Federal Court  Cour fédérale

Date: 20221117

Docket: IMM-6509-20

Citation: 2022 FC 1576

Toronto, Ontario, November 17, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

HIBIL HASSAN MAHDI
(A.K.A.: MAHDI HIBIL HASSAN)

Applicant

And

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a November 23, 2020 decision [Decision] of the Refugee Appeal Division [RAD], confirming a decision of the Refugee Protection Division [RPD] that found the Applicant is not a Convention refugee or a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In the Decision, the RAD found that the reason the Applicant sought refugee

protection when he left Ethiopia had ceased to exist because of a change in country conditions and that he no longer faced risks that entitled him to refugee protection.

[2] For the reasons set out further below, I find that the Applicant has not demonstrated a reviewable error in the RAD's analysis. As such, the application will be dismissed.

I. Background

[3] The Applicant, Mahdi Hibil Hassan, is a 34-year-old man who claims he is from Somalia with Ethiopian citizenship.

[4] In or around 1991, he and his family left Somalia after the civil war and moved to Godey in Ethiopia's Somali Regional State [SRS]. During the time he lived in Ethiopia, Mr. Hassan was allegedly approached by the Ogaden National Liberation Front [ONLF], an Ogadeni separatist group, who demanded monthly contributions. Although he allegedly refused to pay them, he was later taken to jail by the Ethiopian authorities who believed he was a supporter of the ONLF and was mistreated and detained for two months. After his release, the Applicant was again approached by the ONLF for contribution money. He alleges that he was accused of being a spy for the government and that the ONLF threatened to kill him.

[5] In November 2013, the Applicant fled Ethiopia and went to the US where his request for asylum was denied in May 2014. In October 2014, he sought refugee protection from within Canada.

[6] On February 24, 2015, the RPD rejected Mr. Hassan's claim.

[7] On April 15, 2016, the Federal Court allowed a reconsideration of the judicial review of the RPD decision and remitted the Applicant's refugee claim back to the RPD for redetermination.

[8] The redetermination of the Applicant's claim was heard by the RPD on July 26, 2018. The Applicant claimed that he feared persecution and harm in Ethiopia from the ONLF, the Ethiopian government, and the paramilitary Liyu police because of perceived political opinions or affiliations, and in Somalia from the Al-Shabaab terrorist group because of generalized violence and war in Somalia.

[9] On September 25, 2018, the RPD denied the Applicant's refugee claim because of credibility and identity concerns.

[10] On October 26, 2018, the Applicant appealed the redetermination of his claim to the RAD. On September 29, 2020, the RAD invited additional submissions regarding new or updated information added to the National Documentation Package [NDP] for Ethiopia on June 30, 2020. On November 23, 2020, the RAD dismissed the appeal.

[11] The RAD accepted for the purposes of the appeal that the Appellant was a citizen of Ethiopia and/or Somalia and that his identity was established. The RAD also found that the Applicant was considered to be a government supporter by the ONLF and faced more than a

mere possibility of persecution based on his perceived political opinions at the time he fled Ethiopia. However, due to changed circumstances within the country arising from a new Prime Minister being elected in 2018, the RAD found the Applicant did not face a forward-looking risk in Ethiopia and the Applicant had not established that the "compelling reasons" exception under subsection 108(4) of the IRPA applied.

II. Issues and Standard of Review

[12] The Applicant raises the following issues on this application:

A. Did the RAD err in its assessment of the country conditions in Ethiopia in finding that the reasons for which the Applicant sought refugee protection ceased to exist?

B. Did the RAD err in its assessment of the compelling reasons exception?

[13] The parties assert, and I agree, that the standard of reasonableness applies to a review of the Decision. None of the situations that would rebut the presumption that administrative decisions are to be reviewed on the reasonableness standard are present here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[14] In conducting a reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the RAD err in its assessment of the country conditions in Ethiopia in finding that the reasons for which the Applicant sought refugee protection ceased to exist?*

[15] Paragraph 108(1)(e) of the IRPA provides that a claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, if the reasons for which the person sought refugee protection have ceased to exist.

[16] The tripartite test for changed country conditions requires that (*Geda v Canada (Citizenship and Immigration)*, 2022 FC 952 at para 33, citing *Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 at paras 31-32):

> (a) the change must be of substantial political significance;
>
> (b) there must be reason to believe that the substantial political change is truly effective; and,
>
> (c) the change of circumstances must be shown to be durable.

[17] The Applicant argues that the RAD came to premature and speculative findings relating to the substance, effectiveness, and durability of the change in country conditions in Ethiopia. He asserts that although a new Prime Minister was elected in 2018 in Ethiopia, the documentary evidence speaks to the fragility of the changes resulting from the new government and continuing issues of human rights abuses.

[18] The Applicant refers to documentation from item 2.1 of the NDP for Ethiopia, the 2019 US Department of State Human Rights Report, which he asserts references ongoing violence and human rights issues in Ethiopia after the new Prime Minister took office. He refers to excerpts that, *inter alia*, reference unlawful and arbitrary killings and arbitrary arrest and detention by

security forces, the police detainment of more than 200 individuals for political reasons, and the detainment of close to 2,000 individuals in mass arrest roundups relating to multiple incidents.

[19] The Applicant argues that the RAD unreasonably characterized these problems as "distinct issues" that did not have a direct effect on the risk faced by the Applicant, instead of recognizing that they undermined the durability and stability of the purported changes arising from the new government.

[20] In the Decision, the RAD indicates that it considered the excerpts from the NDP referenced to by the Applicant and agrees that they "refer to issues that have been encountered in the implementation of the extensive and significant reforms implemented by the new government since April 2018." However, the RAD notes that the issues do not indicate a continuing conflict between ONLF supporters and the government, which was the focus of the Applicant's claim. As stated by the RAD:

> ...the question to assess here is whether the [Applicant] faces a serious possibility of persecution in Ethiopia as a result of perceived political opinions or affiliations. The allegation is that the Appellant was suspected by the government of involvement in the ONLF, and was perceived by the ONLF as working with the government. The preponderance of the evidence indicates that individuals with either of these profiles are no longer being targeted by the alleged agents of persecution.

[21] I do not consider the approach taken by the RAD to the evidence to be unreasonable in view of the claim made.

[22] The Applicant argues that the effectiveness of political change cannot be assumed. Rather, there must be significant time elapsed before the effectiveness of change can be properly evaluated: *Mahmoud v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1442, 69 FTR 100 at para 26. Where abuses have lasted for an extended time, like in this case, the Applicant argues that a period of two and half years may not be sufficient to evaluate the proposed change.

[23] However, while the Applicant refers to additional excerpts from the NDP for Ethiopia that note the long history of tension between the ONLF and the Ethiopian state and the uncertainty that may arise depending on the outcome of upcoming national elections, the Applicant has not pointed to any information suggesting that the new government will be overturned or that it is at risk of being voted out of power in the near future. Accordingly, I do not consider it unreasonable that the RAD did not expressly address these specific excerpts in its Decision.

[24] The RAD states that it has considered all of the excerpts from the NDP referenced by the Applicant; however, the excerpts do not indicate continuing conflict between ONLF supporters and the government. The RAD notes that the situation in the SRS is relatively stable and that relationships between the government and ONLF and its past and present members are improving and are not characterized by the same violence as in the past.

[25] As stated by the RAD “this is not a situation in which the reforms are merely planned, or aspirational, or legislative declarations of intent... [t]he ONLF is now a national political party

engaged in the democratic process of the nation, and there is no suggestion in the current evidence that they continue to engage in the coercive, threatening behaviour in which they were previously involved."

[26] The Applicant contends that the reasons of the RAD are internally inconsistent, appearing to recognize the fragility of the situation in Ethiopia while at the same time finding that the changes are effective. However, I do not agree with this characterization.

[27] The RAD noted that the situation in Ethiopia was not perfect or free of difficulty. It acknowledged that the documentary evidence reflected ongoing human rights concerns and ethnic violence, but found that these occurrences principally related to other areas of the country and affected other ethnic nationalist issues (such as conflicts in the Oromia, Tigray, and Amhara regions) rather than in the SRS involving the Ogaden ethnic Somalis. The RAD referenced reports of violence among armed groups along the Oromia-SRS border, but noted that these acts appeared to be based on historical issues over land. The RAD acknowledged the Applicant's submissions stating that some reports describe the situation as remaining fragile and dependent on who is in charge. However, the RAD found that on balance the continuing issues did not indicate conflict between ONLF supporters and the government. In my view, it was open to the RAD to make these findings on its consideration of the evidence.

[28] The RAD's findings demonstrate that it has considered both the submissions made by the Applicant and the stability and probability of continuation of the changes in the country conditions. This includes consideration of where those changes might be fragile. This is not a

situation where there has been an omission in the analysis made: *Chowdhury v Canada (Citizenship and Immigration)*, 2008 FC 290 at para 14.

[29] The findings made by the RAD are factual in nature. They were reached by the RAD weighing the evidence before it, including the excerpts from the NDP identified by the Applicant. The findings should not be interfered with or disturbed unless there are truly exceptional circumstances (*Vavilov* at para 125), which I do not consider the Applicant has established exist here. Rather, a review of the Decision indicates that the RAD conducted a thorough review of the evidence and provided a transparent and intelligible analysis that includes a rational chain of analysis.

[30] In my view, the Applicant has failed to establish that there is a reviewable error with this part of the Decision.

B. *Did the RAD err in its assessment of the compelling reasons exception?*

[31] Pursuant to subsection 108(4) of the IRPA, paragraph 108(1)(e) does not apply "to a person who establishes that there are compelling reasons arising out of the previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment."

[32] The parties agree that once the RAD concludes that at the time of a claimant's departure from their home country they met the definition of a Convention refugee or a person in need of

protection, and the reasons for the claim have ceased to exist due to changed country conditions, it is required to determine if there are compelling reasons based on past persecution to allow refugee protection under subsection 108(4) of the IRPA.

[33] Subsection 108(4) contemplates exceptional circumstances that would only apply to a small minority of claims that must be considered on a fact-specific basis: *Canada (Minister of Employment and Immigration) v Obstoj*, 1992 CanLII 8542 (FCA) p 748; *Thanabalasingam v Canada (Citizenship and Immigration)*, 2017 FC 1034 at para 22.

[34] I agree with the Respondent that the preponderance of case law refers to the compelling reasons exception as being limited to situations in which there is *prima facie* evidence of previous persecution whose severity rises to the level of being "appalling or atrocious". This application of the standard was discussed in *Velez v Canada (Citizenship and Immigration)*, 2018 FC 290 at paragraphs 33 and 34, as follows:

> [33] The requirement that a claimant's return be "atrocious" or "appalling" is explained by Justice Crampton, as he was then, in *Echeverri* at para 49:
>
> > [49] In short, had the Board accepted the overall credibility of Ms. Villegas' claims, there would have been credible evidence that: (i) she herself, or the social group consisting of her family, had been subjected to past persecution; and (ii) two of her brothers had been subjected to persecution that, prima facie, rose to the level of being "appalling" or "atrocious", by virtue of the fact that they were murdered by the FARC. In these circumstances, the Board was obliged to explicitly determine, and to address in its reasons, whether Ms. Villegas or her family, as a social group, had in fact been subjected to past persecution and whether there were compelling humanitarian grounds, as contemplated by subsection 108(4), for not requiring her to avail

> herself of the adequate state protection that the Board found now exists in Bogota.
>
> [34] In my view on this record the "atrocious" or "appalling" criteria may be met. The Applicant's father died in his arms after the two of them were attacked by FARC terrorists. The Applicant and his father found the farm manager murdered by FARC. FARC attempted to murder the Applicant himself as a 14-year-old boy. FARC attempted to extort, and it appears that FARC subsequently attacked his mother with potentially deadly consequences.

[35] However, as noted by the parties and acknowledged by the RAD, there is also a second line of authority that includes the cases *Suleiman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125 [*Suleiman*] and *Kotorri v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1195 and refers to the appalling or atrocious standard as being too high. The RAD referred to the question arising from *Suleiman* as "whether, in all the circumstances, the claimant should be made to face the life which they left, even if the principal characters may no longer be present or no longer be playing the same roles, with the focus being on the state of mind of the claimant." The parties assert this involves considering whether the applicant has been seriously and personally affected by the past persecution.

[36] I agree with the Respondent that the cases that have followed *Suleiman* have tended to apply the appalling or atrocious standard. However, irrespective of which standard is applied, it is my view that the RAD reasonably found the Applicant had not demonstrated the existence of compelling reasons so as to give rise to the application of the exception.

[37] The Applicant proposes that the reasons suggest that the RAD trivialized the Applicant's past persecution. However, I do not agree with this characterization. To the contrary, the RAD expressly indicated its recognition of the seriousness of the events that took place and the reasons

why it did not consider the circumstances to satisfy the standard required to meet subsection 108(4) of the IRPA.

[38] Similarly, I do not find the Applicant's argument of inconsistency to be persuasive. In my view, it was reasonable for the RAD to note that the Applicant did not provide any psychological evidence that could be supportive of long-standing effects, while at the same time recognizing that there was no prerequisite for this evidence. I do not consider these comments contradictory, but rather explanatory.

[39] In my view, the RAD considered the totality of the evidence and the circumstances relating to the Applicant, but did not find that the exceptional test for compelling reasons existed under either standard recognized by the jurisprudence. I find no error in this analysis.

IV. Conclusion

[40] For all of these reasons, the application is dismissed.

[41] No question for certification was proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-6509-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6509-20
STYLE OF CAUSE:	HIBIL HASSAN MAHDI (A.K.A.: MAHDI HIBIL HASSAN) v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 10, 2022
JUDGMENT AND REASONS:	FURLANETTO J.
DATED:	NOVEMBER 17, 2022

APPEARANCES:

Eve Sehatzadeh	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Eve Sehatzadeh Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT