

Federal Court



Cour fédérale

**Date: 20141104**

**Docket: IMM-5643-13**

**Citation: 2014 FC 1043**

**Ottawa, Ontario, November 4, 2014**

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

**BETWEEN:**

**SINEDU WORKU DEGAGA**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board], delivered orally following a hearing on July 18, 2013 [Decision], which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under ss. 96 and 97 of the Act.

## II. BACKGROUND

[2] The Applicant is a 42-year-old citizen of Ethiopia. She came to Canada as a temporary foreign worker in November 2010. In May 2012, the Applicant made a claim for refugee protection.

[3] The Applicant claims that she fears the Ethiopian government due to her involvement with political opposition groups. In 2005, before leaving Ethiopia, the Applicant was involved in organizing peaceful demonstrations for the Coalition for Unity and Democracy in anticipation of the Ethiopian election. Following the election, the Applicant ceased her political activity after witnessing government authorities use force and violence to stop political opposition.

[4] In March 2012, the Applicant attended a meeting of the Ginbot 7 in Calgary. The Ginbot 7 is an alliance of groups politically opposed to the Ethiopian government. The Ethiopian government has labelled the Ginbot 7 a terrorist organization. The Applicant chose not to join the Ginbot 7 because of the oppression of political opposition that she witnessed in 2005.

[5] The Applicant claims that, in April 2012, her family told her that government authorities had visited their home and asked for the Applicant. The Applicant thinks that someone at the Ginbot 7 meeting may have reported her attendance to the Ethiopian authorities.

[6] The Applicant's claim for refugee protection was rejected following a hearing before the RPD on July 18, 2013.

III. DECISION UNDER REVIEW

[7] The RPD found that the Applicant was a credible witness who testified in a straightforward and consistent manner. The RPD accepted that the Applicant had attended the Ginbot 7 meeting. However, the Board gave low weight to the Applicant's testimony about the Ethiopian authorities' interest in her following the meeting. The Applicant provided no corroborating evidence to support her allegation that the Ethiopian authorities had visited her parents' home. The Applicant also had no explanation for how or why the Ethiopian authorities came to be interested in her after the Ginbot 7 meeting. She acknowledged that she was speculating that someone may have sent a picture of her at the meeting to the authorities.

[8] The RPD found that the Board's documents supported the Applicant's testimony regarding the Ethiopian government's persecution of political opposition. In particular, the Board referenced a report ("Ethiopia: The Ginbot 7 party," Topical Note, (Oslo, Norway: Landinfo, 2012)) which noted that several Ginbot 7 members had been charged with membership in an illegal group and terrorist offences. The report notes "it is unclear whether the arrests reflect the defendant's concrete connection to terrorist plans or acts, or whether the charges camouflage measures to limit unwanted opposition activity": Applicant's Record at 422. The report also noted that people charged for their Ginbot 7 activities are largely journalists and opposition politicians.

[9] The RPD also considered the UK Visas and Immigration "Operational guidance note: Ethiopia" (July 2012). This note provides that:

...the political profile of the applicant must be carefully considered, together with up to date country information, to determine whether the Ethiopian authorities are likely to view the applicant adversely. If a claimant has a sufficient profile within one of the opposition parties, is known to the Ethiopian authorities and likely to be/remain of adverse interest, then a grant of asylum is likely to be appropriate as an internal relocation would not be a viable option.

(Applicant's Record at 127)

[10] The RPD found that there was no objective evidence from the Applicant or in its own documentation package that the Ethiopian government would perceive the Applicant as a political opponent or an affiliate of the Ginbot 7. The RPD considered: the Applicant's low level of political engagement in 2005; her ability to travel in and out of Ethiopia a number of times following the 2005 election; the fact that she had attended only one Ginbot 7 meeting in Calgary; and that she was speculating that a photo of her at the meeting may have been sent to the Ethiopian authorities. There was also insufficient evidence to find that the Applicant would personally face more than a possibility of persecution because of an imputed political opinion.

[11] The RPD said the same lack of evidence led to the conclusion that the Applicant had not established that she would face a personal risk to her life, or cruel or unusual treatment or punishment if she returned to Ethiopia.

#### IV. ISSUES

[12] The Applicant raises the following issue in this proceeding:

1. Did the RPD err in rejecting the Applicant's refugee claim based on a finding that she failed to produce corroborating documents, in light of the Board's finding that the Applicant's *viva voce* evidence was credible and trustworthy?

V. STANDARD OF REVIEW

[13] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[14] The parties submit, and the Court agrees, that the standard of review applicable to this proceeding is reasonableness. This Court's jurisprudence has established that the RPD's treatment of evidence is within the Board's experience and is deserving of deference: see *Alhayek v Canada (Citizenship and Immigration)*, 2012 FC 1126 at para 49; *Mercado v Canada (Citizenship and Immigration)*, 2010 FC 289 at para 22.

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible,

acceptable outcomes which are defensible in respect of the facts and law”: see *Dunsmuir*, above, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## VI. STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in this proceeding:

### **Convention refugee**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### **Définition de « réfugié »**

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Person in need of protection**

**Personne à protéger**

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**Person in need of protection**

**Personne à protéger**

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. ARGUMENT

A. *Applicant*

[17] The Applicant argues that the Board erred by rejecting her claim solely on the basis that she failed to produce corroborating evidence. This Court has established that when credibility is not an issue, the RPD cannot draw a negative inference solely on a claimant's failure to produce extrinsic corroborating documents: *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10; *Henriquez Pinedo v Canada (Citizenship and Immigration)*, 2009 FC 1118 at para 13.

[18] The Applicant says it is clear that the Board accepted her testimony as credible and trustworthy. As a result, the Board could not reject her claim solely due to a lack of corroborative evidence.

B. *Respondent*

[19] The Respondent does not dispute that the RPD found the Applicant to be a credible witness. However, the Respondent says that the Board did not reject the claim on a credibility



finding; rather, the claim was rejected due to insufficient evidence. The Respondent says the distinction between a credibility finding has been discussed and applied by this Court when reviewing both Pre-Removal Risk Assessment [PRRA] decisions (see *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 23-26, 34 [*Ferguson*]; *Manickavasagar v Canada (Citizenship and Immigration)*, 2012 FC 429 at paras 29-30 [*Manickavasagar*]) and RPD decisions (see *Tamas v Canada (Citizenship and Immigration)*, 2012 FC 1361 at paras 54, 59).

[20] The Respondent says that the Board thoroughly assessed the Applicant's allegations and the documentary evidence to find that, despite accepting the credibility of the Applicant's evidence, it was insufficient to establish her claim.

[21] The Respondent also responds to the Applicant's "defensive stance" in the affidavit that she filed in support of this judicial review. The Respondent says that by claiming she did not realize that she was required to produce documentation to support her claim, the Applicant "attempts to improperly shift her burden of proof in establishing the nexus in 'clear and unmistakable terms' onto the decision-maker" (Respondent's Memorandum of Argument at 9). An applicant is responsible for obtaining the necessary evidence to support her claim: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 11 (CA).

[22] The Respondent also says that the Applicant was not entitled to preferential treatment and to expect a favourable outcome as a self-represented litigant: *Luanje v Canada (Citizenship and Immigration)*, 2013 FC 792 at paras 14-15.

C. *Applicant's Reply*

[23] The Applicant says that *Ferguson*, above, can be distinguished from her claim. In *Ferguson*, the applicant submitted a PRRA application based on the risks she would face due to her sexual orientation. However, the applicant provided no evidence regarding her sexual orientation. The PRRA officer accepted that the independent country documentation showed that lesbians were persecuted for their sexual orientation but found there was no evidence that the applicant was a lesbian. The Applicant says this is clearly distinguishable from her claim in which the Board accepted both her credible and trustworthy *viva voce* evidence and the Board's independent country condition evidence.

[24] The Applicant also distinguishes *Manickavasagar*, above. A PRRA decision is decided solely on the basis of documentary submissions. It would be reasonable for an officer to deny a claim on the basis of a lack of corroborating documentary submissions when the entire decision is based on documentary submissions. However, in a hearing before the RPD, the Applicant's testimony provides the evidence to establish a claim.

VIII. ANALYSIS

[25] The Applicant raises one issue in this application:

1. Did the RPD Member err in rejecting the Applicant's refugee claim based on a finding that she failed to produce corroborating documents, in light of the fact that the Member found that the Applicant's *viva voce* evidence was credible and trustworthy?

[26] The simple answer to this question is that the RPD did not reject the Applicant's claim because she failed to produce corroborating documents. Read as a whole, the Decision reveals that the RPD reviewed the subjective and objective evidence thoroughly and concluded that the Applicant's fear of s. 96 persecution or s.97 harm was speculative. The Board looked beyond the speculation and concluded that neither the Applicant's own evidence nor the country documentary evidence suggested a profile that would place her at risk.

[27] The Applicant's testimony was believed, but this does not mean that the conclusions drawn by the Applicant from that testimony had to be accepted by the RPD. The Applicant has to establish more than her own subjective fear to qualify for protection.

[28] There is nothing in the Decision to suggest that, as the Applicant asserts, "the RPD rejected the Applicant's claim solely on a finding that she failed to produce corroborative evidence" (Applicant's Record at 452). The RPD mentions a lack of documentation regarding the attendance of the authorities at her home in Ethiopia, but the real basis of the Decision on the Applicant's personal evidence is as follows (Certified Tribunal Record [CTR] at 71):

I find that although the authorities may have attended your parents' home, I give this testimony low weight because while I acknowledge you may genuinely believe this, it is unlikely that the authorities would seek you out because of a single attendance at a G7 meeting in Calgary and although you are credible, I find there is not sufficient evidence before me to find, as a fact, that the authorities are interested in you as the authorities did not issue a summons or any other evidence indicating their interest in you.

When I asked you whether any of your family members had experienced any harm because of your political opposition or perceived political opposition, you testified that none of your family members had been harmed by the government.

[29] The RPD does not make an adverse inference finding on credibility from a lack of corroborative documents. The RPD accepts what the Applicant says but finds that her subjective fears and the personal evidence she offered were not enough to establish risk, and the country documentary evidence supported that she did not have the profile of someone at risk in Ethiopia.

[30] The RPD explains what it means about giving low weight to the Applicant's testimony regarding what her brother told her (CTR at 41):

Really all I have is hearsay before me right now. All I have it [*sic*] you telling me sort o [*sic*] what your brother told you and what your brother told you is essentially that they came and the first time they didn't give any reason and the second time it was related to you and he told you -- he said, "Don't be part of this" and you said, "I'm not part of this Ginbot 7." And that's what I have before me. So that still doesn't give me enough to say that the authorities are specifically looking for you such that if you went back there's a serious possibility that they would arrest you.

[31] The Applicant's own connecting evidence was considered and weighed together with all of the other evidence before the RPD. The Court cannot interfere with this kind of weighing exercise: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA); *Petrova v Canada (Minister of Citizenship and Immigration)*, 2004 FC 506 at paras 54-55.

[32] While the Applicant's subjective fears are understandable, she was simply unable to support them sufficiently with objective evidence. I can find no reviewable error in the Decision.

[33] Counsel agree that there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

"James Russell"

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Judge

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

**DOCKET:** IMM-5643-13

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