

Federal Court



Cour fédérale

Date: 20180719

Docket: IMM-5202-17

Citation: 2018 FC 763

Ottawa, Ontario, July 19, 2018

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

ABEBE KASSAYE DAMTE

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEE AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Abebe Kassaye Damte, seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated October 19, 2017.

[2] The Applicant arrived in Canada from Ethiopia in 2016 and applied for refugee status. In April 2017, the Refugee Protection Division (RPD) found that the Applicant's testimony in

support of his claim was not credible and concluded that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[3] In the decision under review in this application, the RAD confirmed the RPD's findings. The RAD found that the Applicant was not credible due to inconsistencies in certain aspects of his testimony. As a result, he did not have the profile of a person referred to in the National Documentation Package (NDP) as likely to face persecution should he return to Ethiopia.

[4] For the reasons that follow, the application is dismissed.

I. Background

[5] The Applicant is a citizen of Ethiopia and a member of the Amhara ethnic group. He is a graphic artist and was a professor at Addis Ababa University for over 25 years.

[6] After the Ethiopian People's Revolutionary Democratic Front (EPRDF) took power in 1991, the Applicant claims he was pressured to join the party by his superior at the university. He declined and states that he was persecuted by his superior and by party members from that time forward. The Applicant also states that he was a strong supporter of the opposition party. He openly supported the Coalition for Unity and Democracy in the 2005 Ethiopian national election and his support for the opposition jeopardized his job. In addition, the Applicant claims that he was subject to threats, harassment and degrading treatment because he was Amhara.

[7] Events in 2016 precipitated the Applicant's departure from Ethiopia. According to the Applicant, his brother was detained and tortured in April 2016. His brother was released but died from his injuries shortly thereafter. During the same time period, the Applicant states that his cousin was beaten by political gang members and lost an eye. Two other cousins were also arrested and detained in the summer of 2016.

[8] In July 2016, the Applicant travelled to Gondar to visit his family. The Applicant states that he joined the Amhara resistance movement at that time. After returning to Addis Ababa, he continued his efforts to assist the movement and recruited others. The Applicant claims that two men stopped him one evening on his way home and threatened to kill him if he continued to participate in the resistance movement. The Applicant also claims that men came to his home in August 2016 and subjected him to verbal and physical abuse in the presence of his wife.

[9] In October 2016, the Applicant obtained a temporary visa to visit his brother in Calgary. He arrived in Canada on October 22, 2016 and applied for refugee protection shortly thereafter.

[10] According to the Applicant's wife who remained in Addis Ababa, men came to their house on two occasions following his departure searching for the Applicant.

[11] In support of his claim for refugee protection, the Applicant submitted a letter from his wife and an invitation card from his brother's memorial.

[12] On April 12, 2017, the RPD dismissed the Applicant's claim. The determinative issue was the Applicant's credibility. According to the RPD, the Applicant failed to establish his allegations on a balance of probabilities as there were inconsistencies and omissions in his evidence relating to key factual issues, namely the Applicant's testimony regarding his brother's arrest and the Applicant's evidence regarding the August 2016 incident at his home. The RPD found that these two events were significant in the Applicant's narrative as they were the catalysts for his involvement in the resistance movement. The RPD found that the Applicant's testimony regarding his brother's arrest was evolving and was inconsistent with the information in his Basis of Claim (BOC) form. The RPD also found that the Applicant's account of the August 2016 incident and the identity of the two assailants was inconsistent with the information provided by his wife in her letter. The panel did not accept the Applicant's claim that he was being sought by the authorities in Ethiopia. The RPD concluded that the Applicant had not established his political affiliations.

II. The RAD's Decision

[13] The RAD's decision (Decision) is dated October 19, 2017. The issue raised by the Applicant before the RAD was whether the RPD erred in finding that the Applicant had not established a well-founded fear of persecution in Ethiopia by reason of his political opinion. The RAD confirmed the RPD's decision that the Applicant was not a Convention refugee or a person in need of protection and dismissed the Applicant's appeal.

[14] The determinative issue for the RAD was the Applicant's credibility. The RAD agreed with the RPD's assessment of the Applicant's testimony regarding the circumstances of his

brother's arrest and death. The RAD cited inconsistencies that the Applicant was asked to clarify by the RPD and found that he failed to do so. Based on its review of the evidence, the RAD stated the Applicant appeared to be "adjusting his testimony" in order to obtain a positive decision. The invitation card for his brother's memorial was not helpful as it made no reference to the cause of death.

[15] The RAD also considered the Applicant's submission that the letter from his wife was credible confirmation of the Applicant's testimony. The RAD disagreed as the details in the letter regarding the August 2016 incident at the Applicant's home were not consistent with the Applicant's own account. The RAD found that the Applicant's explanation of the inconsistencies was not satisfactory.

[16] The RAD addressed the Applicant's argument that his residual profile as an Amhara and a long serving academic gave rise to his well-founded fear of persecution. The RAD reviewed the documents in the NDP and those provided by the Applicant and concluded that they contained no support for the argument that the Applicant, as an academic or as a member of the Amhara ethnic group, was at risk of persecution. The NDP confirmed that there were serious political protests continuing in Ethiopia, some of which were violent. However, the Applicant failed to relate those protests to his residual profile. With regards to the Applicant's argument that he was at risk due to his political profile, the RAD completed its review of the country condition documentation and stated:

[24] I understand all of these issues, which are serious and are happening to those who are or are perceived to be anti-government. If the Appellant had some reliable and credible

evidence to indicate that he was one of those people, then he may be considered at risk.

III. Issues

[17] The Applicant raises two issues in this application:

1. Was the RAD's assessment of the Applicant's credibility reasonable?
2. Was the RAD's assessment of the Applicant's fear of persecution on the basis of either his political opinions and activism or his residual profile reasonable?

IV. Standard of review

[18] The standard of review for this Court in reviewing a decision of the RAD is reasonableness (*Canada (Minister of Citizenship and Immigration) v Huruglica*), 2016 FCA 93 at para 35 (*Huruglica*); *Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 646 at para 8). In practical terms, this means that I am required to assess whether the RAD's credibility findings and its assessment of the country condition evidence regarding Ethiopia and the Applicant's profile were reasonable (*Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at para 23).

[19] The reasonableness standard is concerned with ensuring that the decision of a tribunal is justified, transparent and intelligible, and that the decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and law applicable in the particular case (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 (*Dunsmuir*)). The *Dunsmuir* criteria are met if the reasons provided by the tribunal "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within

the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

V. Analysis

1. *Was the RAD’s assessment of the Applicant’s credibility reasonable?*

[20] There were three elements to the Applicant’s fear of persecution should he be forced to return to Ethiopia. There is no dispute as to the existence of two of those elements: the Applicant’s Amhara ethnicity and his status as an experienced academic. These elements make up the Applicant’s residual profile. I will review the conclusions of the RAD regarding the Applicant’s residual profile in the next section of this judgment. The third element is the Applicant’s claim that his political activism had come to the attention of the Ethiopian authorities resulting in threats and harassment. It is primarily this third element, and its factual foundation of political activism, upon which the Applicant bases his fear of persecution.

[21] The RAD found that the Applicant’s evidence with respect to his political activities was not credible and, therefore, he had not established himself as an individual who was likely to face persecution in Ethiopia due to his political profile. The Applicant’s central argument is that the RAD failed to address the core elements of his claim, his political profile and Amhara ethnicity, and focussed its credibility analysis on peripheral issues: the circumstances of the arrest and death of the Applicant’s brother and the content of the letter written by his wife. The Applicant argues that the RAD ignored his uncontroverted evidence regarding his political opinions and his involvement in the Amhara resistance movement.

[22] For the reasons that follow, I find that the RAD's conclusions regarding the Applicant's lack of credibility and his failure to establish his political profile were reasonable.

[23] The Applicant is correct in stating that the RAD focused its analysis in the Decision on specific incidents from the Applicant's evidence and not on his general testimony as to his political activism. In so doing, the RAD did not commit a reviewable error.

[24] The Applicant consistently identified the events addressed by the RAD as critical to his decision to become politically active and to leave Ethiopia. They were central events in the Applicant's narrative and were the only events in respect of which the Applicant provided detailed evidence. The Applicant's testimony described his political activism in general terms. He stated that he was politically active and that he supported the opposition party. He also stated that, after his visit to Gondor, he continued his work in the resistance movement in Addis Ababa. However, the Applicant provided few details in respect of his work and submitted no supporting evidence. Having characterized the circumstances of his brother's arrest and death and the August 2016 incident at his home as the catalysts for his political activities, the focus by the RAD on the inconsistencies in the Applicant's evidence regarding these events was reasonable.

[25] The RAD found significant inconsistencies in the Applicant's factual evidence that he was unable to explain when asked to do so by the RPD. These inconsistencies led the RAD to its general conclusion that the Applicant was not credible:

[26] ...There are simply too many contradictions, inconsistencies and questionable explanations for the RAD to assess any credibility to this Appellant. Because he himself is not credible, I cannot find that he fits the profile of any of those people spoken

about in evidence who are likely to face persecution. I cannot find his supporting evidence to be sufficient to overcome his major credibility gaps.

[26] The RAD assessed the only detailed evidence available to it and drew negative credibility inferences. The RAD gave reasons for its specific credibility findings that were consistent with the evidence. The remainder of the Applicant's very general testimony could not be verified factually. The RAD's extrapolation from its specific adverse credibility findings to its general finding that the Applicant was not credible was justifiable and intelligible. The RAD's reasons meet the *Dunsmuir* requirements.

[27] The Applicant submits that the RAD engaged in a microscopic examination of peripheral issues. As stated above, the circumstances of the arrest and death of the Applicant's brother and the August 2016 incident at the Applicant's home were positioned by the Applicant as precipitating his increasing political activism. The cases cited by the Applicant in support of his submission are distinguishable on this basis.

[28] The Applicant also submits that the factual issues concerning the location of his brother's arrest were illusory as his brother's place of work and the protests referred to by the Applicant were both in Gondar. I am not persuaded by this argument. The Applicant did not state that his brother was arrested "in Gondar". Rather, in his BOC, the Applicant stated his brother was arrested at work. At the hearing, the Applicant testified that his brother was arrested at a protest but, when questioned by the RPD, stated he was arrested at work. The fact that the brother's place of work and the protests in question were both in Gondar does not render the contradictions in the Applicant's evidence illusory.

[29] The Applicant argues that the RAD's consideration of his wife's letter was unreasonable for two reasons. First, the inconsistencies resulted from translation errors. He identifies an error in the date of the August 2016 incident and an error in the way in which the individuals who came to the house were described. However, neither the date of the incident nor the differences in the translations regarding the identification of the men were material to the RAD's Decision. The concern raised by the RAD was the discrepancy between the Applicant's testimony that the men did not identify themselves and his wife's statement that they had done so.

[30] Second, the Applicant argues that the RAD used the letter to undermine his credibility but then accorded the letter no weight. He argues that this inconsistent use of the letter is a reviewable error, citing *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA). I find that the RAD's treatment of the letter was reasonable. The RAD stated that, if it accepted the Applicant's statement that his wife's letter was incorrect in its identification of the men, the letter had no probative value. The RAD then stated that the "other alternative" was that the letter was correct and that the Applicant's testimony was wrong. The two statements are not inconsistent. Reading the Decision as a whole, it is clear the RAD had serious concerns with the Applicant's credibility and the inconsistency between the letter and the Applicant's testimony did not assist in establishing his claim.

[31] The Applicant submits that the RAD failed to take into account his linguistic and cultural background in assessing his testimony. In fact, the RAD addressed the Applicant's linguistic capabilities directly in the Decision. In support of his contention that the RAD did not take into account his cultural background, the Applicant cites the case of *Lubana v Canada (Minister of*

Citizenship and Immigration), 2003 FCT 116 (*Lubana*). In *Lubana*, the applicant was a woman from rural India with documented PTSD who had been detained and sexually assaulted. She broke down many times during the hearing. The Applicant argues that he is a graphic artist who does not express himself well in words. In addition, due to his age and status, he is not used to being questioned and having his statements examined. I do not find these arguments persuasive. There is no suggestion in the record that these issues figured in a material way in the Applicant's testimony or that the RAD should have made specific reference to them. The arguments are general in nature in contrast to the specific and obvious issues facing the applicant and the tribunal in *Lubana*.

[32] This is not a case in which the RAD searched the record for inconsistencies in order to arrive at a decision. The Applicant relied on his brother's arrest and death and on the August 2016 incident at his home to explain his increased political activism, activism that was central to his claim. The Applicant's testimony was not consistent with his BOC. He provided very little supporting documentary evidence. The RAD detailed inconsistencies in the Applicant's testimony and documentary evidence regarding the two events. It found that the Applicant did not adequately explain the inconsistencies when questioned by the RPD. As stated above, the RAD's confirmation of the credibility findings of the RPD in respect of these events was justified and intelligible. The remainder of the Applicant's testimony gave little detail regarding his actual political activities. He provided no other evidence that the RAD could assess linking his political activities to state interest in the Applicant. As the only detailed evidence before the RAD was unreliable, it was reasonable for the RAD to conclude that the Applicant was not credible and had not established a profile of political activism.

2. *Was the RAD's assessment of the Applicant's fear of persecution on the basis of either his political opinions and activism or his residual profile reasonable?*

[33] The Applicant's primary argument is that, as the RAD made no adverse credibility finding regarding his political beliefs and activism, the core of his testimony, the RAD erred in not finding that he was at risk of persecution because of his political profile. The Applicant also argues that the RAD erred in concluding that there is no recent country evidence to support the claim that the Applicant is at risk of persecution in Ethiopia as an academic of Amhara ethnicity. I note that in oral submissions, the Applicant acknowledged that his ethnic and academic status are secondary elements in his fear of persecution.

[34] The Applicant's primary argument is premised on his position that the RAD erred in basing the Decision on its specific, adverse credibility findings. However, I have found that the RAD's conclusion that the Applicant had not established a political profile in Ethiopia was reasonable. As a result, I also find that the RAD's determination that the Applicant would not be at risk of persecution in Ethiopia due to political opinion or profile was reasonable.

[35] The RAD referred to the ongoing violent protests across Ethiopia described in the NDP but found that they were political protests. The RAD stated that "those who are perceived to be anti-government" are at risk. Having found that the Applicant had not established that he was or was perceived by the state to be anti-government, the RAD concluded that the Applicant did not fit "the profile of any of those people spoken about in the documents in evidence who are likely to face persecution". The RAD's reasoning is internally consistent. Without credible evidence

before it regarding the Applicant's political activities, the RAD's finding that the Applicant was not at risk due to political profile was reasonable.

[36] The RAD focussed on the Applicant's residual profile as an Amhara and an academic. The RAD found that neither the Applicant's Amhara ethnicity nor his status as an academic were sufficient to ground a well-founded fear of persecution.

[37] The RAD reviewed the documents in the NDP and those disclosed by the Applicant and concluded they did not demonstrate that an academic was more at risk in 2016 than any other individual in Ethiopia. The panel stated that the NDP did not show any recent persecution of academics in Ethiopia.

[38] The Applicant highlights a number of passages from recent NDP documents that point to issues affecting academics. The documents describe government restrictions on academic freedoms, damage to career progression and dismissals. The issue before me is whether the RAD's conclusion that the NDP did not demonstrate persecution of academics was reasonable. I have reviewed the NDP documents referred to by the Applicant. Although the documents describe different forms of discrimination against academics not affiliated with the EPRDF, it is reasonable to conclude that they do not describe persecution. The RAD made no reviewable error in this regard.

[39] With respect to whether the Applicant's Amhara ethnicity gave rise to a well-founded fear of persecution, the RAD reviewed the NDP documentation and acknowledged that there

have been continuous protests across Ethiopia involving violence and detention of protesters, including protests in Gondor in the Amhara region. The RAD also acknowledged that the NDP states that over 800 protesters had been killed and many more arrested at the protests. The Amnesty International report referred to by the Applicant details the protests in the Amhara region and states that hundreds of “political activists, human rights defenders, journalists and protesters have been arrested ...”.

[40] The RAD concluded that the impetus for the protests was political and not ethnic. The Applicant argues that the RAD made a fundamental error in how it understood the nature of the unrest in Ethiopia. He cites the following excerpt from the Decision:

[22] ... [N]one of the documents referred to by counsel suggest that any of the violence perpetrated by state actors has anything to do with the Appellant’s ethnicity or religion. People in various cities and towns, including Addis Ababa, went out to protest issues more political than anything ...

[41] Based on the documentary evidence, the characterization of the protests in Ethiopia as either political or ethnic/religious over-simplifies a complex country dynamic. However, the simplified distinction drawn by the RAD does not render its conclusion regarding the role of the Applicant’s Amhara ethnicity and the potential of state persecution unreasonable. Both the RAD and the Applicant focussed on the political, and not the Amhara, facet of the Applicant’s profile. In his memorandum, the Applicant states that his ethnicity is important in assessing his residual risk upon return to Ethiopia “because of his real and perceived anti-government views and activities”.

[42] Many Amharas participated in the anti-government protests described in the NDP for Ethiopia and were subject to violent repercussions. The RAD did not ignore or question the scope of the protests, the involvement of individuals of Amhara ethnicity or the violence perpetrated by the state against protesters. However, the Applicant provided no credible evidence of his participation in the protests. Further, the RAD found that the Applicant had not established a political profile which could lead to state perception that he was involved in the protest movement or in similar political activities. The Applicant's Amhara identity, in the absence of political profile, was not a sufficient basis on which to found a fear of persecution. I find that the RAD's conclusion that the Applicant was not at risk of persecution was consistent with the NDP documentation and was reasonable.

VI. Conclusion

[43] The application is dismissed.

[44] No question for certification was proposed for appeal by the parties and no issue of general importance arises on the record.

JUDGMENT in IMM-5202-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5202-17

STYLE OF CAUSE: ABEBE KASSAYE DAMTE v THE MINISTER OF
IMMIGRATION, REFUGEE AND CITIZENSHIP

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