

Federal Court



Cour fédérale

Date: 20160704

Docket: IMM-5474-15

Citation: 2016 FC 747

Toronto, Ontario, July 4, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AMLESAT HADESH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, determining that the Applicant is not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a person in need of protection pursuant to section 97 of IRPA. The RPD also found that the Applicant's claim does not have a credible basis.

[2] For the reasons that follow, this application is allowed.

I. Background

[3] The Applicant, Amlesat Hades, claims to be a national of Eritrea, and alleges fear of persecution there on the basis that she evaded military service. She left Eritrea and went to Sudan in July 2009 and then to Israel in April 2010, residing in Israel for approximately 5 years before arriving in Canada on July 14, 2015.

II. Impugned Decision

[4] The RPD found that the determinative issues in the Applicant's claim were identity and credibility as it relates to identity. It rejected her claim on the basis that she was not a credible witness and had not met the burden to establish her identity on a balance of probabilities as required by Section 106 of IRPA and Rule 11 of the RPD Rules.

[5] The Applicant did not have any identity documents from Eritrea. She therefore presented other supporting documents to establish her identity including Israeli resident documents, a baptism certificate, and letters and national identity cards [NICs] from family members. She also called as a witness a former resident of Eritrea, now a Canadian citizen, who testified to knowing her and her family in Eritrea prior to 1997.

[6] The RPD found that inconsistencies in the Israeli documents undermined the Applicant's credibility as to her identity. This included reversal of her first name and surname from one

document to another, different spellings of her name, and the fact that her Israeli temporary permits cards gave a different surname (Beyane) which did not appear in any other Israeli document or her Basis of Claim [BOC] form. The RPD also gave the Israeli documents no weight, because the Applicant testified that she did not present any identity documents to Israeli authorities when she entered Israel, and there was no evidence as to how Israel determined her identity.

[7] The RPD also afforded no evidentiary weight to the Applicant's baptism certificate, as it gave only her first name and no surname, and used a spelling of her first name and her mother's first name different than the Applicant had used in her BOC. There were also no security features on the certificate or accompanying photo to establish that it was properly issued and was issued to the Applicant.

[8] The Applicant's evidence included a letter from Mr. Hadish Beyene, who claimed to be her father, attaching copies of NICs for him and the Applicant's mother. The NICs have different years of birth for the parents than the Applicant had identified in her BOC. When questioned on this, she testified that she did not know the exact dates of birth for her parents and simply guessed. The RPD rejected this explanation, as she had the assistance of counsel in completing her BOC, which gives instruction to give a person's approximate age if the date of birth is not known.

[9] With respect to the witness who testified before the RPD, it remarked that his knowledge of the Applicant and her family was very basic and limited and that he had had no contact with

her since 1997. While the RPD accepted that the witness personally knew the Applicant in Eritrea at some point in time before 1997, it found his evidence did not establish her identity or her current national identity as a citizen of Eritrea and no other country.

[10] In rejecting the Applicant's claim on the basis that she had not established her identity on a balance of probabilities, the RPD also determined that, given her lack of credibility and the lack of independent credible evidence linking her to potential persecution or risk of harm, there was no credible basis for her claim.

III. Issue and Standard of Review

[11] The Applicant submits that the RPD erred in concluding both that her evidence was not credible and that there was no credible basis for her claim. The parties agree, and I concur, that the decision is to be reviewed on a standard of reasonableness.

IV. Analysis

[12] The Respondent argues that the RPD is experienced in reviewing identity documents and that its assessment of such documents should be given significant deference. I agree with this submission. Nevertheless, I do not find the RPD's decision to be a reasonable one. As argued by the Applicant, the RPD failed to consider evidence contained in its National Documentation Package [NDP] on Eritrea that might have alleviated some of the principal concerns that resulted in it giving no weight to key documentary evidence offered to establish the Applicant's identity. While the RPD must be afforded deference because of its expertise, this expertise

extends to assessment of the country condition documentation. As explained below, there is information in the NDP which arguably assists in explaining some of the main inconsistencies in the Applicant's identity documents identified by the RPD, which information does not appear to have been taken into account by the RPD in reaching its decision.

[13] The NDP includes a Country of Origin Information Report related to Eritrea issued by the European Asylum Support Office (EASO) in May 2015, which explains that Eritrean names do not have surnames in a European sense. Rather, the first name is followed by a person's father's first name and his or her grandfather's first name.

[14] The NDP also includes a Response to Information Request from December 2014, related to Eritrean birth certificates, which refers to information provided by a United States embassy official that there is no standard transliteration of Tigrinya (the language spoken in Eritrea), as a result of which name changes and different spellings are seen on Eritrean birth certificates. While the embassy official's particular comments relate to the spelling of the name of the central region "Zoba Maekel" or "Zoba Maakel", the point about transliteration and non-standardization of spellings appears to be one of more general application. The Applicant argues that the lack of a standard transliteration from the Tigrinya alphabet to the Latin alphabet results in there being different spellings of Eritrean names.

[15] These two points (the Eritrean naming system and the lack of a standard transliteration) could serve to explain some of the main inconsistencies identified by the RPD in what are

arguably the most significant identity documents, the Israeli documents and the baptism certificate. These inconsistencies are as follows:

- A. While the Applicant's Israeli prison medical record states her name as "Amleset Hadesh" (consistent with her BOC), her Israeli temporary permit cards and Israeli Population and Migration Authority decision record a different spelling of her first name (Amlest) and a different surname (Beyane);
- B. The baptism certificate records no surname;
- C. The baptism certificate records the first name as "Amlesat", while it is recorded in the Applicant's BOC with a different spelling "Amleset";
- D. The Applicant's mother's name is recorded in the baptism certificate as "Letankel Gebre", while her BOC records her name as "Letmichael Gebre".

[16] The inconsistent spellings identified by the RPD could be a function of non-standard transliteration. The inconsistent surnames (Hadesh and Beyane) could be a function of the Eritrean naming system not employing surnames in the European sense but relying on multiple names in the paternal line. In that respect, it is relevant, but was not noted by the RPD, that the baptism certificate records the Applicant's father's name as "Hadesh Beyene" which, except for the varied spelling of "Beyene", contains the two surnames, one of which appeared in each of her Israeli prison medical record, temporary permit cards and Israeli Population and Migration Authority decision. This is consistent with the evidence from the NDP as to how Eritrean

surnames are derived. That information about the Eritrean naming system also assists in understanding why the baptism certificate identifies the Applicant's father's name rather than expressly referring to a surname.

[17] I am conscious that the RPD is not required to refer to every piece of evidence it has considered. However, the more important the evidence that is not mentioned and analyzed, the more willing a court may be to infer that a finding was made without regard to that evidence (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at paras 16-17). My conclusion is that the failure either to refer to the information available from the NDP as described above, or to conduct an analysis of the identity documentation with an evident understanding of the information surrounding the Eritrean naming system and transliteration from the Tigrigna script, renders the decision unreasonable.

[18] I appreciate that the RPD's decision contains other reasons for giving no weight to the Applicant's identity documents, including the reversal of the Applicant's first name and surname on the prison identity documents. It also found that there was no evidence that the Applicant's name and personal information as recorded in the Israeli documents by Israeli authorities originated from reliable sources, and that she did not have any knowledge of what information would have been presented in order to obtain the baptism certificate. However, the RPD's decision was sufficiently influenced by the concerns about the variety of spellings and surnames that the Court cannot know whether it would have discounted the Israeli documents and the baptism certificate to the extent it did, and therefore would have reached the same decision with respect to her credibility, had it not made the errors identified above.

[19] Having concluded that this application for judicial review must be allowed based on errors in the RPD's credibility analysis, and as the no credible basis finding followed from the adverse credibility determinations, that finding must also be revisited.

[20] The parties did not propose any question of general importance for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to another member of the Refugee Protection Division for re-determination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5474-15

STYLE OF CAUSE: AMLESAT HADESH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 7, 2016

JUDGMENT AND REASONS: SOUTHCOTT, J.

DATED: JULY 4, 2016

APPEARANCES:

Paul VanderVennen

FOR THE APPLICANT

Bridget A O'Leary

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Paul VanderVennen
Barrister & Solicitor
VanderVennen Lehrer
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT