

Federal Court



Cour fédérale

**Date: 20161216**

**Docket: IMM-4589-15**

**Citation: 2016 FC 1387**

**Ottawa, Ontario, December 16, 2016**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**RAHEL YARED BELAY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant, a citizen of Ethiopia, seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated September 23, 2015. The RPD heard the matter over two days, on July 29, 2015, and September 9, 2015, via video conference in Vancouver and Calgary. In the decision, dated September 15, 2015 [Decision], the RPD found the Applicant is not a Convention refugee as she does not have a well-founded fear of persecution in Ethiopia on a Convention ground. The RPD also found the Applicant is not a

person in need of protection pursuant to subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In addition, the panel found both that the claim was manifestly unfounded under section 170.1 of the *IRPA* and that it had no credible basis. As a result, no appeal to the Refugee Appeal Division was available to the Applicant.

[2] Prior to the hearing, the Minister intervened on the basis of serious concerns regarding the Applicant's credibility and the well-foundedness of her claim. Counsel for the Minister took part in the hearing, as did the immigration consultant who was advising the Applicant.

[3] The hearing before the RPD proceeded by videoconference between Calgary and Vancouver. The RPD panel member was located in Vancouver while the Applicant and both counsel were present in Calgary. An interpreter was linked in by telephone to both Vancouver and Calgary.

[4] The Applicant alleges there were two instances of procedural unfairness during the hearing. One is that the interpretation of the first day of the hearing was not adequate. The other is that on the second day of the hearing, the RPD denied a request by the Applicant's counsel that the matter proceed *de novo* because of the prior interpretation problems. Counsel for the Applicant also alleges that it was unfair for the RPD not to accept and consider written submissions tendered by the consultant two days after the conclusion of the hearing. Finally, the Applicant alleges that the Decision is unreasonable.

[5] For the reasons that follow, it is my view that there was no procedural unfairness in this matter and the Decision is reasonable. The application is therefore dismissed.

[6] For ease of reference, sections of legislation referred to are attached as Annex A.

II. **BACKGROUND FACTS**

[7] The Applicant alleges persecution by her former boyfriend, who she says holds a position of power and influence in the Ethiopian government.

[8] After graduating from St. Mary's University College with a one year law school diploma in 2007, the Applicant moved to Dubai. She worked in Dubai for Juice Junky for three years and then for another company as a sales associate for three years. In May 2014, the Applicant returned to Ethiopia, as her father's health was deteriorating. At that time, she ended a romantic relationship with a man who she says has a position of power and influence in the Security and Intelligence arm of the government in Addis Ababa. As a result, he had her arrested on May 6, 2014, and taken to Maikelawi prison where she spent four days. While at the prison, she was beaten and subjected to sexual advances. At the second day of the hearing before the RPD, she said she was raped while in prison although this information was not in her Basis of Claim form [BOC]. The Applicant says she was also accused of raising money for the opposition party and militia who fought the government. She alleges that in order to be released she was forced to sign a document admitting participation in these activities.

[9] On release from prison, the Applicant admitted herself to a hospital on May 10, 2014, where she stayed overnight for observation. She submitted a medical certificate dated May 11, 2014, to the RPD which indicated that she was suffering from severe dehydration, generalized body weakness and severe abdominal cramps. On May 12, 2014, a bribe was paid on her behalf at the airport and she left Ethiopia using her own passport returning to Dubai.

[10] The Applicant first came to Canada July 21, 2014, on a work visa which was valid until August 14, 2015. When some time later she spoke with her father he told her security agents and

police officers were harassing him and her siblings. He also told her that her brother and sister had become outspoken political activists. Each of them had been arrested and released. Her brother, she alleges, would be imprisoned for a period of time and released then re-imprisoned several times. Prior to the RPD hearing the Applicant submitted arrest warrants for her that were dated May 12, 2014, and May 18, 2015, as well as an order to appear before the police dated May 5, 2014. All these documents were from the Addis Ababa City Government Police Commission.

[11] In January 2015, the Applicant travelled through Europe, Netherlands, and Italy then returned to Canada on January 18, 2015. She renewed her Ethiopian passport in February 2015, and completed a BOC form on May 26, 2015. She then proceeded to make her refugee claim on June 1, 2015, almost a year after her arrival in Canada. She claimed fear of her former boyfriend and members of the ruling party. She alleges physical abuse of women is often justified as punishment for women who do not listen or submit themselves to their husbands. The Applicant says if she returns to Ethiopia she will be imprisoned, jailed and subjected to beatings, torture and suffering because of her former boyfriend's position with the government.

### III. **DECISION UNDER REVIEW**

[12] The RPD found the determinative issue to be credibility. Recognizing that there was a presumption that the Applicant's testimony was true unless there was reason to doubt its veracity, the RPD identified the following significant credibility concerns:

- i. her testimony about conditions in the prison was inconsistent with the documentary evidence about the prison, specifically the location of the toilets and the access to fresh air;
- ii. she provided no evidence of the alleged link to the Ethiopian government by her former boyfriend, despite a

written request from the RPD approximately eight weeks before the hearing; she also failed to provide evidence of any efforts she made to provide evidence;

- iii. she did not testify in a straightforward or flowing manner, nor directly answer various questions put to her;
- iv. she failed to satisfactorily explain how she was able to renew her Ethiopian passport while there was an active arrest warrant in her name;
- v. she failed to mention in her BOC the warrant for her arrest issued May 5, 2014;
- vi. her explanation as to why she waited more than one year to make a claim for refugee protection was inconsistent with her statements on her fear of persecution and the statement in her BOC that she was afraid when she left Ethiopia and paid a bribe at the airport;
- vii. the summons in her disclosure of claim-specific documents, which was received late, had a reporting date that did not match her BOC narrative;
- viii. she raised for the first time at the second day of hearing that she had been raped while held in prison and when asked why she did not mention it the first day or in her BOC, she gave an answer that was insufficient, which was that she did not want to disclose it to her counsel as he was a man but she did not request a female panel nor did she amend her BOC between the first and second dates of the hearing; and
- ix. although she did not put gender forward as a basis for her claim after questioning by her counsel for the second time she made statements that women were not seen as human in Ethiopia; it was not included in her BOC nor did she raise it when she was first asked about conditions in Ethiopia or during the first day of hearing.

[13] After considering the foregoing, the RPD found the claimant was not a credible witness.

The corroborative documents she provided (the notice to appear, two summonses and a medical certificate) presented their own credibility concerns about the allegations of her well-founded fear of persecution in Ethiopia: one summons had a date inconsistent with her BOC and the

arrest warrant was never mentioned in her BOC. Moreover, the Applicant was unable to satisfactorily explain why the documents were important enough for her father to hold onto for a year but not inform the Applicant of their existence over that time. The supporting documents were given no weight. The panel determined the Applicant would not face a serious possibility of persecution, including the risk of torture, should she be returned to Ethiopia.

[14] The RPD found that the inconsistencies in the Applicant's story did not solely go to the lack of a subjective fear of persecution, but impugned her credibility to such an extent that the panel disbelieved the truth of her story. As such, the panel also found she had not established on a balance of probabilities that she faces a risk to her life or risk of cruel and unusual treatment or punishment under section 97 of the *IRPA* if she was returned to Ethiopia.

[15] Because of the serious and extensive credibility concerns, the RPD appears to have found both that the claim is manifestly unfounded pursuant to subsection 107.1 of the *IRPA* and that there is no credible basis for the claim pursuant to subsection 102(2). While the Notice of Decision issued by the RPD's Registrar and the first paragraph of the reasons state only that the claim is manifestly unfounded, the last paragraph of the reasons state that the claim is manifestly unfounded and that there is no credible basis for the claim. The RPD also applies the tests for both findings, stating that there was no trustworthy or credible evidence on which the RPD could have made a favourable decision and that the claim is clearly fraudulent.

[16] To make a finding that a claim has no credible basis or is manifestly unfounded, the *IRPA* only requires that the finding be stated in the RPD's reasons. It is not required that the finding be repeated in the RPD's Notice of Decision. Moreover, the language in sections 107(2) and 107.1 of the *IRPA* are mandatory: if the RPD finds no credible or trustworthy evidence on which it

could have made a favourable decision, it shall state that there is no credible basis to the claim. And if the RPD is of the opinion that a claim is clearly fraudulent then it must state that the claim is manifestly unfounded. It therefore stands to reason that if the RPD is of the opinion that there is no trustworthy or credible evidence on which it could have made a favourable opinion and that the claim is clearly fraudulent, then it must state both that the claim has no credible basis and that it is manifestly unfounded. That is what the RPD appears to have done in this case.

#### IV. **ISSUES AND STANDARD OF REVIEW**

##### A. *Issues*

[17] The Respondent raises as a preliminary matter that certain paragraphs in the Applicant's affidavit as well as three paragraphs in her consultant's affidavit including an attached exhibit containing his post hearing submissions be struck or given no weight as being either hearsay evidence or evidence that was not before the panel at the time of the hearing.

[18] On the merits of the application, the Applicant has identified two issues of procedural unfairness:

- (1) the refusal to order a *de novo* hearing on the second day because of translation issues on the first day;
- (2) the refusal to accept post hearing submissions from counsel for the Applicant.

[19] In addition, the Applicant seeks to overturn the credibility findings made by the panel as being unreasonable and in particular, the conclusion that the claim was manifestly unfounded.

##### B. *Standard of Review*

[20] The ground for requesting a *de novo* hearing appears to have been that the translation which occurred on the first day of the hearing was inadequate. Whether the interpretation at the

hearing was adequate is a question of procedural fairness the standard of review for which is correctness: *Goltsberg v Canada (Citizenship and Immigration)*, 2010 FC 886 at paragraph 16.

[21] The standard of review for issues of credibility, which are fact-driven, is reasonableness. Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 47 and 51.

[22] Credibility assessments are fact driven and made on a case-by-case basis from the evidence before the decision maker. The RPD is best positioned to assess the evidence, gauge the credibility of an account and draw the necessary inferences. As long as the inferences drawn by the RPD are not so unreasonable as to warrant intervention by the Court, its findings are not open to judicial review: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 at 316 (FCA). Since the Applicant testified at the hearing, the RPD had the advantage of hearing her. The Court should therefore not interfere with the RPD's assessment of her credibility, unless satisfied that the RPD based its conclusions on irrelevant considerations or ignored important evidence: *Thach v Canada (Citizenship and Immigration)*, 2008 FC 658 at paragraph 19 [*Thach*].

## V. ANALYSIS

### A. *Should Parts of the Affidavits be Struck or Given no Weight?*

[23] Both the Applicant and the consultant who represented her before the RPD submitted affidavits as part of this application. Counsel for the Respondent objects to various paragraphs in each affidavit on the basis of one or more of them being argumentative, hearsay or not before the original decision-maker. In particular, the Respondent challenges the post-hearing submissions



put forward to the RPD by the Applicant on the basis that they were not accepted and were therefore not before the original decision-maker.

[24] With respect to the disputed paragraphs in the Applicant's affidavit, being numbers 22-24, they speak either to the Applicant's assessment of what the panel member was thinking or profess to state the Applicant's state of mind during the first day of hearing. As such, they are not admissible and will not be considered.

[25] The impugned paragraphs of the consultant's affidavit, being those numbered 5, 14 and 15 are similarly problematic. Part of paragraph 5 purports to state what the member was thinking and as such is inadmissible and will not be considered. Another part of paragraph 5 states how many objections the consultant made to the interpretation. As any objections are on the record in the transcript I will not strike that portion. However, my review of the transcript does not accord with the statement by the consultant that he objected 15-17 times to the interpretation. By my count, although the consultant interrupted many times for various reasons, he objected either 4 or 5 times to the translation. As such, the statement in the consultant's affidavit is given no weight.

[26] Paragraphs 14 and 15 of the consultant's affidavit address the post-hearing submissions which are attached as Exhibit D to his affidavit. Since the RPD's refusal to accept those submissions forms the basis of one of the Applicant's procedural unfairness arguments I have reviewed them for that purpose. In that limited respect, they will be discussed in the analysis of the procedural fairness complaints raised by the Applicant.

B. *Was it Procedurally Unfair to Refuse to Conduct a De Novo Hearing on Day 2?*

[27] The Applicant alleges the translation conducted by the interpreter on day one of the hearing was inadequate and procedurally unfair to the Applicant.

[28] The jurisprudence regarding the quality of translation to which an applicant is entitled is that it must be continuous, precise, competent, impartial and contemporaneous. No proof of actual prejudice to an Applicant is necessary. Perfect translation is not required as translation is an inherently human endeavour which often takes place in less than ideal circumstances. The goal is linguistic understanding: *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at paragraphs 4 and 6.

[29] As noted previously, the consultant in his affidavit swore he objected 15-17 times to the interpretation. My review of the transcript is to the contrary, as is the review conducted by the Respondent. It would appear the consultant objected to the actual interpretation 4 or 5 times at most. At the resumption of the hearing several weeks later he requested a *de novo* hearing based on the results of an audit of the interpretation conducted by the RPD.

[30] The results of the audit of the interpretation were that:

- i. at two points in time the interpreter added interpretation not provided or said by the claimant;
- ii. the interpreter had very good command of English and excellent fluency with Amharic; and
- iii. there were minor errors in interpretation but they were not serious enough to alter the decision.

[31] In the general comments section of the audit report, the analyst noted that the minor inconsistencies by the interpreter were due to the Applicant's long responses to questions. The

reviewer indicated that from their point of view, the slight inaccuracy or error would not be serious enough to alter the decision.

[32] The two times the interpreter added words not spoken by the Applicant are as follows:

<b>Accurate Interpretation</b>	<b>Interpreter Version</b>
I was at peace/ease and continue to do my work.	I continue to pursue my work and other living.
Since I was working legally.	Yes, I know where I am.

[33] The submissions by the consultant to the RPD were that by the interpreter adding information which was not said, the Applicant's right to be heard was denied. He also submitted there were "numerous inconsistencies" and "numerous errors", which was not fair to the Applicant and could induce an error in the administration of Canada's immigration laws. No specific examples were provided of the errors alleged even though each party received a CD of the hearing in addition to the audit results.

[34] The submissions by the Respondent were simple: the audit said that the interpretation was considered acceptable by the analyst and, given that the minor inconsistencies were due to long responses by the Applicant, the testimony from the first day of hearing was accurate and admissible.

[35] In denying the request for a *de novo* hearing, the RPD ruled that the feedback provided by the Applicant was at odds with the audit results. The RPD found that any issues which were revealed by the audit were not serious enough to impact the Applicant's right to a fair hearing and the consultant provided no specific basis for the comments he made in response to the audit or to support his request for a *de novo* hearing. The RPD had noted at the hearing that the interpreter had an excellent record as an interpreter in the Western Region and was highly rated.

The analyst's conclusion in the audit would seem to back up that comment. The two misinterpretations found in the audit are not serious enough to frustrate linguistic understanding.

[36] As part of this application, the Applicant stated that the RPD had "serious problems with the interpretation" and attempted to replace the interpreter. A review of the transcripts shows the member stated toward the end of the first day that she would switch interpreters because "the atmosphere in the hearing has just become too adversarial and contentious for the hearing to proceed as is." She specifically stated that "it is no comment on the interpretation level provided by [the interpreter]." While a second interpreter was located and joined the hearing by telephone, the Applicant had to leave for work so the hearing adjourned without using the new interpreter.

[37] I have reviewed the entire transcript for both days of hearing. Clearly the first day of the hearing was difficult for several reasons. There were some relatively minor interpretation difficulties, which were corrected at the time either by the Applicant herself or by the consultant who spoke fluent Amharic. For example when the Applicant left the prison and went to the hospital it was originally interpreted as she was "sent to" the hospital but, her English was good enough that she appears to have corrected the interpreter as he next said "Okay, I stand corrected. What she's saying is "I think you misinterpreted my -- nobody sent me. It's myself who went to that hospital.'" Approximately eight pages later in the transcript the consultant objects about "lots of inconsistency" in translation. When asked for an example, he only mentions that the Applicant took herself to the hospital and was not sent there. As that had already been instantaneously corrected by the Applicant and the interpreter, in my view it no way impacted the linguistic understanding by the Applicant. In fact, it supports that her English was adequate to understand that particular error. At another point, the consultant complains about an alleged

misinterpretation over why the Applicant did not “surrender” her passport. The actual question had been why she didn’t “give up” her passport. The interpreter pointed out that was what he translated, word for word. The consultant apparently misheard the question.

[38] During the first day of hearing, there are also several admonishments by the panel to the Applicant directing her to break her answers into smaller segments. There were a number of complaints by the interpreter that the Applicant was either not answering the question that was asked or was making her answer too long to translate. On those occasions, the interpreter raised the issue with the RPD so that the question and answer could be repeated and translated. At another time during the hearing the Applicant continued to speak over the interpreter with the result that the panel had to ask her to let the interpreter finish otherwise they could not hear either the applicant or the interpreter.

[39] I note as well that the Applicant in her application for a work permit said she spoke fluent English. Certainly in the hearing, the consultant on several occasions asked the Applicant to explain herself in English. The RPD also noted in the hearing that the issue raised by the Applicant was that although the interpreter spoke Amharic it was a different dialect than the Applicant who spoke what she and her consultant referred to as “deep Amharic”. But, on the BOC the Applicant did not note that she spoke a particular dialect. She indicated her dialect was Amharic.

[40] On the basis of the transcript and the audit results, and for the reasons given above, I can find no error by the RPD in concluding that a *de novo* hearing was not required and in finding that the interpretation was not procedurally unfair to the Applicant. There was no interpretation

issue raised with respect to the second day of the hearing at which time a different interpreter was present.

C. *Refusal to Accept Post-Hearing Submissions*

[41] Counsel for the Applicant takes issue with refusal of the RPD to accept post-hearing submissions that were delivered by the consultant two days after the conclusion of the hearing. He says that although no formal application was made under rule 43 of the *Refugee Protection Rules*, SOR/2012-256 [*RPD Rules*] to be permitted to file the submissions, all the elements required by the rule exist. He submits that the probative value and relevance of the submission is evident. The submissions were filed after lengthy submissions by the Respondent and huge volumes of disclosure. He also alleges the panel could have applied rule 70 to extend the time limit to allow the submissions.

[42] There is no merit to the Applicant's argument that it was procedurally unfair to permit the post-hearing submissions. There are several reasons for rejecting the arguments. Rule 43 does not apply. It sets out a procedure for filing evidence after a hearing, not submissions. While rule 70 permits the RPD to extend time for filing documents, the submissions were not in fact late as the consultant had already filed written submissions following the first day of hearing and made further oral submissions at the conclusion of the hearing. The stated purpose for the post-hearing submissions was to reply to the Respondent's submissions. The consultant had already provided his oral reply to the Respondent's oral submissions, which were made at the conclusion of the hearing, prior to his. As to written submissions generally, rule 10(7) of the *RPD Rules* provides that representations must be made orally at the end of a hearing unless otherwise ordered. As an

aside, I note that on reviewing the submissions they are essentially repetitive of the written and oral submissions already made to the panel.

D. *Is the Decision or the Finding of the Claim as Manifestly Unfounded Unreasonable?*

[43] The Applicant has three complaints with respect to the reasonableness of the Decision. She alleges the panel engaged in a microscopic dissection of the evidence of her time in prison. She also says that although the panel was presumed to have considered all the evidence it received the panel did not refer to the four important and highly relevant documents that were submitted (and referred to collectively as Exhibit 8), being the police summons, the medical certificate and the two police warrants. She also alleges the RPD did not mention or even consider the Chairperson Guideline 4, Women Refugee Claimants Fearing Gender-Related Persecution [Gender Guidelines] and the way the evidence was treated showed a lack of understanding, sympathy and insight into the danger women face in Ethiopia.

(1) Was there a Microscopic Analysis of the Applicant's Time in Prison?

[44] The Applicant objects to the RPD's finding that her evidence regarding the location of the toilets in the prison and whether she had access to fresh air was contradicted by evidence in the National Documentation Package [NDP]. The Applicant argues this was a microscopic analysis. To the contrary, the questions were clearly posed by the RPD to verify whether the Applicant had been detained at the prison. Her answer at the hearing was that the toilet was in the cell with the women prisoners. The NDP indicated the toilets and showers were located next to the women's cells, not in them. Similarly, the NDP said the women's cells are open during the day so they can get fresh air and there is a small courtyard where detainees are taken for fresh air. The Applicant testified fresh air was only received by way of a small window in the cell.

During the hearing, the contradictions were put to the Applicant who said the toilet was inside the room but partitioned and that while there could be an area for fresh air what she saw was the room where she was imprisoned.

[45] The RPD preferred the evidence in the NDP—which is 76 pages long and deals solely with the conditions at the Maekelawi prison—because it had a variety of sources, a solid research methodology and a lack of interest in the outcome. That is a reasonable conclusion to have drawn. In my view, the important evidence with respect to the physical layout of the prison was not a microscopic examination of evidence; it was critical in determining whether the Applicant could describe the prison facility in which she alleged she was detained.

(2) Was Relevant Evidence Ignored?

[46] The Applicant relies upon *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paragraph 17, in saying that the important evidence, which was submitted as Exhibit 8, was not considered. Therefore the Court may infer that the RPD made an erroneous finding of fact without regard to the evidence.

[47] I admit I am mystified by this argument. The Applicant says the RPD did not refer to the documents, but at paragraphs 14 and 16-20 inclusive, a full two pages of the Decision specifically consider the documents under the heading “Provision of Claimant-Specific Documents”. The panel observes that although the documents were referred to in the BOC as “to be provided”, and even though the RPD specifically requested on June 10, 2015 that they be disclosed, the documents were only filed on July 22, 2015, which was after the deadline for filing documents. The documents are all dated May 2014. At the hearing and as noted in the Decision, the Applicant was questioned about the documents. She failed to provide a satisfactory



answer as to why it took over one year to produce them. The Decision noted that the summons to report was not mentioned in the Applicant's BOC and she failed to answer why one of the documents did not mention her failure to report to authorities on May 12, 2014 after her release from detention. The conclusion drawn by the RPD was that:

Altogether, I find that the documents at exhibit 8 raise various credibility concerns, bearing on the timeline and consistency with BOC allegations, or BOC omissions, and on the probative value of the very documents themselves. I give the documents no weight given the claimants' inability to reasonably account for the credibility issues they raise.

[48] As the foregoing shows, there is no merit whatsoever to the Applicant's allegation that the RPD overlooked important evidence and made only a blanket statement that all the evidence was considered.

(3) Were the Gender Guidelines Ignored by the RPD?

[49] Although the Applicant did not raise the question of the Gender Guidelines either at the hearing or in her written or oral submissions she alleges the RPD did not mention or apply them. The Respondent says that based on the BOC there was no reason to view the Applicant's claim as gender-based. While on the second day of the hearing the Applicant did allege she was raped while in prison the reason she gave for not mentioning it in her BOC or during the first day of the hearing was that she did not want to disclose it to in front of her consultant who was male.

[50] The RPD considered the rape allegation at some length noting that the explanation that she could not disclose the allegation because her consultant was a man was insufficient to make up for not mentioning the rape in her BOC, not having requested a female panel before the hearing and not amending her BOC to reflect the allegation or adding it to her testimony on the first day of the hearing. The RPD observed that in response to questioning by her consultant on

the second day of the hearing the Applicant made a few statements that women were not seen as human in Ethiopia but she failed to provide any substance. The RPD found that the Applicant did not put forward gender as a basis for her claim and she had failed to make out any credible claim based on her gender.

[51] The Gender Guidelines were considered in *Correa Juarez v Canada (Citizenship and Immigration)*, 2010 FC 890, at which time Mr. Justice Kelen reviewed the principles and determined at paragraph 12 that the issue of whether the Gender Guidelines were applied is reviewable on the reasonableness standard. The application of the Gender Guidelines has been considered in a number of cases as a result of which various principles have emerged, the ones most relevant to this matter being:

- i. There does not seem to be a need for an identifiable objective trigger in order to bring the Guidelines into play. Accordingly, one must consider the nature and grounds of the persecution feared by the Applicant to determine whether it is appropriate to consider the Guidelines in the context of the claim: *Higbogun v Canada (Citizenship and Immigration)*, 2010 FC 445 at paragraphs 55-56.
- ii. The Guidelines are an aid for the panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The Guidelines do not create new grounds for finding a person to be a victim of persecution: *Newton v Canada (Minister of Citizenship and Immigration)*, 182 FTR 294 at paragraph 17.
- iii. The Gender Guidelines, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence: *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at paragraph 5.
- iv. The Gender Guidelines cannot be used to compensate for omissions: *Khurram v Canada (Citizenship and Immigration)*, 2015 FC 1358 at paragraph 9.

- v. The Gender Guidelines exist, in part, to ensure that social, cultural, traditional and religious norms do not interfere with the proper assessment of an applicant's credibility: *Diallo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1450 at paragraph 33.
- vi. There is no obligation for the Board to mention the guidelines in its decision as long as the reasons disclose the degree of knowledge, understanding, and sensitivity warranted by the Gender Guidelines: *Allinagogo v Canada (Citizenship and Immigration)*, 2010 FC 545 at paragraph 14.

[52] There were many reasons given by the RPD to find the Applicant not credible. The RPD had issues with contradictions involving the BOC and her testimony, timelines she provided, her evidence about the police station, use of her passport while under an arrest warrant and her documentary evidence. The panel directly assessed the Applicant's rape allegation, finding it not credible for a variety of reasons including her failure to amend her BOC or add it to her testimony at the end of the first day of hearing when she added something else. The RPD found that her allegation that women "are not seen as human in Ethiopia", which may be seen as a gender-based claim, was not put forward by her anywhere else as a basis for claiming a well-founded fear of persecution.

[53] The Gender Guidelines were not raised before the RPD, nor did the Applicant make a gender-based claim prior to her very late mention that she was raped while in prison. Her post-hearing affidavit, filed with this application, does not mention that she was raped in prison; it says she was beaten and accused of raising money for the opposition and militia. The medical certificate that was part of Exhibit 8 has no indication of an assault of any kind having occurred; it says the Applicant was dehydrated and suffered from generalized body weakness. In all the circumstances of this matter, it is my view that the RPD considered the gender basis put forward by the Applicant but ultimately was not satisfied on the evidence that it was a credible claim.

There is no evidence in the hearing transcript or in the Decision on which to find that the RPD failed to appropriately consider and assess the Applicant's claim.

## VI. CONCLUSION

[54] As stated in *Thach*, the Court should not interfere with the assessment of credibility unless satisfied that the Decision was based on irrelevant considerations or that important evidence was ignored. Neither is the case here. Although the Applicant disagrees with the Decision it is thorough and well-reasoned. The findings, including that there was no credible or trustworthy evidence that could support a positive determination of the claim, were supported by the evidence.

[55] At present, there has been very little analysis by this Court as to the threshold for the RPD to reasonably find that a claim is "clearly fraudulent" and therefore manifestly unfounded under section 107.1 of the *IRPA*. It is unnecessary to determine whether the threshold was met in this case, because while finding that the claim was manifestly unfounded, the RPD also found that there was no credible or trustworthy evidence on which it could have made a favourable decision and that the claim had no credible basis. Because a no credible basis finding has the same effect as a finding that a claim is manifestly unfounded, if this determination was reasonable, so is the decision as a whole.

[56] It is clear that the RPD made the necessary findings to support a no credible basis determination. If the only evidence in support of a claim is the claimant's testimony, then a finding that the claimant is not credible is sufficient to find no credible basis in support of the claim: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FCR 238 (CA). However, if there is independent and credible evidence that could support a positive refugee

determination, the RPD cannot make a no credible basis finding even if that evidence is outweighed by a claimant's lack of credibility: *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89.

[57] In this case, the RPD did not merely find that the documentary evidence submitted by the Applicant could not displace her lack of credibility. Rather, it found that the implausibilities and inconsistencies surrounding how that evidence was acquired meant that the documents themselves could not be trusted. The RPD gave no weight to the documents in exhibit 8, making clear that the inconsistencies affected "the probative value of the very documents themselves." The RPD gave no weight to the other documents provided by the Applicant because of her lack of credibility. In essence, the RPD found either that the documents provided by the Applicant were not credible (in the case of the documents in exhibit 8) or not independent of the Applicant (in the case of the other documents). The RPD reasonably found that the Applicant's testimony, as well as each piece of independent evidence, was not credible, and these individual evidentiary findings intelligibly supported its conclusion that the claim had no credible basis.

[58] In conclusion, the RPD's decision-making was procedurally fair and the Decision is reasonable. It falls within a range of possible, acceptable outcomes which are defensible on the facts and law as required by *Dunsmuir*. There is no doubt as to why the RPD came to the conclusions it did. As stated in *Khosa*, the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility.

[59] The application is dismissed. On these facts there is no serious question of general importance for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** application is dismissed. There is no serious question of general importance for certification.

“E. Susan Elliott”

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Judge

**ANNEX “A”****Immigration and Refugee Protection Act  
(S.C. 2001, c. 27)**

## 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.

## Person in need of protection

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

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
  - (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
  - (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,
  - (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in

**Loi sur l'immigration et la protection des  
réfugiés (L.C. 2001, ch. 27)**

## 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.

## Personne à protéger

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) 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) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
  - (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
  - (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) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées

disregard of accepted international standards, and

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

#### Person in need of protection

(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.

#### Manifestly unfounded

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.

#### **Refugee Protection Division Rules (SOR/2012-256)**

##### Oral representations

10 (7) Representations must be made orally at the end of a hearing unless the Division orders otherwise.

##### Documents after hearing

43 (1) A party who wants to provide a document as evidence after a hearing but before a decision takes effect must make an application to the Division.

##### Application

(2) The party must attach a copy of the document to the application that must be made in accordance with rule 50, but the party is not required to give evidence in an affidavit or statutory declaration.

##### Factors

(3) In deciding the application, the Division must consider any relevant factors, including

(a) the document's relevance and probative value;

au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

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

#### Personne à protéger

(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.

#### Demande manifestement infondée

107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.

#### **Règles de la Section de la protection des réfugiés (DORS/2012-256)**

##### Observations faites oralement

10 (7) Les observations se font oralement à la fin d'une audience, à moins d'une décision contraire de la Section.

##### Documents après l'audience

43 (1) La partie qui souhaite transmettre à la Section après l'audience, mais avant qu'une décision prenne effet, un document à admettre en preuve, lui présente une demande à cet effet.

##### Demande

(2) La partie joint une copie du document à la demande, faite conformément à la règle 50, mais elle n'est pas tenue d'y joindre un affidavit ou une déclaration solennelle.

##### Éléments à considérer

(3) Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment :

a) la pertinence et la valeur probante du document;



- (b) any new evidence the document brings to the proceedings; and
- (c) whether the party, with reasonable effort, could have provided the document as required by rule 34.

#### Powers of Division

70 The Division may, after giving the parties notice and an opportunity to object,

- (a) act on its own initiative, without a party having to make an application or request to the Division;
- (b) change a requirement of a rule;
- (c) excuse a person from a requirement of a rule; and
- (d) extend a time limit, before or after the time limit has expired, or shorten it if the time limit has not expired.

- b) toute nouvelle preuve que le document apporte aux procédures;
- c) la possibilité qu'aurait eue la partie, en faisant des efforts raisonnables, de transmettre le document aux termes de la règle 34.

#### Pouvoirs de la Section

70 La Section peut, si elle en avise au préalable les parties et leur donne la possibilité de s'opposer :

- a) agir de sa propre initiative sans qu'une partie ait à lui présenter une demande;
- b) modifier l'exigence d'une règle;
- c) permettre à une personne de ne pas suivre une règle;
- d) proroger un délai avant ou après son expiration ou l'abréger avant son expiration.

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

**DOCKET:** IMM-4589-15

**STYLE OF CAUSE:** RAHEL YARED BELAY v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

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