Federal Court Cour fédérale

Date: 20200601

Docket: IMM-4186-19

Citation: 2020 FC 655

Ottawa, Ontario, June 1, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

BAYE MOGES WOLDEMICHAEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Baye Moges Woldemichael [Applicant or Mr. Woldemichael] is a citizen of Ethiopia. His refugee claim was unsuccessful before the Refugee Protection Division [RPD], and on appeal before the Refugee Appeal Division [RAD]. Mr. Woldemichael subsequently sought a pre-removal risk assessment [PRRA] alleging a risk of death, extreme

sanction, or inhumane treatment if removed to Ethiopia based on his ethnicity [Amhara], political opinion, and membership in the opposition ‘Semayawi’ Party [also known as the Blue Party]: *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] ss 96, 97, and 112. On April 17, 2019, a PRRA Officer with Immigration, Refugees and Citizenship Canada [IRCC] concluded there was no such risk and denied Mr. Woldemichael’s PRRA application. This is an application for judicial review of the PRRA Officer’s decision: IRPA s 72(1).

[2] For the reasons that follow, I dismiss this judicial review application.

II. Background

A. *Original Basis of Claim [BOC] for Refugee Protection*

[3] Mr. Woldemichael based his initial refugee claim in Canada on his Amhara ethnicity, political opinion, and membership in the opposition [particularly the Blue Party]. In his Basis of Claim [BOC], he alleged that he first supported and assisted the Coalition for Unity and Democracy [CUD or Kinijit] during the May 2005 election. When the CUD lost the election, it called for a nation-wide protest and strike. While participating in these activities on June 8, 2005, Mr. Woldemichael alleged he was arrested, along with thousands, and detained at Gulele police station in Addis Ababa for three days, where he was beaten, punched, kicked, and insulted for being of Amhara descent before being released with a strict warning.

[4] Mr. Woldemichael also alleged that during his career as an IT professional, he helped many other Ethiopians access the website for the Ethiopian Satellite Television and Radio

[ESAT] station. ESAT is an media outlet that the Ethiopian government has jammed and disrupted many times. Mr. Woldemichael further alleged that the government was aware of his activities and political opinions, and put him out of business by levying higher taxes against him. Mr. Woldemichael also submitted that he had been a member of the Blue Party since January 2013, and had donated money, distributed flyers, attended some meetings, and assisted with them with IT. He alleged he faced accusations and harassment from government forces for this support. He also submitted that he was approached many times to become a member of the EPRDF, but refused.

[5] On April 22, 2015, Mr. Woldemichael allegedly participated in a rally held at Meskel Square, Addis Ababa, for Ethiopians killed by ISIS in Libya. This protest devolved into demonstrators condemning the government for its negligence to protect its own citizens, which led to the federal police and other government forces brutalizing the crowd and arresting whomever they could. Mr. Woldemichael alleged he was arrested and taken to Cherkos police station with many others, where he was beaten badly, interrogated, and vilified based on his Amhara ancestry using derogatory words. He was released two days later on a bond of 10,000 birr with a strict warning not to involve himself in any kind of anti-government activity and a twice-weekly signing condition, which he never complied with out of fear. Instead, he stayed in different houses in Addis Ababa.

[6] Mr. Woldemichael submitted that the political situation in Ethiopia continued to deteriorate, with large demonstrations in the Oromo and Amhara regions violently suppressed by the government. Fearing for his life and afraid of future arrest, harassment, and mistreatment, he

paid a man $12,000 USD to smuggle him to Toronto, Canada. His claim for refugee protection was heard on October 26, 2016, and denied by the Refugee Protection Division on November 30, 2016. His appeal to the Refugee Appeal Division was denied on June 5, 2017. His application for leave and judicial review of the RAD decision was discontinued by his former lawyer for "reasons unclear to [Mr. Woldemichael]".

B. *The PRRA Application*

[7] In his PRRA application, Mr. Woldemichael alleges he has continued his political activism in Canada by attending memorial services, protest rallies organized to condemn the Ethiopian government for its killings and human rights abuses, and panel discussions [including a public memorial service on Danforth Avenue denouncing the Ethiopian government; and a public protest in Ottawa on September 25, 2016 where he led the protest chanting slogans, which was captured on video]; contributing to civil dialogue; fundraising for various causes [for example, for the families of political prisoners and for the Toronto chapter of ESAT]; and serving in various committee members [*sic*] in the Toronto Gondar Hibret for Human Rights' locality. He submits these activities place him at risk should he return to Ethiopia.

III. The PRRA Officer's Decision

[8] The PRRA Officer noted Mr. Woldemichael's reliance on the same risks he claimed before the RPD and RAD, namely his Amhara ethnicity, membership in the Blue Party, and political opinion opposing the government of Ethiopia. The PRRA Officer also accepted Mr. Woldemichael's additional claim that he has engaged in various political activities since his

application for refugee protection was denied, and refers to the activities alleged in the preceding paragraph.

A. *Summary of RPD and RAD Decisions*

[9] The PRRA Officer noted that the RPD denied Mr. Woldemichael's original refugee claim because of credibility concerns, and quoted the relevant provisions of the RPD's decision which describe the following concerns:

A. A lack of corroborative evidence showing Mr. Woldemichael was held in detention, went into hiding, and was sought by government authorities;
B. Mr. Woldemichael's inability to identify the core components of the summons that he provided to the RPD as evidence;
C. Mr. Woldemichael's vague testimony about the period of time when he allegedly was in hiding, including where he was;
D. Testimonial discrepancies and omissions about the summons and his acts of voting and obtaining a government-issued international driver's licence during the time he allegedly was in hiding;
E. Mr. Woldemichael's inability to explain adequately how he was able to exit Ethiopia;
F. Insufficient corroborative evidence to establish that Mr. Woldemichael obtained assistance from his family and girlfriend; and
G. Insufficient evidence to establish Mr. Woldemichael's active membership in the Blue Party, including Mr. Woldemichael's lack of a strong foundational knowledge about what he—an educated business owner—was protesting or the names or

> family surnames of any of the deceased on whose behalf he was protesting, and vague and ambiguous testimony regarding specific encounters he had with authorities.

[10] Referring next to Mr. Woldemichael's appeal to the RAD [which affirmed the RPD's negative credibility determination in the absence of any new evidence] and the discontinued judicial review application, the PRRA Officer again reiterated Mr. Woldemichael's PRRA application was based on risk if he was removed to Ethiopia because of his Amhara ethnicity, his membership in the Blue Party, and political opinion, having regard to his political activities in Canada.

B. *The PRRA Analysis*

[11] The PRRA Officer noted that Mr. Woldemichael, as a person under an effective removal order, could present only new evidence that: (i) arose after the rejection of his refugee claim; (ii) was not reasonably available at the time of his claim; or (iii) that he could not reasonably have been expected in the circumstances to have presented, at the time of the rejection: IRPA s 113(a). Such new evidence also must conform to section 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which reads:

> 161 (2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.

[12] The PRRA Officer began by assessing Mr. Woldemichael's allegations of risk based on his Amhara ethnicity, noting there was insufficient objective evidence to demonstrate the issue

was raised in detail before the RPD and RAD. Faced with vague statements in the PRRA application which were unsupported by sufficient objective evidence and details related to forward looking risks, the PRRA Officer found Mr. Woldemichael had failed to substantiate that he would face risks because of his Amhara ethnicity were he to return to Ethiopia.

[13] The PRRA Officer next declined to consider the documentation package Mr. Woldemichael provided, noting that it was before the RPD. The PRRA Officer reiterated that the RPD had reviewed the evidence, interviewed Mr. Woldemichael, and surmised he was not a credible witness, and had failed to establish he was or is being pursued by Ethiopian authorities, was an active member of the Blue Party, or was being pursued by the authorities as a result of his oppositional activities. The PRRA Officer found there was no new evidence to address or overcome the RPD's significant negative credibility findings regarding Mr. Woldemichael's alleged membership in the Blue Party.

[14] This effectively left for the PRRA Officer's consideration only Mr. Woldemichael's alleged political opinion as a potential basis of risk. The PRRA Officer considered first a support letter provided by Unity for Human Rights and Democracy [UHRD], and concluded it had little probative value. Accepting the UHRD letter confirmed Mr. Woldemichael's membership and his attendance at and participation in activities such as protest rallies, fundraising, and discussions, the PRRA Officer found, however, that the letter did not contain sufficient objective evidence to determine his profile within the organization, or that his political opinion was such that it would bring him to the attention of the Ethiopian governing party or authorities. The PRRA Officer also

found there was insufficient objective evidence to indicate Mr. Woldemichael would face a forward looking risk in Ethiopia as a result of his membership and participation in UHRD.

[15] The PRRA Officer conceded, however, that the letter also stated Mr. Woldemichael was at the forefront of protests and therefore visible to anyone, including Ethiopian authorities or their informants in Canada and he was widely known in their community, at churches and restaurants, and his opposition was no secret. The PRRA Officer, however, found these statements speculative in nature and not supported with sufficient objective evidence. Though I might not agree with the PRRA Officer's characterization of these statements as speculative, I also find that the letter provided no foundation as to how Mr. Woldemichael came to be "widely known", how "their community" is defined, or how many [attendees at] churches and restaurants were involved. In other words, these statements are too imprecise in my view for any meaningful conclusions to be made or inferences to be drawn from them with respect to the possibility of Mr. Woldemichael's actions while in Canada coming to the attention of the Ethiopian government. Accordingly, the PRRA Officer's characterization was not a reviewable error.

[16] The PRRA Officer next refused to admit a post linking a video from the ECAD Ethiopian News & Views titled "Demonstration Against Ethiopian Regime Ottawa Canada", as it predated the RPD hearing and Mr. Woldemichael failed to explain why this evidence was not reasonably available to him at the time of his hearing. The PRRA Officer also found this document "contain[ed] no relevant information regarding the applicant or his personal circumstances as they relate to his stated risk in Ethiopia". The PRRA Officer similarly refused to admit two photocopies of photographs with the captions "[f]ellow countrymen death & suffering is painful"

and “the claimant at the Ottawa protest in September 25, 2016”, and a photocopy of two additional photographs captioned “[t]he Claimant with Tamagne Beyens (illegible) on Oct. 15, 2016” on the same grounds. On a balance of probabilities, the PRRA Officer found these photographs were insufficient to determine that Mr. Woldemichael would face a forward-looking risk in Ethiopia as a result of his participation in the protest, or of his posing for the photographs with other individuals.

[17] The PRRA Officer next considered a letter provided by ESAT, dated November 29, 2017, which confirmed Mr. Woldemichael’s active participation in the Toronto chapter through fundraising and personal financial contributions. Noting the letter stated the Ethiopian government arrested and harassed members of their organization when they travelled to Ethiopia, the PRRA Officer found this allegation was not corroborated. Accordingly, the PRRA Officer found this evidence did not establish, on a balance of probabilities, that Mr. Woldemichael would be targeted or perceived as a person of interest to the ruling party or authorities in Ethiopia for doing so, or that Mr. Woldemichael’s political profile was such that it would render him a person of interest, and assigned the letter little probative weight.

[18] The PRRA Officer assigned no weight to a letter provided by Ms. Woldesenbet, which described how she met Mr. Woldemichael and his volunteer efforts with ESAT, because the letter was undated and unsigned, the identity of the author was not verified, the relationship between Ms. Woldesenbet and Mr. Woldemichael was not corroborated, and the letter itself did not sufficiently establish that Mr. Woldemichael would be perceived as a person of interest or would come to the attention of the ruling party in Ethiopia or authorities for his volunteer

activities and political activism in Canada such that it would render him at risk. The PRRA Officer also assigned no weight to a flyer for the ESAT 7th Anniversary [May 13, 2017] and a ticket for the documentary film screening "Dead Donkeys Fear No Hyenas" [October 28, 2017]. The PRRA Officer found the flyer and ticket did not establish Mr. Woldemichael had attended these events or that, even if he had, he was at risk for having done so.

[19] The PRRA Officer next considered a letter of support provided by the Executive Director of the Gondar Hibret for Human Rights, dated November 28, 2017. This letter stated that Mr. Woldemichael was a member/supporter of the organization, that the Executive Director had known him for over one year, and that Mr. Woldemichael was actively involved in Ethiopian affairs, including attending protest rallies against the Ethiopian government, panel discussions, fundraising events, and serving in "various committee members" [*sic*]. Despite accepting Mr. Woldemichael was an active member of this organization, the PRRA Officer found there was insufficient objective evidence to establish that Mr. Woldemichael would be perceived as a person of interest to the ruling party or authorities in Ethiopia by virtue of his membership in the group and participation in human rights-related activities. Consequently, the PRRA Officer found the author's allegations that Mr. Woldemichael faced such risk speculative in nature.

[20] Noting that Mr. Woldemichael provided the cover page for the January 31, 2017 and March 31, 2017 Immigration and Refugee Board [IRB] National Documentation Packages [NDP] for Ethiopia and a list of several News Releases available online on the Human Rights Watch Website, but not the articles themselves, the PRRA Officer assigned these lists no weight.

[21] The PRRA Officer next noted Mr. Woldemichael's counsel provided several news articles and country reports which both pre- and post-dated the IRB's rejection of his claim. The PRRA Officer found these articles provided only general information rather than information related to personalized risk. The PRRA Officer noted that Mr. Woldemichael did not link this evidence to his personalized, forward-looking risk, and stated that it was insufficient to simply provide country conditions without also demonstrating how this may lead to the individualized risk: *Kaba v Canada (Citizenship and Immigration)*, 2007 FC 647 [*Kaba*]. As such, the PRRA Officer found this documentary evidence did not establish Mr. Woldemichael, on a balance of probabilities, would face risk in Ethiopia.

[22] Finally, the PRRA officer dismissed affidavits prepared by Mr. Woldemichael's friend, and brother-in-law, as both indicate they were provided only to attest to Mr. Woldemichael's identity, and therefore could not establish Mr. Woldemichael faced a forward looking risk in Ethiopia as a result of his Amhara ethnicity or political opinion.

[23] Having considered all of the evidence, the PRRA Officer concluded that it did not have sufficient probative value, on its own or coupled with other tendered evidence, to establish on a balance of probabilities that Mr. Woldemichael would face forward looking risk in Ethiopia based on his Amhara ethnicity, political opinion, or political activism. Noting the burden of proof rested with Mr. Woldemichael and that his personal circumstances were taken into account in a careful review of all the evidence, the PRRA Officer concluded there was insufficient objective evidence to substantiate the risks identified in his application for protection. The PRRA

Officer thus found that Mr. Woldemichael was not a person in need of protection as defined in IRPA ss 96 and 97.

IV. Issues

A. Did the PRRA Officer err in the analysis of targeted profiles in Ethiopia?

B. Did the PRRA Officer err in the assessment of the Applicant's sur place claim?

C. Did the PRRA Officer err in the analysis of admission of new evidence?

V. Relevant Provisions

[24] See Annex A for the relevant legislative provisions.

VI. Standard of Review

[25] Although both parties' submissions were received prior to the Supreme Court of Canada's seminal decision *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], both parties concede that the applicable standard of review is reasonableness.

[26] In *Vavilov,* the Supreme Court of Canada [SCC] adopted a rearticulated approach for determining the standard of review for reviewing the merits of administrative decisions. The starting point is that a rebuttable presumption of reasonableness is applicable in all cases: *Vavilov,* above at paras 10-11. I find none of the situations in which this presumption is rebutted [summarized in *Vavilov,* above at paras 17 and 69] is present in the instant proceeding. As such, reasonableness remains the applicable standard of review.

[27] When "…conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov,* above at para 15. The SCC defined a reasonable decision owed deference as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov,* above at para 85. In other words, "it is not enough for the outcome of a decision to be *justifiable …*, the decision must also be *justified* …": *Vavilov*, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov,* above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at para 100. Finally, it bears mentioning that "[i]t is not the role of the Court on judicial review to re-weigh the evidence": *Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 15, citing *Ellero v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 1364.

VII. Analysis

A. *Did the PRRA Officer err in the analysis of targeted profiles in Ethiopia?*

[28] Accepting Mr. Woldemichael was an active member in three diaspora-based organizations, nonetheless the PRRA Officer consistently was of the view that Mr. Woldemichael's level of participation in activities such as protest rallies, fundraising and panel discussions was insufficient to demonstrate that he would come to the attention of, or be a person

of interest to, the ruling party or authorities in Ethiopia given the lack of sufficient objective [i.e. corroborative] evidence demonstrating such.

[29] Mr. Woldemichael argues there was sufficient documentary evidence to demonstrate risk to political dissidents upon removal to Ethiopia. He asserts the PRRA Officer erred by failing to consider, or define, what profiles the Ethiopian regime targets and whether, because of his activism in Canada, he fit a "targeted profile". In his view, the PRRA Officer speculated that his activism would be of no interest to the authorities in Ethiopia, rather than examining and drawing reasonable inferences from the available evidence [including the country condition documents he presented in his PRRA application]. For example, he notes that Response to Information Request [RIR] ETH105729.E dated February 2, 2017 includes a statement from a staff attorney for the Electronic Frontier Foundation explaining "[t]he Ethiopian government appears to being doing everything it can to spy on members of the diaspora, especially those in opposition groups[,]" and from a Human Rights Watch Senior Researcher cautioning "…both in the case of dissidents who return home to visit or failed asylum claimants who are sent back to Ethiopia, 'individuals who are known dissidents are at high risk of detention. Mistreatment and torture in detention are common'". Counsel's Written [PRRA] Submissions on behalf of the Applicant also referenced a July 23, 2012 RIR containing similar information.

[30] As noted above, the PRRA Officer declined to consider the items listed in the NDP cover page as they were not provided in full. I note, however, this Court previously has found that PRRA Officers have not only the ability, but also the duty, to refer to the most up-to-date country condition information publicly available when assessing risk, **regardless of whether the**

applicant has submitted this evidence, in order to comply with Canada's international obligations: *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 [*Jama*] at para 18. I therefore am of the view that the PRRA Officer's position regarding the NDP items was not reasonable. This, however, was in and of itself not a reviewable error. Mr. Woldemichael bore the onus of demonstrating he faced a risk upon removal for his profile and activities by establishing the necessary link between the documentary evidence and his personal situation. Consequently, it is reasonable to require that he, at a minimum, point the PRRA Officer in the right direction with respect to "updated" country information, **and explain how it applies to him**: IRPR s 161(2); *Bahar v Canada (Citizenship and Immigration)*, 2019 FC 1640 at para 17; *Kaba*, above at para 48. While this 'linking' need not be a fulsome analysis of the documentary evidence, it is insufficient simply to point to general country condition documents available in the NDP and allege risk, unless it is clear on the document's face that he would fit the risk profile: *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409 at para 28; see also *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paras 71-73. I further note that, on its face, none of the NDP items meets the "newness" test required per IRPA s 113(a); though Mr. Woldemichael's *sur place* claim was not before the RPD or the RAD for consideration, all of the NDP items pre-date the RAD decision and the majority pre-date the RPD decision.

[31] Although Mr. Woldemichael directed the PRRA Officer to the two RIRs which, support his assertion that dissidents face risk of harassment/detention if removed to Ethiopia and, provide context for the support letters from the UHRD, ESAT, and Gondar Hibret for Human Rights, nonetheless this is insufficient in my view to demonstrate a personalized risk in so far as IRPA s

97 is concerned. As held in *Paz Guifarro v Canada (Citizenship and Immigration)*, 2011 FC 182 at para 32:

> Given the conjunctive nature of the two elements contemplated by paragraph 97(1)(b)(ii), a person applying for protection under section 97 must demonstrate not only a likelihood of a personalized risk contemplated by that section, but also that such risk "is not faced generally by other individuals in or from that country." Accordingly, it is not an error for the RPD to reject an application for protection under section 97 where it finds that a personalized risk that would be faced by the applicant is a risk that is shared by a sub-group of the population that is sufficiently large that the risk can reasonably be characterized as being widespread or prevalent in that country. **This is so even where that sub-group may be specifically targeted.** … [Bold emphasis added.]

[32] I agree with the Minister that the PRRA Officer used the term "targeted" as an alternative to "perceived as a person of interest". As in *Raveendran*, the evidence suggests that the "[Ethiopian] authorities do not make a concerted attempt to 'profile' who does or does not [oppose them]. The documentary evidence shows that arrests have been made against persons who are suspected of [opposing the ruling party or authorities in Ethiopia] in any manner. No reference is made in these reports to any profile": *Raveendran (Guardian of) v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 49 [*Raveendran*] at para 54. Though it could have been made clearer, I also am of the view that the PRRA Officer used the term "perceived as a person of interest" as an alternative to "would come to the attention of the ruling party in Ethiopia or the authorities". I note Counsel's Written [PRRA] Submissions on behalf of the Applicant also utilizes similar terminology in concluding that "[t]he evidence the Applicant has presented to show the basis of his subjective fear and the objective basis of his fear establish that the applicant has a political profile that would interest the Ethiopian government". These Submissions also do not provide a definition for such a political profile.

B. *Did the PRRA Officer err in the assessment of the Applicant's sur place claim?*

[33] In order to ground a *sur place* claim based on political activities in Canada, an applicant must demonstrate on a balance of probabilities, the alleged activities (i) would become known to the agent of persecution, in this case the Ethiopian authorities, *and* (ii) would evoke a negative response upon the applicant's return by the agent of persecution: *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at paras 23-24, citing *Ngongo v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1627 at para 23; *Win v Canada (Citizenship and Immigration)*, 2008 FC 398 at paras 28-30. As noted in the definition of a *sur place* claim in the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* [bold emphasis added]:

> 96. A person may become a refugee "sur place" as a result of his own actions, such as associating with refugees already recognized or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin **and** how they are likely to be viewed by those authorities.

[34] I find the PRRA Officer considered the submitted evidence through this lens and was of the view that there was insufficient objective evidence to conclude there was anything more than a mere possibility that Mr. Woldemichael would become known to the Ethiopian authorities as a result of his political activities or opinion in Canada. In the PRRA Officer's view, Mr. Woldemichael failed to link his personal situation to Ethiopia's treatment of political dissidents, both domestic and diasporic. In other words, in my view he failed to demonstrate that his fear of persecution was objectively well-founded. For example, the PRRA Officer considered the news

articles and country reports submitted by Mr. Woldemichael, including RIR ETH105729.E, and held [bold emphasis added]:

> I find this documentation provides general information and does not provide evidence of risk that is personal to the applicant. Of importance is that the applicant has not linked this evidence to his personalized, forward-looking risks. It is a well-recognized principle that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situations of an applicant. **The assessment of an applicant's potential risk of being persecuted or harmed if he were sent back must be individualized.** The fact that documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual [citing *Kaba*, above]. …

[35] With respect to his involvement in Gondar Hibret for Human Rights and the ESAT, I agree there was insufficient information presented for the PRRA Officer to determine whether these were the types of dissident groups targeted by, or would be of interest to, the Ethiopian authorities. I note the documentary evidence provided does suggest the Ethiopian government monitors ESAT, and that "[g]overnment authorities have repeatedly intimidated, harassed, and arbitrarily detained sources providing information to ESAT and other foreign stations". This information suggests, however, that mere membership or affiliation is not enough to substantiate risk allegations; the individual must have provided information to ESAT. Mr. Woldemichael does not fit this profile; he alleged only that he provided access to the station website to others while in Ethiopia [an allegation not accepted by the RPD nor pressed at the PRRA] and supported it through fundraising efforts and monthly contributions. Given this, and that ESAT's own letter was vague about the risk fundraisers face upon return [noting, with bold emphasis added: "the Ethiopian government consider [*sic*] visible and active participants **on ESAT events** as the enemy of the state and arrested, harassed our members when they travel to Ethiopia"], in my view it was reasonable for the PRRA Officer to conclude, based on the evidence presented on the PRRA, that Mr. Woldemichael's activities with ESAT and the Gondar Hibret for Human

Rights do not support his claim that he would face risks were he to return to Ethiopia. Notwithstanding my concerns outlined above regarding the PRRA Officer's characterization of some of the statements in the UHRD letter, in my view the same can be said as well of Mr. Woldemichael's activities with this organization.

[36] Though the language used in weighing the Applicant's evidence could have been clearer, in at least one instance the PRRA Officer was very clear [in respect of the undated and unsigned support letter from Ms. Woldesebet – bold emphasis added]: "Additionally, this letter does not contain sufficient objective evidence to establish, on a balance of probabilities, that the applicant will be perceived as a person of interest or that he **would come to the attention of the ruling party in Ethiopia or the authorities** for his volunteer activities and political activism in Canada to the extent that would render him at risk pursuant to section 96 and/or 97 for doing so". As mentioned above, in my view references in the PRRA Officer's decision to "perceived as a person of interest" are used as an alternative or short-hand for "would come to the attention of the ruling party in Ethiopia or the authorities"; hence the PRRA Officer's conclusion, after careful review of all the evidence, that Mr. Woldemichael "does not face more than a mere possibility of persecution in Ethiopia".

C. *Did the PRRA Officer err in the analysis of admission of new evidence?*

[37] PRRA determinations are not an appeal or reconsideration of an applicant's refugee claim. Rather, a PRRA ensures the RPD's or RAD's decision to refuse refugee protection remains sound despite the presence of new risk factors or evidence which otherwise may have affected materially the RPD's or RAD's conclusion: *Raza v Canada (Citizenship and*

Immigration), 2007 FCA 385 [*Raza*] at paras 12-13. In other words, a PRRA is to determine whether on the basis of a change in country conditions, or on the basis of new evidence that has come to light since the RPD decision, there has been a change in the nature or degree of risk: *Chirivi v Canada (Citizenship and Immigration)*, 2015 FC 1114 [*Chirivi*] at para 35. Accordingly, Mr. Woldemichael's failure to provide additional new evidence to overcome the RPD's conclusions on his Amhara ethnicity, political opinion in Ethiopia, and membership in the Blue Party mean the RPD's conclusion on these points stands.

[38] As noted, Mr. Woldemichael also submitted a *sur place* claim arising from his involvement with UHRD, the Toronto chapter of ESAT, Gondar Hibret for Human Rights, and his participation in various other oppositional activities since his arrival in Canada. His evidence included letters attesting to his active membership with these groups, as well as a video post/photographs of him attending public protest events opposing the Ethiopian government in September, 2016. The *sur place* claim was not presented to, and thus not assessed by, the RPD.

[39] In December 2007, the Federal Court of Appeal elaborated on the criteria applicable to admitting "new evidence" on a PRRA, known as the 'Raza Factors' [*Raza*, above at paras 13-15] [bold emphasis added]:

> 1. Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.
>
> 2. Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
>
> 3. Newness: Is the evidence new in the sense that it is capable of:
>
> > (a) proving the current state of affairs in the country of removal **or an event that occurred or a circumstance that arose after the hearing in the RPD, or**

> (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
> (c) contradicting a finding of fact by the RPD (including a credibility finding)?
> If not, the evidence need not be considered.

4. Materiality: Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.

5. Express statutory conditions:

> **(a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.**
> (b) If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).

[14] The first four questions, relating to credibility, relevance, newness and materiality, are necessarily implied from the purpose of paragraph 113(a) within the statutory scheme of the IRPA relating to refugee claims and pre removal risk assessments. The remaining questions are asked expressly by paragraph 113(a).

[15] I do not suggest that the questions listed above must be asked in any particular order, or that in every case the PRRA officer must ask each question. **What is important is that the PRRA officer must consider all evidence that is presented, unless it is excluded on one of the grounds stated in paragraph [13] above**.

[40] To be admissible per Raza Factors 3(a) and 5(a), Mr. Woldemichael bore the onus of explaining why evidence which pre-dated his refugee hearing reasonably could not have been provided to the RPD. His counsel explained Mr. Woldemichael was unaware of his need to plead his *sur place* claim before the RPD because of his [mistaken] belief that he was limited to basing his claim solely on events which occurred in Ethiopia. Although the PRRA Officer found in some instances, such as in respect of the video post and photographs, the news articles and country reports, that Mr. Woldemichael did not provide a reasonable explanation as to why the

evidence would not have been reasonably available at the time of the Applicant's hearing, the PRRA Officer nonetheless considered the evidence and concluded the documentation was irrelevant or insufficient to substantiate his risk allegations.

[41] Regarding the NDP List of Documents for Ethiopia and the four News Releases described in the PRRA Officer's decision, all of which were discounted by the PRRA Officer, it is not evident that any of this material would have demonstrated that "the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision": *Chirivi*, above at para 35, citing *Perez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379 at para 5. For example, several of the documents which comprise the News Releases have titles that on their face appear to be unrelated to the Applicant's circumstances: "Central African Republic: Sexual Violence as Weapon of War"; "Statement of Human Rights Watch for Hearing on Oversight of the Administration's Decision to End Deferred Action for Childhood Arrivals"; and "Human Rights Watch Letter to Inspector of Police of Kenya". Had they contained information pertinent to the Applicant's situation, in my view more should have been done to bring the specific information to the PRRA Officer's attention. Moreover, regarding the NDP List of Documents, the RPD is presumed to have considered these prior to discounting the claim and in my view, as discussed above, they were not sufficiently linked to his *sur place* activities.

VIII. Conclusion

[42] Based on a holistic review of the PRRA Officer's decision against the backdrop of the record in this case, I am satisfied that the PRRA Officer's reasoning on the whole "adds up":

Vavilov, above at paras 103-104. Accordingly, this application for judicial review is dismissed. I note that neither party proposed a serious question of general importance for certification, and I find there is none.

JUDGMENT in IMM-4186-19

THIS COURT'S JUDGMENT is that: this judicial review application is dismissed; there is no serious question of general importance for certification.

"Janet M. Fuhrer"
Judge

Annex A: Relevant Provisions

Immigration and Refugee Protection Act, SC 2001, c 27	**Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27**
95 (1) Refugee protection is conferred on a person when	**95 (1)** L'asile est la protection conférée à toute personne dès lors que, selon le cas:
(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;	**a)** sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;
(b) the Board determines the person to be a Convention refugee or a person in need of protection; or	**b)** la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;
(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.	**c)** le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).
(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).	**(2)** Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).
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,	**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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**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) 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.	**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.
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	**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

subject them personally	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 themself 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.
(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.
112 (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	**112 (1)** La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).
113 Consideration of an application for protection shall be as follows: **(a)** an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	**113** Il est disposé de la demande comme il suit : **a)** le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
Immigration and Refugee Protection	**Règlement sur l'immigration et la**

Regulations, SOR/2002-227	**protection des réfugiés, DORS/2002-227**
(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.	**(2)** Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4186-19
STYLE OF CAUSE:	BAYE MOGES WOLDEMICHAEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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