

Federal Court



Cour fédérale

Date: 20161027

Docket: IMM-1805-16

Citation: 2016 FC 1197

Toronto, Ontario, October 27, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MEKEDES MELAKU HARAMICHEAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

I. Nature of the Matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision rendered by a Member of the Refugee Appeal Division of the Immigration and Refugee Board [RAD], where it confirmed that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

II. Facts

[1] The applicant is a citizen of Ethiopia. She is of Amhara origin and a member of the Ethiopian Orthodox Church. She alleges that she is a political activist and that she has a long-standing history of being involved in activities opposing the ruling party in Ethiopia.

[2] In November 2014, she came to Canada to visit one of her daughters. During her visit, she discussed the state of Ethiopian politics with family members and friends. Following these discussions, they allegedly decided that they would support the families of political prisoners with money and support letters that the applicant would bring to them upon her return to Ethiopia.

[3] At the airport in Addis Ababa, her luggage was searched and the money and letters found by the authorities. The applicant was allegedly detained for five days and released on bail. She was put under constant surveillance and asked to report to the authorities several times. She was also threatened with prosecution under the anti-terror laws if she did not join the ruling party within two months.

[4] Her husband and she decided that she should return to Canada, where she landed on August 10, 2015. She made a refugee claim on September 24, 2015, which was rejected on December 1, 2015.

III. Decision

[5] The RAD concluded that the determinative issue was the credibility of the applicant's allegations. It found that based on the detailed history of alleged harassment from the authorities in Ethiopia contained in her narrative, it was not credible that she had taken the risk to bring money and support letters in her luggage back to her home country. The RAD noted that she had indicated in her refugee claim forms that she was not a member of any organization and found that the omission of her support for the Unity for Democracy and Justice Party [UDJ] was significant in light of her narrative.

[6] The RAD gave little weight to the psychological report submitted as new evidence. While it acknowledged that the report explained some deficiencies in the applicant's testimony before the Refugee Protection Division [RPD], it noted that if the underlying facts of a medical report are disbelieved, the report may be disregarded and that psychological reports are not cure-alls for lapses in credibility. It found that the report could not explain the significant omission of the applicant's support of UDJ from her forms.

[7] The RAD further concluded that the applicant's return to Ethiopia in spite of a long history of abuses endured by the applicant and her family undermined her credibility. It acknowledged that the RPD had made an error in stating her ethnicity, but nonetheless found that she had provided insufficient evidence that she would be persecuted in Ethiopia based on her Amhara ethnicity and her membership in the Orthodox Church. It found that the organizations she had joined in Canada, both political and spiritual, had been joined for the purpose of bolstering her claim.

IV. Issues

1. What is the applicable standard of review?
2. Did the RAD commit a reviewable error in finding that the applicant was not a Convention refugee or a person in need of protection?

V. Submissions of the Parties

A. *The Applicant*

[8] The applicant submits that the RAD's assessment of her credibility lacks proper foundation in the evidence. She submits that she did not omit to mention her membership in UDJ in her form, because she was not a member of the organization but only a supporter. The question on the form gave contradicting instructions as to whether support or actual membership was the threshold for an organization to be mentioned. Nevertheless it is a minor inconsistency in light of her testimony and the remainder of the record.

[9] The psychological report was tendered as evidence of the applicant's poor health at the time of the RPD hearing, and not as evidence of her allegations. Furthermore, the RAD's conclusion on reavailment ignores that the applicant's airport detention upon her return to Ethiopia is the event which triggered the refugee claim.

[10] The applicant argues that the RAD did not consider the apparent inconsistencies in her testimony in light of the totality of evidence and ignored evidence of her detention which contradicts its conclusions.

B. The Respondent

[11] The respondent submits that it was open to the RAD to note the omission in the applicant's form that she had supported the UDJ party. Moreover, the RAD had other credibility concerns in addition to the omission. The applicant's testimony was hesitant and her course of action in returning to Ethiopia was not plausible in light of the history of harassment she alleged. The psychological report could not explain the deficiencies in the applicant's evidence.

[12] The respondent further argues that the Court has held that reavilment typically suggests an absence of risk or a lack of subjective fear of persecution (*Ortiz Garcia v Canada (Citizenship and Immigration)*, 2011 FC 1346 at para 8).

VI. Analysis

1. What is the applicable standard of review?

[13] Questions of credibility and weight of the evidence are factual in nature. As such, the RAD is afforded considerable deference on these issues (*Ortega Ayala v Canada (Citizenship and Immigration)*, 2011 FC 611 at para 14). The Court will not intervene if the decision is justified, transparent and intelligible and falls within the range of acceptable, possible outcomes in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47).

2. *Did the RAD commit a reviewable error in finding that the applicant was not a Convention refugee or a person in need of protection?*

[14] The principles governing the assessment of an applicant's credibility in the refugee context are well-established within this Court. The RAD is entitled to make findings of credibility based on implausibility, common sense and rationality (*Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116). Adverse credibility findings should however not be based on a microscopic evaluation of issues peripheral or irrelevant to the case (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444).

[15] As to the RAD's assessment of the evidence, it is also well-established that, the "more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence"" (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[16] While it does not have to mention or analyze all the evidence, it is reasonable to expect the RAD to examine the one piece of evidence corroborating the applicant's story. The record contains a receipt for bail to the amount of 2000 birrs, issued on January 13, 2015, a date which would be consistent with her return to Ethiopia. I am concerned that both the RPD and the RAD are silent on corroborative evidence of her detention. While on its own, and in light of the other credibility issues, this document may not be sufficient to overcome the credibility findings, it nevertheless should have been examined. As I stated in *Teklewariat v. Canada (Citizenship and Immigration)*, 2016 FC 1026 the absence of any mention of a key piece of evidence is

suspicious. The Court cannot speculate on whether or not this evidence would have influenced the RAD's credibility findings.

[17] For this reason alone, the judicial review is granted and the matter is remitted back for redetermination by a different member.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted and the matter is remitted back for redetermination by a different member.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1805-16

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