

Federal Court



Cour fédérale

**Date: 20221116**

**Docket: IMM-4100-22**

**Citation: 2022 FC 1563**

**Ottawa, Ontario, November 16, 2022**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**GIRMAY KEBEDE GEBRU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Girmay Kebede Gebru [Applicant] is a citizen of Ethiopia and Tigrayan by ethnicity. After arriving in Canada in November 2018, the Applicant made a refugee protection claim on the basis of his ethnicity and political views.

[2] At the time of his refugee claim, the Applicant submitted a Basis of Claim [BOC] form dated April 1, 2019 [Original BOC form]. He stated in the “Background” section of his BOC narrative that he “joined” the Tigray People’s Liberation Front [TPLF] in 2001. The Applicant also stated that he was initially involved in TPLF’s fundraising events and later in a grassroots campaign to elect TPLF candidates. In the attached Schedule A form, the Applicant identified himself as a “supporter” of TPLF between 2014 and 2018, and a “member” of Tigray Development Association [TDA] between 2011 and 2018.

[3] TPLF was the dominant political party in the Ethiopian Peoples’ Revolutionary Democratic Front government between 1991 and 2018 and is reported to have committed violent acts with the intention of overthrowing the government of Ethiopia. TDA, on the other hand, is a non-profit, non-governmental organization whose aim is to lift the Ethiopian Tigray region out of poverty.

[4] An officer from Canada Border Services Agency [CBSA Officer] interviewed the Applicant on November 24, 2020 due to inadmissibility concerns. The Applicant signed an amended BOC form two days after the CBSA interview [Amended BOC form]. The CBSA Officer prepared a report pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* in December 2020 [s. 44(1) Report]. The s. 44(1) Report found the Applicant inadmissible to Canada on the basis of his membership in TPLF, which there were reasonable grounds to believe engaged in acts of subversion or terrorism.

[5] The Applicant was referred to the Immigration Division [ID] by a Minister's Delegate pursuant to subsection 44(2) of *IRPA*. At the admissibility hearing conducted on January 31, 2022 [Admissibility Hearing], the Respondent dropped the claim regarding terrorism. The Applicant maintained that he never admitted to being a member of TPLF.

[6] In a decision dated April 4, 2022, the ID found the Applicant inadmissible to Canada for being a member of TPLF, an organization that engages, has engaged, or will engage in instigating the subversion by force of any government, contrary to paragraphs 34(1)(f) and 34(1)(b) of the *IRPA*, respectively [Decision]. The Applicant challenges the Decision.

[7] I find that the ID erred by finding that the Applicant "effectively admitted to membership with TPLF", and by failing to apply the three-part test set out in *B074 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1146 [B074] to determine whether or not the Applicant was a member of TPLF. As such, the Decision was unreasonable.

## II. Issues and Standard of Review

[8] The Applicant raises two arguments:

- a) The ID erred in finding that the Applicant admitted to membership in TPLF; and
- b) The ID erred by failing to apply the requisite three-part test for membership.

[9] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[10] Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12–13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is 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* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88–90, 94 and 133–35.

### III. Analysis

[11] The Decision was made pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *IRPA*, which can be found in Appendix A.

[12] The Respondent submits that if I conclude the ID erred in finding that the Applicant admitted to membership in TPLF, then I shall grant the application, as the ID ought to have applied the three-part test where there was no admission of membership. If, on the other hand, I find that the ID did not err in its finding with respect to admission of membership, then there was no need for the ID to apply the three-part test.

[13] I agree with the Respondent. The determinative issue is whether the ID erred in finding that the Applicant admitted to membership in TPLF. For the reasons set out below, I find that the ID so erred.

*The ID did not address the evidence that the BOC narrative was never translated back to the Applicant before he signed it*

[14] The Applicant was represented by different counsel at the time of his interview with the CBSA Officer. The Applicant's former counsel advised the CBSA Officer that the Applicant's brother, Moges Kebede [Mr. Kebede], assisted him in preparing his narrative by interpreting his BOC form. Mr. Kebede then filled out the form in English. The lawyer pointed out that the Mr. Kebede had been in Canada for over 25 years, suggesting that something was lost in translation. The lawyer pointed out that the Schedule A form indicated that the Applicant was a "supporter" of the TPLF and a "member" of the TDA.

[15] On November 26, 2020, the Applicant submitted his Amended BOC form, where 'TPLF' was crossed out and replaced with 'TDA' in two places in the "My political involvement" narrative:

In 2001, I became a member of the Tigray Development Association ("TDA"). My involvement was initially limited to participating in TDA fundraising events for different communities...

[16] The Schedule A form was amended to change the start date of the Applicant's membership in the TDA from 2011 to 2001. At the CBSA interview, the lawyer stated that the 2011 was a typo.

[17] Both the Applicant and Mr. Kebede, his brother, testified at the Admissibility Hearing.

[18] The Applicant was asked about the preparation of the Original BOC form. The Minister's counsel pointed out that in section 9A of the form, the Applicant indicated that he was represented by counsel who assisted him in filling out the form. The Applicant testified that while he did have counsel, only his brother assisted him in preparing the form. Under questioning from his own counsel, the Applicant elaborated on how his brother assisted him in filling out the Original BOC form and confirmed that his brother never read the document back to him after completing the form, including the written narrative.

[19] During Mr. Kebede's testimony, the Minister's counsel posed questions about the TPLF and the TDA. Mr. Kebede distinguished between the two organizations. The Minister's counsel then asked how someone could get the organizations confused. In response, Mr. Kebede testified that he left Ethiopia over 30 years ago and has lived in different countries since, causing there to be confusion. Mr. Kebede explained that this confusion revolved around the Gregorian (as opposed to the Ethiopian) calendar, as well as different wording. Mr. Kebede suggested the confusion between TPLF and TDA could be "an honest mistake."

[20] Mr. Kebede also confirmed at the Admissibility Hearing that he had not read the contents of the Original BOC form and narrative back to the Applicant before the latter signed it.

[21] The ID rejected the inclusion of TPLF in the Original BOC narrative as an "honest mistake" because Mr. Kebede knew about and could distinguish between the TPLF and TDA. The ID also focused on how the Original BOC form included a lengthy explanation of the TPLF, which followed the Applicant's alleged admission of membership.

[22] The Respondent submits that in finding that the Applicant admitted to membership, the ID addressed the evidence appropriately and reasonably concluded that the Applicant and Mr. Kebede were not credible.

[23] The Applicant submits that the ID erred by failing to address the evidence that the BOC narrative was prepared by a family member without any qualification as a translator and who never read the BOC narrative back to the Applicant before he signed it.

[24] I agree with the Applicant.

[25] The Applicant testified at the Admissibility Hearing with the assistance of a Tigrinya interpreter. Even the CBSA interview was conducted with the assistance of a Tigrinya interpreter. There was no evidence before the ID suggesting that the Applicant had sufficient English proficiency to verify the information that his brother put down in the Original BOC form. On the contrary, there was evidence confirming that Mr. Kebede never read the Original BOC form back to the Applicant before it was signed by the latter.

[26] I note also that the ID acknowledged in the Decision the testimonies of both the Applicant and Mr. Kebede that the Original BOC form was not read back to the Applicant. Nothing in the Decision suggests that the ID rejected their testimonies in this regard.

[27] The ID based its finding that the Applicant admitted to membership in TPLF on the Original BOC form. The significance that the ID placed on the Original BOC is evidenced by the following passage of the Decision:

[33] An individual's first instance of testimony is often the most accurate account and I choose to accept it over the second version of events. I find that [the Applicant] effectively admitted to membership with TPLF in its original BOC form. He admitted to joining the TPLF in 2001 and initially only participated in TPLF fundraising events. He admitted that he was involved in a grass root campaign to elect TPLF candidates where he donated his time, energy, and money to those candidates. He attended town hall meetings and spoke about issues that mattered to him, his family and his country. All those facts, combined with his admission to joining the TPLF, provide ample support to the conclusion that [the Applicant] was a member of the TPLF. He provided material support to the TPLF through his activities of fundraising, his involvement in an election campaign, and providing his time, energy, and money, in support. There is jurisprudence that when membership is admitted then it is membership for all purposes including 34(1)(f).

[28] The above-quoted passage from the Decision confirms that the ID found the Applicant admitted to membership based on the Original BOC form because of the notion that "an individual's first instance of testimony is often the most accurate account." Yet the ID never addressed how "accurate" the Applicant's original account was in light of the evidence that the Original BOC form was prepared by someone who is not a trained interpreter and that the form was never read back to the Applicant.

[29] The ID's finding of admission relied on its rejection of Mr. Kebede's explanation that the inclusion of the TPLF in the Original BOC form was "an honest mistake." In my view, this reliance was misplaced. The issue before the ID was not whether Mr. Kebede knew about the distinction between the TPLF and TDA. The issue was whether the Applicant knew and agreed



with the content of the BOC form and narrative that his brother had written down for him. The Decision was silent on this crucial point.

[30] Because the Original BOC form was central to the ID's finding regarding the admission of membership, and because the ID did not address the evidence suggesting that the Original BOC form was never read to the Applicant before he signed it, the Decision as a whole cannot be allowed to stand on this basis alone.

[31] While I am of the view that the ID's failure in addressing this issue was sufficient to set aside the Decision, I will address two other errors in the Decision, with a view to providing further guidance for the ID in its redetermination.

*The ID ignored the Applicant's statements to the CBSA Officer*

[32] As I have already noted, the ID found that the Applicant admitted to membership in TPLF by relying on the Original BOC form. In so doing, I agree with the Applicant that the ID ignored the entirety of the Applicant's statements to the CBSA Officer.

[33] The Respondent does not make any submission directly on this issue, stating only that the reasons of the ID reveal an in-depth analysis of the testimonies of the hearing and documentation to not only support a finding that the Applicant had admitted to membership but also to justify a negative credibility finding. The Respondent asserts that the ID clearly engaged with the evidence and its analysis was well-founded and justified.

[34] With respect, I disagree. The Decision, in my view, did not consider the statements given by the Applicant to the CBSA when the ID found that the Applicant “effectively” admitted membership to TPLF.

[35] During the CBSA interview, the Applicant told the CBSA Officer various times that he was not a member of the TPLF, and that he meant to say he was a member of the TDA in his Original BOC form narrative.

[36] Included in the Certified Tribunal Record was a solemn declaration from an Enforcement Assistant of CBSA, attaching the transcription of the recorded interview conducted by the CBSA of the Applicant.

[37] Below are the some of the exchanges that took place during the CBSA interview, with “Q” denoting questions from the CBSA Officer, “A” indicating the answers from the Applicant as interpreted by an interpreter, and “I” representing the interpreter’s questions or comments.

Q: Your membership, I understand you joined the Tigray People’s Liberation Front in 2001?

A: I wasn’t member of the Tigray Liberation Front but I was supporter, I was a supporter to TBA

I: I don’t know what TBA stands for

Q: I’m sorry he was a supporter of what?

I: TBA. Oh I’m sorry.

A: TDA, Tigray Development Association

Q: So, correct me if I’m wrong, but in your document you said you’re a member and you joined in 2001, the TPLF?

A: I was not a member of TPLF, I was member of TDA, which is Tigray Development Association. So that they did were financial assistance for supporting developments, like building churches. For social development, like abolition women's circumcision, things like that, I was supporting financially.

Q: Okay, on page two of six of your narrative of your base of claim, under "my political involvement", it says "in 2001 I joined the Tigray People's Liberation Front, TPLF, as the party was representing mainly the Tigray community." I didn't write this, this is part of your base of claim.

I: Officer I just need to repeat – page 2 of 6, what's the document name called?

Q: Base of claim.

I: Oh base of claim

Q: So I'll say and you repeat: "In 2001, I joined the Tigray People's Liberation Front...as the party was representing mainly the Tigray community"

A: I just want to elaborate on this. I was not a member of TPL but I was a support of TPLF, I was member of TDA. Because originally my background was from Tigray, I was supporting the TPLF as a party

Q: Okay so you can understand that I can only go by what you said in your base of claim, and you said "I joined the party"

A: I just want to elaborate on this, I am not a politician and I have never been a politician. I don't have a knowledge of politics. It could be an error of writing or it could be the way -- the word that I used was -- I joined TDA, not the TPLF, I was trying to say I joined TDA, the Tigray Development Agency

[38] During the CBSA interview, the Applicant also explained the difference between the TPLF and the TDA, and his rationale for supporting the TPLF due to his Tigrayan ethnicity. The Applicant stated that he supported the TPLF by attending two to three meetings and assisting financially, and that these meetings were "during the election and... arranged by the supporters."

[39] The Applicant's then-counsel also tried to clarify that the Applicant was a supporter, not a member of the TPLF, and that the Applicant's direct involvement was with the TDA. The CBSA Officer then suggested to the Applicant and his counsel that it was up to them to let the ID know there has been an "atrocious error done by whoever was hired as the interpreter", and that the CBSA would carry on the interview in the direction of the Applicant being a "supporter."

[40] At the Admissibility Hearing, throughout his testimony, the Applicant maintained that he was never a member of the TPLF, and that he is a member of the TDA. The Applicant testified that he never attended TPLF protests or fundraisings, never signed the membership list or had a membership card, and never was a politician or served in the military.

[41] While the Decision did mention the CBSA interview, it did not analyze any of the statements that the Applicant gave at the interview. Nowhere in the Decision did the ID make any credibility findings with respect to the Applicant's denial of membership of TPLF during the CBSA interview.

[42] This lack of analysis of the CBSA interview was made all the more glaring when one considers the ID's own statement that "[a]n individual's first instance of testimony is often the most accurate account and I choose to accept it over the second version of events." In this case, the CBSA interview represented the Applicant's first instance of oral testimony. By the ID's own logic, it would have been the "most accurate."

[43] Case law confirms that inconsistencies between an applicant's statements made at the port of entry and those made to the ID may support a negative credibility finding: *Avrelus v Canada (Citizenship and Immigration)*, 2019 FC 357 at para 14; *Kusmez v Canada (Citizenship and Immigration)*, 2015 FC 948 at para 22; *Arokkiyanathan v Canada (Citizenship and Immigration)*, 2014 FC 289 at para 35; *Bozsolik v Canada (Citizenship and Immigration)*, 2012 FC 432 at para 20; *Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at paras 14-15.

[44] In this case, the opposite was true. The Applicant provided consistent statements at the CBSA interview and at his Admissibility Hearing by insisting on both occasions that he was not a member of the TPLF. While that alone was insufficient to support a finding that the Applicant was not a TPLF member, the CBSA interview statements reinforce the Applicant's repeated attempts to deny admission of membership.

[45] The fact that the ID did not analyze the Applicant's statements at the CBSA interview denying membership of TPLF, while declaring its preference for an individual's "first instance of testimony", means the Decision lacked an internally coherent and rational chain of analysis and was thus unreasonable.

*The ID failed to address the internal contradiction in the Applicant's written evidence*

[46] The Applicant further submits that his statement that he "joined" the TPLF in 2001 in the Original BOC form was contradicted by the Schedule A form that he filed on the same date, where he stated that he became a "supporter" of the TPLF in 2014. The Applicant argues that the

ID never dealt with the contradiction between the Original BOC form and the Schedule A as to the year in which he allegedly joined the TPLF. The Applicant further submits that given the correction of the year 2011 to 2001 as the year he joined the TDA in his amended Schedule A – a typo that the Applicant argues is more easily understood given the similarity in numbers – the Applicant’s evidence that he was only ever a “supporter” of the TPLF as of 2014 renders his Amended BOC form coherent with his Schedule A.

[47] The Respondent submits that the ID reasonably concluded that the Applicant admitted to being a member but tried to “walk back” on his admission, and that the ID’s finding was reasonable in view of the documents filed and the testimonies of the Applicant and Mr. Kebebe. The Respondent argues that the Court should read through the Decision carefully to consider whether there was a fatal flaw that would render the Decision unreasonable, bearing in mind the ID’s negative credibility findings.

[48] I accept the Applicant’s argument that the ID’s failure to address this internal contradiction in the documents was a reviewable error, and reject the Respondent’s broad-stroke submission.

[49] It is trite law that “the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact ‘without regard to the evidence’”: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (TD) at para 17. In my view, the ID was so singularly focused on the Original BOC form, which it chose to

accept, that it ignored all the other written evidence that could have contradicted its own finding. Such evidence included not only the internal contradictions with respect to the date that the Applicant purportedly “joined” the TPLF, but also the Applicant’s membership card for the TDA.

[50] The only contradiction that the ID addressed, as the Respondent correctly submits, was the inconsistency in the Schedule A form whereby the Applicant stated he was a supporter of the TPLF. The ID addressed this contradiction by noting that someone can be “both a member and a supporter of an organization.”

[51] Having so noted, I find that the ID’s analysis clearly missed the mark. The issue that the ID had to decide, at this point, was not whether the Applicant was a member of TPLF under paragraphs 34(1)(f) and 34(1)(b) of the *IRPA*. Rather, the issue was whether or not the Applicant admitted to being a member of the TPLF. The Applicant had pointed to the contradiction between the Original BOC form and Schedule A as further evidence that he did not admit to membership, noting the use of the word “supporter” in the Schedule A form. Instead of asking itself whether the use of the word “supporter”, as opposed to “member”, could help substantiate the Applicant’s claim that membership was never admitted, the ID instead concluded that a supporter could also be a member, an issue that would have been more appropriately addressed in the context of the three-part *B074* test, when admission of membership is in dispute.

*Did the ID err by failing to apply the requisite three-part test for membership?*

[52] As noted above, I agree with the Respondent that once I conclude that the ID erred in finding that the Applicant admitted to membership in TPLF, I shall grant the application without having to consider the Applicant's submissions regarding the three-part test.

[53] As I recently concluded in *Wasta Ismael v Canada (Citizenship and Immigration)*, 2022 FC 1520 at para 41:

.... there is strong consistency in this Court's position on paragraph 34(1)(f) of the IRPA. The term "membership" under the impugned provision has been consistently given a broad interpretation, with no distinction being drawn between formal and informal member. Once membership is admitted, no further analysis is needed. However, a more fulsome analysis is needed in cases where membership is not admitted, or when membership is tied not to the organization alleged to be engaged in subversion, but to an "adjacent" organization, or to an entity under the control of the organization in question. In these situations, the additional analysis is to be conducted by way of the three-prong test under B074, or by some other similar process.

[54] In this case, the admission of membership was strenuously contested by the Applicant. Having set aside the ID's finding with regard to the issue of admission, the matter needs to be returned for redetermination with regard to whether the Applicant did admit to being a member of TPLF and, if not, whether or not he was a member of TPLF, pursuant to the three-part test.

#### IV. Conclusion

[55] The application for judicial review is granted.

[56] There is no question for certification.



**JUDGMENT in IMM-4100-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a differently constituted panel of the ID.
3. There are no questions to certify.

"Avvy Yao-Yao Go"

Judge

## APPENDIX A

*Immigration and Refugee Protection Act (SC 2001, c 27)*  
*Loi sur l'immigration et la protection des réfugiés (LC 2001, ch 27)*

<p><b>Inadmissibility</b></p> <p><b>Security</b></p> <p><b>34 (1)</b> A permanent resident or a foreign national is inadmissible on security grounds for</p> <p>...</p> <p><b>(b)</b> engaging in or instigating the subversion by force of any government;</p> <p>...</p> <p><b>(f)</b> being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).</p>	<p><b>Interdictions de territoire</b></p> <p><b>Sécurité</b></p> <p><b>34 (1)</b> Emportent interdiction de territoire pour raison de sécurité les faits suivants :</p> <p>...</p> <p><b>b)</b> être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;</p> <p>...</p> <p><b>f)</b> être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).</p>
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4100-22

**STYLE OF CAUSE:** GIRMAY KEBEDE GEBRU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 27, 2022

**JUDGMENT AND REASONS:** GO J.

**DATED:** NOVEMBER 16, 2022

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