and documents that an officer reasonably requires. Furthermore, s. 11(1) of the IRPA states that an officer may issue a visa or other document if, following an examination, they are satisfied the foreign national is not inadmissible and “meets the requirements of [the IRPA].”

[12] In the PR Officer’s view, the Principal Applicant failed to meet the requirement to be truthful pursuant to s. 16 of the IRPA due to his negative answers in relation to his immigration history and failure to disclose during the interview.

[13] With respect to the Principal Applicant’s response to the PFL, the refusal letter states: “your responses did not satisfactorily respond to the concerns presented and the credibility concerns remain. I am not satisfied you meet the requirements of the Act...” The GMCS notes, which form part of the reasons, elaborate:

> In [the PFL], [the Principal Applicant] indicates they did not declare their previous refusals on the Schedule A due to the individual who helped them complete it advising them that the question pertains only to resettlement applications. This led to [the Principal Applicant] responding, "no" during the interview to these questions as well… I do not find [the Principal Applicant's] explanations satisfactory, especially regarding the reasons why they responded "No" at the interview. The three questions to which [the Principal Applicant] answered "No" to at the interview are clear and direct and do not allude to resettlement or refugee claims or applications. Yet, [the Principal Applicant] responded "No" to the questions noted. As a result, I am of the opinion that the applicant lacks credibility.

[14] The letter and GCMS notes make no mention of the eligibility of the Dependant Applicants.

III. Preliminary Issue – Style of Cause

[15] The Notice of Application names only the Principal Applicant. In oral submissions, counsel for the Applicants asked to amend the style of cause to include the Dependant Applicants. While she initially had reservations, counsel for the Minister of Citizenship and Immigration [Respondent] ultimately did not oppose this amendment, as it is the Respondent's position that the PR Officer's decision was in fact a refusal of all the Applicants, together.

[16] Rule 75(2) of the *Federal Courts Rules*, SOR/98-106 applies to requests for leave to amend during or after a hearing. This rule provides that such amendments shall not be allowed, with limited exceptions. One exception is where the purpose of the amendment "is to make the documents accord with the issues at the hearing" (Rule 75(2)(a)).

[17] In light of the fact the Respondent does not oppose the amendment, and because the amendment brings the style of cause in line with both parties' understanding of the issues, the amendment is allowed, and the Dependant Applicants are added as parties.

IV. Analysis

[18] The only issue on this application is whether the PR Officer's decision is unreasonable.

[19] The parties agree and I concur that the applicable standard of review for the PR Officer's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]; *Taye v Canada (Citizenship and Immigration)*, 2023 FC 444 at para 11.

[20] I conclude that the PR Officer's decision is unreasonable because, after they determined that the Principal Applicant did not meet certain requirements of the IRPA, they failed to make any determination with respect to the Dependant Applicants. As noted, the decision was entirely silent on the fate of the Dependant Applicants.

[21] The Applicants rely on program delivery instructions [PDI] from Immigration, Refugees and Citizenship Canada [IRCC] which provide that (REF-OVS-4-1):[1]

> If the principal applicant does not qualify as a member of the Convention refugee abroad class, the officer must assess the eligibility and admissibility of the spouse or common-law partner

[1] Applicants' counsel referred to s. 13.3 of IRCC's operational manual "OP-5," the predecessor document to the PDI which provides virtually identical guidance: see *Canada (Minister of Citizenship and Immigration) v Heidari Gezik*, 2015 FC 1268 at para 11. Therefore, while OP-5 is no longer current, the same guidance continues to exist for Convention Refugees Abroad under the PDI.

> and of any family members. Where any one family member qualifies, that status applies to all other family members.

[22] The PDI does not apply in the Applicants' circumstances. The Principal Applicant was not refused PR because he failed to "qualify as a member of the Convention refugee abroad class." Indeed, the Interviewing Officer's notes reflect that the Principal Applicant was found to have "a well founded fear of persecution" and "therefore [met] the definition of a convention refugee." The Principal Applicant was ultimately refused PR because he failed to meet the requirement to be truthful under s. 16 of the IRPA; it was this credibility issue, and not a failure to qualify as a Convention refugee, that caused the Principal Applicant's refusal.

[23] Both parties refer to the decision of this Court in *Samuel v Canada (Citizenship and Immigration)*, 2022 FC 1102 [*Samuel*]. In that case, a mother (Ms. Samuel) and her son each made separate applications as Convention Refugees Abroad. Ms. Samuel's daughters were her dependant applicants. Justice Zinn found that it was a breach of procedural fairness for the immigration officer to interview only Ms. Samuel and not also her son, before rejecting both of their applications. In coming to this conclusion, he relied on the same IRCC guidance raised by the Applicants in this case: *Samuel* at para 26.

[24] The Respondent says that the conclusion in paragraph 26 of *Samuel* is distinguishable, and I agree, because the son's application in Samuel was based on different facts than his mother's, whereas here the Dependant Applicants rely entirely on the Principal Applicant's narrative.

[25] However, Justice Zinn did not solely conclude that the son in *Samuel* ought to have been separately assessed because he submitted a separate application based on different facts – he went further and stated that "[t]he officer was required to assess the eligibility of each of the Applicants" [emphasis added], including the two dependant daughters: *Samuel* at para 27. He also found it "telling that the [the decision on Ms. Samuel] makes no mention of [the daughters]" and noted that the officer was under the mistaken impression that the daughters' applications, as well as the son's, were "inextricably linked to Ms. Samuel's": *Samuel* at para 28; see also *Moreno v Canada (Minister of Employment and Immigration)*, 1993 CanLII 2993 (FCA).

[26] The Respondent asserts that the Principal Applicant's denial on the basis of s. 16 of IRPA necessarily means that the Dependant Applicants cannot be granted PR. However, the refusal letter and GCMS notes do not say that the Dependant Applicants are automatically refused because the Principal Applicant was refused; the PR Officer makes no mention of them at all. In the absence of even a short statement in the refusal decision about the Dependant Applicants there is nothing before the Court to demonstrate what the Officer intended.

[27] Importantly, the Principal Applicant was not determined to be inadmissible, but denied on the basis of s. 16 for failing to be truthful about his personal immigration history. The present case is therefore distinguishable from cases such as *Reynoso v Canada (Citizenship and Immigration)*, 2010 FC 1076 at paragraph 13 [*Reynoso*] and *Kuhathasan v. Canada (Citizenship and Immigration)*, 2008 FC 457 where the Principal Applicant was inadmissible.

[28] It is also distinguishable from cases where the Principal Applicant was found not to meet the definition of a Convention Refugee: *Adera v Canada (Citizenship and Immigration)*, 2016 FC 871 at para 13.

[29] The decision to refuse the Principal Applicant in the present case was based on his failure to be truthful on questions pertaining to his *personal* immigration history. There is nothing on the record to demonstrate that the spouse provided false information on her application or at the interview.

[30] The unique circumstances underlying the Principal Applicant's refusal in this case, coupled with the complete silence regarding the fate of the Dependant Applicants, renders the decision unreasonable. The reasons fail to meet the basic requirements of responsiveness and transparency discussed in *Vavilov*.

[31] This conclusion is sufficient to dispose of this application. However, for completeness, I will consider the alleged errors that remain.

[32] The Applicants state that the PR Officer's decision is unreasonable because their assessment of the duty of candour pursuant to s. 16 of the IRPA was not balanced and failed to consider the surrounding circumstances. In particular, they argue that the officer ought to have considered the Principal Applicant's PFL explanation for why he answered "no" to the questions concerning prior visa applications.

[33] The record demonstrates that the PR Officer considered the Principal Applicant's explanation regarding his prior visa applications. As reflected in the GCMS notes, the PR Officer acknowledged the explanation provided but was not convinced by it. The PR Officer did not accept that the Principal Applicant was confused because the questions posed were sufficiently clear and direct. The Applicants may disagree with the PR Officer's rejection of the explanation provided, but this does not render the decision unreasonable.

[34] It was not unreasonable for the PR Officer to find that, even in light of the explanation provided, the Principal Applicant did not meet the requirements of s. 16 of the IRPA: *Osman v Canada (Citizenship and Immigration)*, 2021 FC 1279 at para 39. Non-compliance with s. 16 of IRPA is sufficient to deny a PR application: *Shafique v Canada (Citizenship and Immigration)*, 2023 FC 226 at paras 8, 13-15.

[35] The Principal Applicant further argues that the PR Officer's decision was unreasonable because it failed to consider as an additional ground of persecution; namely, the potential punishment he and his spouse face in Eritrea due to their illegal exit from the country. I agree with the Respondent that, with respect to the Principal Applicant, the fact of his illegal exit from Eritrea would not have changed the determination of his application; his claim was not refused because he lacks a well-founded fear of persecution. His application was refused because he failed to meet the requirement to be truthful under s. 16 of the IRPA.

[36] Whether the consequences of the Principal Applicant's spouse exiting Eritrea illegally constitute an additional ground of persecution, or if there is sufficient evidence on the record

regarding a change in circumstances post-exit from Eritrea to give rise to a refugee *sur place* claim, may be questions for an immigration officer to consider on a redetermination of this matter.

[37] Finally, the Applicants maintain that the PR Officer failed to give due consideration to the Principal Applicant and his spouse's UNHCR refugee status. They rely on Justice Mosley's decision in *Teweldbrhan v Canada (Citizenship and Immigration)*, 2012 FC 371 [*Teweldbrhan*], where he found an officer's decision unreasonable because it failed to explain why the applicants were determined not to be refugees despite having UNHCR designation: *Teweldbrhan* at paras 20-24. However, Justice Mosley also noted that the officer was not bound by the UNHCR designation to grant the refugee claims – the officer only had an obligation to explain why they arrived at a different conclusion: *Teweldbrhan* at para 24.

[38] In my view, the PR Officer provided sufficient reasons for refusing the Principal Applicant's refugee claim despite his UNHCR designation; namely, his failure to meet IRPA requirements. The same cannot be said with respect to the Principal Applicant's spouse, who was never mentioned in the reasons.

V. Proposed Question for Certification

[39] On the morning of the hearing, counsel for the Applicants sought to propose the following question for certification:

> In an application for permanent residence made by an applicant from overseas under the Convention refugee or humanitarian-protected person abroad class, where the principal applicant's (PA) application is refused for reasons of credibility, is the decision-

> maker required to conduct a separate assessment of the applications of dependent or associated applicants?

[40] The Applicants did not give the Respondent five days notice of their intention to propose a certified question, as required by the *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, dated October 31, 2023, at paragraph 36. However, the parties agreed to file post-hearing submissions on the issue of a certified question, with ample time for the Minister to prepare responding submissions.

[41] I decline to certify the proposed question.

[42] The Federal Court of Appeal in *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 succinctly summarized the requirements for a question to be certified at paragraph 28:

> It is well established in the jurisprudence of this Court that a question cannot be certified unless it is serious, dispositive of the appeal and transcends the interests of the parties. It must also have been raised and dealt with by the court below, and it must arise from the case rather than from the judge's reasons. Finally, and as a corollary of the requirement that it be of general importance pursuant to section 74 of the IRPA, it cannot have been previously settled by the decided case law: see *Liyanagamage v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1637 (QL) at para. 4; *Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178 at para. 36; *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras. 36, 39 (*Lewis*).

[43] From this passage and the jurisprudence it cites, the following criteria arise:

a) The question was dealt with by the court below and arises from the case rather than the judge’s reasons;

b) The question is dispositive of the appeal;

c) The question transcends the interests of the parties and raises an issue of broad significance or general importance; and

d) The question was not previously settled by the decided case law.

[44] The proposed question here cannot be certified because it fails to meet the second criteria. “[T]he corollary of whether a question is determinative of an appeal is that it must have been raised and dealt with in the decision of this Court”: *Galvez Padilla v Canada (Citizenship and Immigration)*, 2013 FC 247 at para 83, citing *Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89. The proposed question could not have been dealt with in this decision.

[45] The Applicants say that their “question arises from the Respondent’s refusal of the principal applicant’s application on credibility grounds and the consequential refusal of the associated or dependant applicants – without a separate and independent assessment of their own individual circumstances.” However, this question is premature because it is not clear that there was a “consequential refusal” of the Dependant Applicants – there is simply no mention of them. The application is allowed not because it is evident that the Dependant Applicants were refused without assessment, but because it is unknown what consideration, if any, the PR Officer gave to their fate.

[46] Put another way, “the proposed question should not be certified as it does not correspond with the basis on which I have decided this application”: *Nguyen v Canada (Citizenship and Immigration)*, 2012 FC 331 at para 16. The determinative issue in this application for judicial

review is the lack of responsiveness in the PR Officer's reasons; the failure to mention the Dependant Applicants foreclosed any potential findings or conclusions as to whether their claims were properly assessed.

VI. Conclusion and Disposition

[47] For the above reasons, the style of cause is amended, the application for judicial review is granted, and the matter remitted to a different immigration officer for redetermination.

[48] The Applicants' proposed question will not be certified.

JUDGMENT in IMM-15509-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed and the matter remitted to a different immigration officer for redetermination.
2. No question of general importance is stated.
3. The style of cause is amended to add the following individuals as applicants: Lwam Habteslase Hayle, Eliana Eseyas Ghebremichael, Hyab Eseyas Ghebremichael and Amen Eseyas.
4. No costs are ordered.

"Meaghan M. Conroy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-15509-23
STYLE OF CAUSE:	ESEYAS GHEBREMICHAEL KETEM v. MCI
PLACE OF HEARING:	TORONTO, ON
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REASONS ON COSTS AND ORDER:	CONROY J.
DATED:	AUGUST 21, 2025

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