

Federal Court



Cour fédérale

**Date: 20220301**

**Docket: IMM-1206-21**

**Citation: 2022 FC 279**

**Ottawa, Ontario, March 1, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**SABA YEMANE MEBRAHTU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision made on January 29, 2021, by the Refugee Protection Division [the RPD] of the Immigration and Refugee Board of Canada rejecting the Applicant's claim for refugee protection and finding that her claim has no credible basis. For the reasons that follow, this application is dismissed.

## **Background**

[2] The Applicant is a refugee claimant, allegedly from Eritrea. The following is her claimed narrative.

[3] In 2000, she left her hometown of Massawa and went to Asmara in order to avoid mandatory military service. She was caught by the police and detained. She was released after five days upon promising to report to the military. She did not do so and stayed in hiding.

[4] The Applicant was caught again in January 2005 and was imprisoned. In prison, she was beaten and tortured, sustaining injuries that made her unfit for military service.

[5] While the Applicant was no longer required to serve in the military because of her injuries, her failure to serve still caused difficulties. She was often asked for proof of military service. This resulted in her having to pay bribes to receive certain documents, including a license for her business.

[6] In early 2019, the Applicant helped her half-sister escape to Sudan after a man with government connections tried to make her his second wife. The Applicant was detained in April 2019. She believes that this was at this man's behest. While detained, she was interrogated, beaten, and made to confess that she helped her sister escape and she was in communication with opposition movements in Ethiopia.

[7] The Applicant was released with conditions after a week. Fearing being arrested again, she fled to Sudan. Once there, she was told that Sudan was not safe and so decided to come to Canada as a refugee.

[8] The Applicant came to Canada on May 20, 2019, with a smuggler, posing as his wife. She says that she used a brown passport with her picture in it. She does not know which country the passport was for or the name inside the passport.

[9] Upon clearing customs, the smuggler took the passport and all of the Applicant's travel documents and told to her take a taxi to any Eritrean restaurant.

[10] The Applicant fears arrest and torture in Eritrea for being a political opponent and enemy of the government, leaving the country illegally, violating the terms of her release, and applying for protection in Canada.

[11] The Applicant claims to no longer have any contacts in Eritrea. Her mother was killed in 1990 during the war, and she has not had any contact with her father since 1998. The Applicant does not know the whereabouts of her half-sister.

[12] With her application for refugee protection in Canada, she provided her Eritrean birth certificate, a photocopy of a business license for a restaurant issued in 2004, and two letters from friends from Eritrea who are now in Canada.

[13] The Minister of Public Safety and Emergency Preparedness [the Minister] intervened in the Applicant's claim in December 2020 on the bases of "identity, credibility, and program integrity."

[14] The Minister's position was that the Applicant had not proven her identity and that her narrative regarding her arrival in Canada was not plausible. The Minister submitted that the Applicant should be presumed to be a national of the country of the passport she used for travel until she proves otherwise. The Minister noted that there was no fingerprint match when she made her refugee claim, which suggested that she was a national of a visa-exempt country. As Eritrea is not a visa-exempt country, the Minister submitted that the Applicant had not travelled on an Eritrean passport and had not established that she was Eritrean.

[15] On January 9, 2021, two days after the hearing, the Minister filed further submissions. The Minister submitted that the Applicant was an Italian national named Rahel Mokenen, who entered Canada on April 14, 2019, five weeks before the date the Applicant claimed to have entered Canada.

[16] The Minister submitted a photograph of Ms. Mokenen taken in May 2018 at a primary inspection kiosk at Pearson Airport, alongside the photograph taken of the Applicant for her refugee claim. The Minister submitted that the Applicant's claim was fraudulent.

[17] In response, the Applicant provided submissions to the RPD that she is not Rahel Mokenen and that it was not possible to conclude from the photographs that they were of the same person.

### **The Decision**

[18] The RPD reviewed the Applicant's documentary evidence and testimony at the hearing. The RPD noted that the Applicant was asked at the hearing what instructions or directions she had been given by the smuggler. She told the RPD that she had simply been told to keep quiet. She told the RPD that upon arrival she was not asked any questions and the smuggler was the only one who dealt with the authorities.

[19] The Applicant claimed that all documents that could corroborate her travel to and arrival in Canada had been taken by the smuggler. The Applicant's counsel argued that the smuggler gave the Applicant as little information as possible in order to protect himself.

[20] The RPD did not accept this explanation. The RPD found that, given the likelihood that the Applicant would be questioned on arrival to Canada or during one of the stopovers on her journey, it would be reasonable to expect the smuggler to have provided the Applicant with more instructions and to ensure that she knew the name in the passport she was using to travel. The RPD found that the failure to produce the passport and her inability to provide any details about it, such as the name it was in or the issuing country, cast doubt on her identity and raised concerns regarding her credibility.

[21] The RPD noted that the birth certificate the Applicant provided was issued in Asmara and not Massawa, where she claimed to have been born. When asked about this, the Applicant told the RPD that she applied for it when she was living in Asmara, as she needed it to obtain her business license. She then told the RPD that she had to bribe someone to obtain the certificate. The RPD accepted the explanation regarding the place of issue as plausible, but, because the birth certificate had been obtained through bribery, the RPD gave it no weight.

[22] The RPD then considered the Applicant's business license. The RPD noted that it contained a photograph "which could have been the claimant in 2004." The RPD indicated that at the hearing the Applicant was asked for the address of the business and she said she could not remember since it was so long ago. The RPD found that despite having closed the business 11 or 12 year ago, it was reasonable to expect the Applicant to remember the address of a business that she operated for 4 years. As with the birth certificate, the RPD was also concerned about the reliability of a document obtained through bribery. The RPD gave the business license no weight.

[23] The RPD considered the letters provided by the Applicant from two individuals claiming to have known her in Eritrea. The RPD noted that neither author appeared as a witness, and the letters were almost identical and provided little information about the Applicant. The RPD assigned no weight to the letters.

[24] The RPD noted that no other identification had been provided by the Applicant but did acknowledge counsel's submissions that there was no one left in Eritrea to obtain documents or support her identity.

[25] The RPD then considered the post-hearing submissions of the Minister claiming that the Applicant was in fact an Italian national. The RPD found that the two photographs were, on the balance of probabilities, of the same person. The RPD noted that "[a]side from similarities in skin tone and facial features, the most compelling evidence is the presence of the mole in essentially the same spot (the bottom of the bridge of the nose)."

[26] Because the RPD found that the Applicant had falsified her application, the RPD rejected her claim and found that there was no credible basis for the claim which, pursuant to paragraph 110(2)(c) of the *Immigration and Refugee Protection Act*, SC 2001, prevented her from appealing to the Refugee Appeal Division.

### **Issues**

[27] The Applicant sets out the following issues: (1) whether the RPD's finding that the Applicant is not a refugee nor a person in need of protection is reasonable, and (2) whether the RPD's finding that there is no credible basis to the claim is reasonable.

## Analysis

[28] The parties agree that the decision is to be reviewed on the standard of reasonableness:

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[29] The Applicant submits that given the serious consequences to her, there is a heightened reasonableness requirement, citing para 133 of *Vavilov*:

It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

### *The Identity Documents*

[30] The Applicant submits that the RPD made unreasonable findings regarding the reliability of the Applicant's identity documents. She notes that the Respondent has now conceded that the treatment of the birth certificate is unreasonable.

[31] The Applicant submits that the finding that the birth certificate is unreliable because it was obtained via bribery is unreasonable. The Applicant submits that the RPD failed to address



the documentary evidence that corruption is so widespread in Eritrea that it is necessary in order to obtain services that one is entitled to.

[32] The Applicant submits that for the same reasons, the consideration of bribery with respect to her business license is also unreasonable. The Applicant submits that it is reasonable that she would be have to pay a bribe to receive a legitimate document, because she had no way of showing proof of military service or an exemption.

[33] The RPD also took issue with the fact that the Applicant was unable to recall the address of her business. The Applicant notes that she was able to describe the section of the district it was located in and submits that it is not implausible that someone would direct people to their business by describing its location rather than giving the precise street address. As such, the Applicant submits that it is not implausible that she forgot the address after 12 years.

[34] The Applicant notes that she has no family or friends still in Eritrea to obtain documents for her, and submits that it would be unreasonable to draw a negative inference from the fact that she only has two documents.

[35] Although the Respondent concedes that it is unreasonable for the RPD to have given no weight to the Applicant's birth certificate because it was obtained through bribery, I agree with the Respondent that the finding with respect to the business license is reasonable.

[36] It is reasonable to expect the Applicant to remember the address of her business. This, in combination with the facts that the document was allegedly obtained by bribery and the original was not provided, entitled the RPD to give the business license no weight.

[37] I agree with the Respondent's submission that the error regarding the birth certificate is not necessarily fatal to the ultimate finding. In *Lin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1235, the Court stated the following at paras 59 and 60:

[59] Even if the RPD's conclusion that the Occupational Certificate undermines the Applicant's credibility was a mistake, I am satisfied that the Decision as a whole is reasonable given the RPD's other findings on credibility. In *Stelco Inc v British Steel Canada Inc.*, [2000] FCJ No 286, Justice Evans said at paragraph 22 that

even if the Tribunal committed a reviewable error on some of its findings of fact, its decision to rescind will still be upheld if there were other facts on which it could reasonably base its ultimate conclusion.

[60] Justice Evans's guidance has been followed several times by this Court in the context of immigration decisions. See for example *Zazay v Canada (Minister of Citizenship & Immigration)*, 2008 FC 182; *Ogiriki v Canada (Minister of Citizenship & Immigration)*, 2006 FC 342; and *Agbon v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1573. In the present case, the RPD found that the Applicant was not credible on the basis of several factors other than the Occupational Certificate. There was enough other evidence to support the conclusion that he was not credible and had not established his identity.

[38] In my view, the challenge to the Applicant's evidence regarding the business license and the issue of identification from the photos supplied by the Minister are more than sufficient to overcome any unreasonable decision regarding the birth certificate.

*False Identity*

[39] The Applicant notes that courts have long been concerned of the dangers of misidentification. The Applicant submits that in *R v Nikolovski*, [1996] SCR 1197, the Supreme Court of Canada found that it is permissible for a judge alone to decide a case based on their own observations of video evidence, but noted at para 22 that this is “[s]o long as the videotape is of good quality and gives a clear picture.”

[40] The Applicant notes that that the RPD only commented on the quality of the video feed of the Applicant at the hearing and not on the quality of the photographs. The Applicant submits that given the quality of the photographs, it was not possible to conclude that they were of the same person.

[41] The Respondent correctly observes that the authority cited is in a criminal law context. While I accept that the quality of visual evidence is important when assessing the reasonableness of decisions made comparing photos, the Applicant was before the decision-maker via video and there is nothing to suggest to the Court that the comparison made was not reasonably open to the decision maker. Indeed, having examined and compared the photos in the Certified Tribunal Record, the Court would most probably have reached the same decision as the member.

*Plausibility of Arrival Narrative*

[42] The Applicant submits that the RPD unreasonably found that her testimony regarding her passport and arrival into Canada was implausible.

[43] The Applicant submits that it is an error to draw a negative inference against a claimant for using a false passport or following the instructions of their agent (see *Gulamsakhi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 105 at para 9, *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 18).

[44] The Applicant notes that the evidence was that she was travelling with the smuggler as a couple and the Minister's evidence on entry procedures indicated that families are treated as a unit. The Minister suggested that the Applicant may have used a European passport. The Applicant submits that these factors would have reduced the risk of the Applicant being questioned.

[45] I agree with the Respondent that the RPD is entitled to draw credibility inferences from an Applicant's inability to relate their travel identities and passport particulars. In *Su v Canada (Minister of Citizenship and Immigration)*, 2007 FC 680, Justice Barnes found that the fact that the applicant claimed to be following instructions did not explain why they were unable to relate basic information regarding their travel documents. I further agree that one would reasonably expect a competent smuggler to provide the person being smuggled with basic identity information in case they were questioned by border officials.

[46] The Respondent is also correct in noting that, contrary to the Applicant's submissions, the RPD did not draw an adverse inference based on her travelling on false documents. The adverse inference was based on the lack plausibility of her testimony and the lack of details regarding the documents. Again, I agree with the Respondent that it was reasonable to expect

the smuggler to give more instructions than to simply keep quiet and to ensure that the Applicant knew the name in the passport (see e.g. *Ahmedin v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1127 at para 42).

## **Conclusion**

[47] For these reasons, I find that the decision under review is reasonable, both in its finding that the Applicant is not a refugee nor a person in need of protection, and in its finding that there is no credible basis to the claim for protection.

[48] No question was posed for certification.

**JUDGMENT IN IMM-1206-21**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-1206-21

**STYLE OF CAUSE:** SABA YEMANE MEBRAHTU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 12, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MARCH 1, 2022

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