

Federal Court



Cour fédérale

Date: 20230612

Docket: IMM-4774-22

Citation: 2023 FC 830

Ottawa, Ontario, June 12, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SEMIR AHMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of the Refugee Appeal Division [RAD] affirming the determination of the Refugee Protection Division [RPD] finding that the Applicant is not a Convention Refugee or a person in need of protection, pursuant to s 96 and s 97(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I am dismissing this application for judicial review.

Background

[3] Semir Ahmed, the Applicant, is a citizen of Ethiopia. He claims that he fears persecution or a risk to his life by the Ethiopian Government because of his political opinions and, from the Oromo Liberation Front [OLF], because of his mixed ethnicity as an Oromo-Amhara.

[4] The Applicant claims that in May 2008 he and his father were taken from their home and brought to a police station where they were falsely accused of membership in the OLF, beaten and tortured. The Applicant signed an attestation of OLF membership in order to avoid further torture. He was then transferred to a prison where he was again tortured and claims that, during one such event, he lost consciousness and awoke in hospital. He escaped from the hospital after 10 days and, using a smuggler, fled Ethiopia in September 2008.

[5] The Applicant made his way through Kenya, South Africa, Brazil, Honduras, Guatemala and Mexico. Finally, he landed in the United States [US], where he was arrested for illegal entry. He made a claim for asylum, which was denied in May 2009. However, he also applied for and received withholding of removal. This required him to periodically report to US immigration authorities and also permitted him to work. He remained in the US for the next nine years.

[6] The Applicant claims that in March of 2018, when he reported to the US authorities, he was required to wear a GPS tracking device while documents for his departure from the US were being completed. On March 22, 2018, he broke the GPS device and came to Canada where he made a claim for refugee protection.

[7] The RPD denied the Applicant's claim in a decision dated August 11, 2021. It found that the determinative issues were credibility and prospective risk.

[8] More specifically, the RPD found that while the Applicant had testified that the special police had been periodically looking for him at his home in Ethiopia, most recently in June 2021, this was omitted from his Basis of Claim [BOC] narrative and his amended BOC narrative and that his explanation for this omission was not reasonable. Similarly, with respect to his claim that he fears persecution by the OLF because of his mixed Oromo and Amhara ethnicity and because the OLF would want to recruit him should he return to Ethiopia, this fear was not raised in the Applicant's original narrative but was included in his amended narrative submitted only a few days before the hearing. The RPD found that the Applicant did not reasonably explain the substantial delay in making this amendment.

[9] With respect to the Applicant's claimed mixed ethnicity, the RPD noted that in his BOC the Applicant identifies as Oromo-Ethiopian, but his Ethiopian residential identity card states his race as Oromo. He explained this discrepancy by stating that the ethnicity on his ID is determined by his father, an Oromo. The RPD found that this did not reasonably explain why the Applicant failed to mention his part-Amharic ethnicity and that, on a balance of probabilities, the Applicant had failed to establish that he also belongs to the Amhara ethnic group. The RPD also considered documentary evidence contained in the National Documentation Package [NDP] showing ethnic tension and violence in Ethiopia. However, it found that there was a lack of objective evidence supporting the Applicant's claim that the OLF is systemically targeting individuals of Oromo-Amhara ethnicity.

[10] The RPD also noted that the Applicant did not claim in either his narrative or amended narrative that he feared that the OLF wanted to recruit him. The RPD did not accept as reasonable his explanation for this omission, being that he had stated his fear of them, and drew a negative inference as to his credibility.

[11] Regarding the Applicant's prospective fear of the Ethiopian government, the RPD found that the credibility of his claim of events in Ethiopia in 2008 was at issue and that, overall, the documentary evidence showed that the treatment of political opponents had generally improved.

[12] The RPD also rejected the Applicant's *sur place* claim.

[13] For these reasons, the RPD concluded that on a balance of probabilities the Applicant would not be at risk of persecution or serious harm at the hands of the Ethiopian government or the OLF should he return.

[14] The Applicant appealed the RPD's decision to the RAD; the RAD's decision is the subject of this judicial review.

Decision Under Review

[15] The RAD found, having conducted its own analysis of the record, in particular by reading the transcript of the RPD hearing, that the RPD did not err and upheld its decision.

[16] The RAD found that the RPD did not err with respect to its findings concerning the Applicant's fear of being persecuted if returned to Ethiopia. While the Applicant argued that the entire country is engaged in ethnic war, the NDP document referred to in support of this premise actually concerned war between Ethiopia and Eritrea, which are two different countries. And, despite ethnic tensions remaining a problem, the evidence demonstrated that circumstances have improved since the new government came into power in 2018. Further, documentary evidence cited by the Applicant states that the government not only removed the OLF from the list of terrorist groups, but an agreement was signed between the two parties leading to a cease fire, although there is still a climate of violence involving certain Oromos and other ethnic groups.

[17] The RAD concluded that although problems persist, the Applicant could not rely solely on documentary evidence to establish a well-founded fear of persecution in Ethiopia. The Applicant's credibility had to be assessed to determine if he had established a connection between his personal circumstances and the documentary evidence.

[18] In that regard, with respect to the Applicant's omission from his original narrative that, since his departure from Ethiopia, Ethiopian authorities continued to look for him, the RAD found that the Applicant's explanation given to the RPD – that he had written in his narrative that he had a problem and that this statement covered everything – was not reasonable. The RAD added, with respect to the Applicant's claim that he had been arrested, detained and tortured before leaving Ethiopia in 2008, that the Applicant's refugee claim in the US was dismissed and that he did not claim asylum in any of the countries in which he stayed prior to arrival in the US, namely Kenya, South Africa, Brazil, Honduras, Guatemala, and Mexico.

[19] As to the Applicant's claim that he feared persecution based on his mixed ethnicity, the RAD noted that this was raised for the first time in the Applicant's amended narrative. His testimony explaining this, being that these things emerged later, around 2018, was vague. In his amended narrative, the Applicant stated that it was after Prime Minister Abiy Ahmed's rise to power that the situation deteriorated and the Applicant's mother began to be harassed and intimidated by the OLF. However, the RAD found that the documentary evidence showed that the situation in Ethiopia did not deteriorate since an agreement reached with the OLF and its removal from the list of terrorist organizations. Further, the *Refugee Protection Division Rules* [RPD Rules] provide for changes to a BOC form but this must be done in writing, submitted to the RPD without delay and received by the RPD no later than 10 days before the date of the hearing. The Applicant did not reasonably explain why he had not amended his BOC narrative when in 2018 his family informed him that the situation had deteriorated and his mother was being threatened by the OLF.

[20] The RAD also noted that the RPD found no evidence establishing that members of the mixed Amhara and Oromo ethnic groups are persecuted by the OLF by reason of their mixed ethnicity. While the documentary evidence submitted by the Applicant confirmed that Ethiopia faces serious ethnic tensions and that tensions between Oromos and Amharas have recently worsened, the Applicant's testimony was that his parents still live in the same location and his brother lives in his grandparent's home. Further, the RAD stated that it had already established that the Applicant was not credible regarding his allegation that the authorities suspected him of being an OLF member. Nor did the RPD err in finding that the Applicant had failed to establish that he is actually of mixed ethnicity. And, while the documentary evidence did establish that the

situation for members of the Oromo ethnic groups was worrisome, the Applicant failed to establish that he shared characteristics with such persons who have been subjected to serious violence and mistreatment, that would place him in a situation similar to theirs.

[21] As to the *sur place* claim, this was based on the three photographs submitted by the Applicant of his presence at a protest in Toronto. The protest was concerned with the displacement of people from one region of Ethiopia and called for an end to ethnic cleansing in the country and that a transition government be put in place. The RAD referred to NDP documents and found that these suggested that the problem of displacement is multifactorial, fueled not only by the government but also by non-governmental human actors and several other non-human factors. In light of this, it was not possible to assign responsibility for displacements in one region, or the desire to carry out ethnic cleansing, to the Ethiopian government alone. The increase in ethnic tensions in recent years was also likely not attributable to the government. Therefore, the Applicant had not established that what he denounced at the protest could lead to a negative reaction from the Ethiopian authorities to support his *sur place* claim. Nor had the Applicant established that the Ethiopian government was aware of his participation in the protest and he pointed to no documentary evidence establishing that the diaspora is closely monitored by the Ethiopian authorities.

[22] Finally, the RAD found that the only evidence corroborating the events the Applicant asserted took place in Ethiopia in 2008 was a letter from the Applicant's sister. Given the already identified credibility problems, the letter was not sufficient to restore the Applicant's credibility and the RPD did not err in giving it, and the other letters of support, limited weight.

Issues and Standard of Review

[23] The issues identified by the Applicant can be framed as:

1. Did the RAD breach the duty of procedural fairness?
2. Was the RAD's decision reasonable?

[24] Issues of procedural fairness are to be reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances (CPR at paras 54-56; see also *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Ahousaht First Nation v Canada (Indian Affairs and Northern Development)*, 2021 FCA 135 at para 31).

[25] In assessing the merits of the decision of an administrative maker, such as the RAD, there is a presumption that the reviewing Court will apply the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 25). Here, none of the circumstances warrant a departure from that presumption. When applying the reasonableness standard on judicial review, the court “must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the

hallmarks of reasonableness – justification, transparency, and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”

(*Vavilov* at para 99).

No Breach of Procedural Fairness

Applicant’s position

[26] The Applicant submits that in determining his credibility, the RAD introduced a new issue, delay. The RAD insinuated a failure or delay in making a refugee claim in Kenya, South Africa, Brazil, Honduras, Guatemala and Mexico, before he arrived in the US. The RAD breached procedural fairness by failing to give the Applicant notice of this issue and an opportunity to respond.

Respondent’s position

[27] The Respondent submits that the RAD is entitled to make independent findings of credibility against an applicant where credibility was at issue before the RPD, the RPD’s findings are contested on appeal, and the RAD’s additional findings arise from the evidentiary record. Such is the case here.

Analysis

[28] The Applicant refers to *Canada (Citizenship and Immigration) v. Alazar*, 2021 FC 637 at para 75 where Justice Norris held that “deciding an appeal on a new ground without first giving

notice to the parties that the issue is in play can breach the requirements of procedural fairness”, as well as *Husian v. Canada (Citizenship and Immigration)*, 2015 FC 684 where Justice Hughes stated that “if the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions” (at para 10).

[29] However, in my view, these cases are distinguishable because, in the matter now before me, the RAD did not decide the Applicant’s appeal on a new ground. The RPD found the determinative issues were credibility and prospective risk and these were the issues considered by the RAD on appeal.

[30] As the Respondent points out, the RAD can make independent findings of credibility against an applicant where credibility was at issue before the RPD, the RPD’s findings are contested on appeal, and the RAD’s additional findings are rooted in the evidentiary record (*Han v. Canada (Citizenship and Immigration)*, 2021 FC 1390 at para 32; *Mohamed v. Canada (Immigration, Refugees and Citizenship)*, 2020 FC 657 at paras 52-54. See also *Siffort v. Canada (Citizenship and Immigration)*, 2020 FC 351 at para 27).

[31] Here, the Applicant’s credibility was at issue before the RPD and the RAD. The Applicant contested the RPD’s credibility findings before the RAD. Further, the RAD’s statement that the Applicant’s claim for refugee protection in the US had been denied and that he had not sought protection in the other countries he entered prior to arriving in the US clearly stems from the record. The Applicant’s narrative states that he travelled through these countries

before entering the US and he does not claim to have sought asylum anywhere other than the US. To the extent that the RAD was making an additional adverse credibility finding on this basis, as stated in *Farah v Canada (Citizenship and Immigration)*, 2021 FC 116 at paragraph 16, it is well established that where credibility is already in issue, an additional basis with respect to that credibility does not constitute a new issue giving rise to a right to be given notice and an opportunity to respond.

[32] Accordingly, as the RAD did not raise a new issue it was not required to give the Applicant notice. There was no breach of procedural fairness.

Decision was Reasonable

Credibility

[33] The Applicant submits that the RAD erred in doubting the Applicant's credibility based on alleged omissions and late disclosure. Specifically, the omission from the Applicant's claim that the Ethiopian authorities were still looking for him; his disclosure of his mixed ethnicity and fear of persecution just before the hearing; and, a lack of corroborative evidence of his mixed ethnic identity. The Applicant submits that the RAD erred in doubting his credibility based on these omissions without explaining how it had considered and applied guidance documents concerning credibility and victims of torture. More specifically, that the Applicant claimed to be a victim of torture and neither the RAD nor RPD disputed this. Rather, they failed to account for this as a part of his explanation for why he had omitted from his narrative that the authorities had been looking for him since 2008. Failing to account for the fact of torture is contrary to the IRB's

Guideline 8 on Procedures with Respect to Vulnerable Persons Appearing before the IRB

[*Guideline 8*] and the RAD's *Training Manual on Victims of Torture*. Neither the RPD nor the RAD considered these guidance documents which is a reviewable error (citing *Niyongira v. Canada (Citizenship and Immigration)*, 2021 FC 911 [*Niyongira*]).

[34] The Respondent submits that the RAD reasonably found that the Applicant had not credibly established that the Ethiopian government suspected him of being an OLF member. This finding was based on: the Applicant's failure to mention that after he left Ethiopia the special police force went to his home looking for him; the rejection of his asylum claim in the US which undermined his allegations of events in Ethiopia; and, his failure to claim asylum in the countries he visited before coming to the US. Regarding the first of these findings, the Applicant omitted material facts and the RAD reasonably rejected his explanation that he believed that writing in his narrative of his issue with the government addressed this. Regarding the second finding, the RAD did not accept that the Applicant was the victim of torture. The RAD considered this issue, noting that the rejection of his asylum claim in the US undermined his claim to have been arrested, detained and tortured in Ethiopia.

[35] I would first note that both the RPD and the RAD found the Applicant not to be credible. Accordingly, I do not agree with the Applicant's submission that they accepted that he was a victim of torture.

[36] Second, s. 2.4 of *Guideline 8* states that "[w]herever it is reasonably possible, the vulnerability must be supported by independent credible evidence filed with the IRB registry".

Further, s. 7.3 states that “[c]ounsel for a person who may be considered vulnerable is best placed to bring the vulnerability to the attention of the IRB, and is expected to do so as soon as possible”. Section 7.4 states that Counsel for a person who wishes to be identified as a vulnerable person must make an application under the Rules of the Division. The Applicant was represented by counsel in his hearing before the RPD. A review of the transcript indicates that counsel for the Applicant did not raise any concerns about the Applicant’s vulnerability based on the allegation of torture. Nor was any medical or psychological evidence submitted to suggest that the Applicant, as a victim of torture, had difficulties with memory, consistency and coherence (*Wardi v Canada (Citizenship and Immigration)*, 2012 FC 1509 at para 15). And, in the Applicant’s submissions made to the RAD, the Applicant did not assert that the RPD erred in failing to consider the *Guideline 8*. In these circumstances, it was not a reviewable error for the RPD and RAD not to specifically refer to *Guideline 8* (see, for example, in another context, *Konecoglu v Canada (Citizenship and Immigration)*, 2021 FC 1370 at para 26; *Hillary v. Canada (Citizenship and Immigration)*, 2011 FCA 51 at paras 42-44, 47-48). Nor does the Applicant now suggest what accommodations he required, that these were denied or how this impacted his testimony.

[37] As to the RAD’s credibility findings, its treatment of the credibility of the Applicant with respect to the alleged events in Ethiopia in 2008 is brief.

[38] First, the RAD found that in the Applicant’s BOC narrative he omitted to mention that since leaving Ethiopia in 2008, various individuals, including members of the special police force, went to his home looking for him. The RAD referred to his explanation given to the RPD

for this omission. The transcript indicates that this was that “I wrote that I have a problem... I have an issue with the government, that I was afraid of the government and I believe that engulfs all the case concerning me”. The RAD found this explanation not to be acceptable given that at the beginning of the hearing the Applicant had stated that the content of his original BOC form and the changes made at a later date were complete, true and correct.

[39] This is essentially the same reasoning and finding of the RPD which noted that the Applicant testified at the hearing that the special police had been periodically looking for him at his home, most recently in June 2021, but that this had not been mentioned in his Basis of Claim [BOC] narrative or his amended BOC narrative. When asked to explain this important omission, the Applicant stated that he had written in his amended BOC that people went to his home to harass his mother. The RPD noted that in his amended narrative the Applicant had indicated that his mother was harassed by OLF supporters because of her Amhara ethnicity, which was not linked to the Applicant’s allegation that the special police had been looking for him at his home. The RPD found the Applicant’s explanation to be unsatisfactory, as the issue of being sought by the authorities was at the core of his claim of his alleged fear of the Ethiopian government. He would not have omitted this if there were ongoing efforts by the special police to ascertain his whereabouts over the past 13 years and as recently as June 2021. The RPD found the omission to be significant and drew a negative credibility inference.

[40] The RPD and the RAD are entitled to make adverse credibility findings based on material omissions from a claimant’s BOC that are not reasonably explained. The BOC must be comprehensive, with all important facts and details included. Failure to do so can harm the

claimant's credibility (*Weche v. Canada (Citizenship and Immigration)*, 2021 FC 649 at para 22; *Ogaulu v. Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18-20). And, contrary to the Applicant's submissions, the RAD did not ignore his "logical and adequate" explanation, it rejected it as unsatisfactory. I see no error in the RAD's determination in this regard.

[41] The RAD then went on to state that with respect to the allegation that the Applicant was arrested, detained and tortured before leaving Ethiopia in 2008, that the Applicant's claim for asylum in the US was dismissed and that he did not claim asylum in the countries he travelled through before arriving in the US. The RAD did not elaborate on this point. Nor does the Applicant challenge the finding.

[42] Regardless, I note that persons seeking refugee protection are expected to seek asylum in the first safe country they reach and a failure to do so can negatively impact the well foundedness of their fear of persecution. The Applicant traveled to six countries between September and November of 2008 before arriving in the US and provided no evidence that he sought protection in any of these countries. As Justice Bell stated in *Salim v. Canada (Citizenship and Immigration)*, 2022 FC 452 at para 23: "It is trite law that the failure to claim protection in the first safe country of arrival can be indicative of a lack of subjective fear (*Jeune v Canada (Citizenship and Immigration)*, 2009 FC 835 at para 15; *Ndoungo v Canada (Citizenship and Immigration)*, 2019 FC 541 at para 17)".

[43] The RAD also stated, without further explanation, that the Applicant's claim for protection in the US was denied. This was demonstrated by the record which contains the "Order

of the Immigration Judge”, of a US immigration Court dated May 19, 2009 in which the Applicant’s application for asylum was denied. The decision is stated to be a summary of an oral decision and that it is solely for the convenience of the parties. If the proceeding were to be appealed or reopened, then the oral decision would become the official record. Thus, there are no reasons as to why the claim was rejected. The Order does, however, grant the Applicant’s request of “withholding removal”. Again, there are no reasons for this.

[44] The Applicant also did not provide to the RPD his submissions made to the US immigration Court to support his claim for refugee protection or his request for withholding of removal.

[45] He did provide documentary evidence explaining the difference between the granting of asylum and the granting of a withholding order which protects a person from being returned to their country of origin and the right to remain in the US and work there. This document states that withholding of removal does not offer permanent protection or a path to permanent residence. “If conditions improve in a person’s home country, the government can revoke withholding of removal and again seek the person’s deportation. This can occur even year after a person is granted protection.” The Applicant offered no evidence that the reason he was granted a withholding order was because the US immigration judge accepted that he was at risk of torture upon return. And, as he indicated in his BOC narrative, in March 2018 the US authorities required him to wear a GPS tracker until they finalized the documents for his departure from the US. Thus, whatever the reason for granting the withholding order, it appears that in 2018 the US authorities had determined that the Applicant could be returned to Ethiopia.

[46] In sum, the RAD did not err in its negative credibility findings. Nor, in these circumstances did it err in not addressing *Guideline 8*.

Prospective Fear

[47] The Applicant submits that the RAD relied on out-of-date country conditions documents to find that there had been improvement in ethnic tensions in Ethiopia since the new administration came into power in 2018 and that the OLF had been removed from the list of terrorist organizations. According to the Applicant, by making these findings the RAD “implicitly accepted” the Applicant’s claim that he was targeted for his alleged support and membership in the OLF but “insinuates” that real and imputed OLF members and supporters are no longer subjected to persecution in Ethiopia. Further, that the RAD’s analysis of prospective fear is based on old and outdated documents and that documents not cited contradict the RAD’s finding that the Applicant will not face prospective harm based on his alleged membership in the OLF. The Applicant submits that the jurisprudence is clear that the RAD must examine the most up-to-date information available, even when that information was not filed by the Applicant (*Sivapathasuntharam v. Canada (Citizenship and Immigration)*, 2012 FC 486 at para 22).

[48] The Respondent concedes that the RAD relied on a document from November 2019 concerning the treatment of OLF members, rather than newer materials now cited in the Applicant’s record. However, the Respondent submits that this does not render the RAD’s decision unreasonable. The 2019 document is still found in the October 2021 NDP relied upon by the Applicant. More importantly, the RAD did not accept that the Applicant was targeted by the authorities for his alleged membership and support of the OLF. It found that he was not

credible regarding whether the authorities suspected him of being an OLF member. Accordingly, the evidence concerning treatment of OLF members is immaterial and the RAD's overall propositions that the Applicant cannot solely rely on the objective documentary evidence to establish his claim is reasonable.

[49] First, I do not agree with the Applicant that just because the RAD addressed his submissions on the documentary evidence pertaining to ethnic violence that it therefore accepted his claim that he was targeted for his alleged support and membership in the OLF. The RAD was merely responding to the Applicant's submissions.

[50] The RAD noted that in his memorandum the Applicant submitted ethnic tensions are the biggest problem in Ethiopia. The RAD found, however, that the United States, State Department, *Ethiopia, Country Report on Human Rights Practices for 2020*, March 2021, cited by the Applicant and found in the NDP, indicted that the Ethiopian Human Rights Commission investigated allegations of abuses committed by security forces. Further, that another NDP document cited by the Applicant, Austrian Red Cross, Austrian Centre for Country of Origin and Asylum Research and Documentation, *Ethiopia, COI Compilation*, November 2019, states that on July 5, 2019 the Ethiopian parliament removed the OLF from the list of terrorist organizations after an agreement was signed by the parties involved which led to a ceasefire. However, that some people associated with the movement did not accept these changes and there was still a climate of violence involving certain Oromos and other ethnic groups. The RAD concluded that it could not be denied that problems persisted in Ethiopia. Nevertheless, the Applicant could not rely solely on the documentary evidence to establish a well-founded fear of persecution if he

were to return to Ethiopia. For that reason, it was important to analyse the Applicant's credibility in relation to his allegations to determine if he had established a connection between his personal situation and the documentary evidence.

[51] The RAD then went on to assess the Applicant's credibility with respect to whether the Ethiopian authorities are looking for the Applicant based on his alleged OLF membership and his claimed mixed ethnicity.

[52] It ultimately concluded that the RPD did not err with respect to credibility and prospective fear and set out the RPD's reasons, which include that:

[27] Sources report that on 5 July 2018, the Ethiopian parliament voted to remove the OLF from the country's list of "terrorist" organizations. There were return of exiled political leaders and fighters of the OLF to Ethiopia in September 2018 after an agreement to end "hostilities" was signed between the OLF and the Ethiopian government on 7 August 2018 in Asmara. Overall, documentary evidence indicates that with the arrival of Prime Minister Abiy Ahmed in April 2018, treatment of political opponents, including politically active Oromos, who opposed the government, has generally improved.

[28] The Panel has analyzed the risk for the claimant at the hands of the government and OLF. The claimant alleges to have been wrongfully arrested and imprisoned in 2008 for an offence (being a member of the OLF) that he never committed. The OLF is a lawful political party today in Ethiopia. He has been absent from the country for the last 13 years. He was not politically active in Ethiopia. His allegations about the police's ongoing efforts to look for him and charges laid against him lacked credibility. He has failed to credibly establish his mixed ethnicity as Oromo and Amhara, and the alleged systemic persecution against Oromo-Amhara by the OLF. There is no evidence that his one-time participation in a protest was known to the Ethiopian government. In light of all these reasons, the panel finds that on a balance of probabilities, the claimant would not be at risk of persecution or

serious harm at the hands of the government or OLF should he return to Ethiopia.

[footnotes omitted]

[53] Given that the RAD found that the RPD had not erred, and agreed with its finding that the Applicant was not credible with respect to his claim that the Ethiopian authorities suspected him of being an OLF member, I agree with the Respondent that whether or not the RAD failed to refer to the most recent country conditions pertaining to the treatment of OLF members by the authorities, now cited by the Applicant, is immaterial.

[54] Regardless, with respect to the Applicant's assertion that the OLF is once again considered to be a terrorist organization by the Ethiopian government and, therefore, that the RAD erred in relying on a document indicating that the OLF had been removed from the terrorist organization list, I have reviewed the NDP documentation and, on balance, it does not support this assertion.

[55] While the Applicant quotes statements from certain sources from various articles intended to support his position, these quotes cannot be viewed in isolation and without context. Viewed in whole and read in context, the articles referred to by the Applicant and the RAD do not support the Applicant's assertion that the OLF has again been named as a terrorist group by the Ethiopian government. And, while there may be a lack of clarity as to the nature of the relationship between the two, the OLF remains a political party while the OLA appears to be an armed group that has subsequently been listed as a terrorist organization. The Applicant left Ethiopia long before the OLA splinter group emerged. Further, given that the RAD found the

Applicant not to be credible in his claim of being an alleged OLF supporter, even if the RAD erred in not referring to a document cited by the Applicant suggesting that alleged OLF are subject to arbitrary arrest, this would not impact its ultimate decision. “A refugee protection claim cannot rely solely on the evidence found in the National Documentation Package of the country about which the fear is being raised” (*Jean v. Canada (Citizenship and Immigration)*, 2019 FC 242 at paragraph 19).

Mixed ethnicity identity

[56] The Applicant submits that the RAD misinterpreted the Applicant’s claim regarding his mixed ethnicity. The persecution of his family by reason of their mixed ethnicity is a new phenomenon, beginning in 2018. It gives rise to *sur place* considerations and must be dealt with separately instead of as auxiliary to the Applicant’s primary claim, and this amounts to a reviewable error. The Applicant also submits that the RAD was wrong about the situation regarding the OLF and its relationship with the Ethiopian government as the OLF is once again proscribed as a terrorist organization. Further, that the RPD and the RAD improperly relied on delay in raising this issue in his amended BOC narrative to impugn the Applicant’s credibility. Finally, the Applicant submits that the RAD erred in finding that the Applicant had failed to corroborate his mixed ethnic identity, that such individuals are targeted because of their identity, and that the RAD failed to review the available country condition documents and conflated credibility with sufficiency.

[57] The Respondent submits that the RAD reasonably found that the Applicant did not establish his mixed ethnicity given that: the Applicant failed to mention it in his original BOC;

his statement about the worsening of the ethnic tensions in Ethiopia was not supported by the documentary evidence; and, he failed to amend his BOC in 2018 when he supposedly learned about the worsening conditions. Further, the generalized evidence submitted concerning the OLF is immaterial as the Applicant failed to establish that he was suspected of being an OLF member. The Applicant also did not explain why he waited from 2018 until 2021 to update his BOC and, when asked to explain, he did not mention that he was relying on the Rules. The Respondent also submits that the RAD reasonably found that the Applicant's ethnicity did not create prospective risk, nor did the Applicant substantively engage with the findings made by the RAD in that regard. Further, the RAD reasonably did not accept that the Applicant was of mixed Oromo-Amhara ethnicity.

[58] I will first address the Applicant's submission that the late amendment to his BOC should not give rise to an adverse credibility finding because it was submitted in time and in accordance with the RPD's Rules.

[59] The RAD found that the Applicant's claimed fear of returning to Ethiopia because of his mixed Oromo and Amhara ethnicity arose only in the amendment to his BOC. In his original BOC, he stated that he was Oromo and Ethiopian. The RAD referred to the Rule 9 of the Refugee Protection Rules [*RPD Rules*]. Rule 9(1) concerns changes or additions to the BOC form. Rule 9(2) concerns time limits for such changes, requiring that they be provided to the RPD "without delay and must be received by it no later than 10 days before the date fixed for the hearing".

[60] In its decision, the RPD noted that the Applicant's fear of persecution by the OLF because of his mixed Oromo and Amhara ethnicity and because the OLF would want to recruit him should he return to Ethiopia was not raised in the Applicant's original narrative but was included in his amended narrative that was submitted to the RPD a few days before the hearing. The Applicant had explained that the problem arose in 2018 with the formation of the new government but the RPD found that the Applicant had plenty of time to submit an amended narrative between 2018 and 2021 and that his explanation for not previously submitting it was simply that the situation had deteriorated since 2018, without further details. The RPD found that this did not reasonably explain the substantial delay and cast serious doubts on his credibility with regards to this fear. The RAD agreed with this, and found that the Applicant did not provide a satisfactory explanation as to why the amendment was not submitted without delay.

[61] The jurisprudence of this Court is clear that all of the important facts and details of a claim must be included in the BOC form and failure to do so can affect the credibility of all or part of a claimant's testimony (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 18; *Manan v Canada (Citizenship and Immigration)*, 2020 FC 150 at para 44; *Husyn v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 1386 at para 25; *Hamidi v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 243 at paras 27-29). The RPD may also draw a negative credibility inference with respect to late amendments relating to important elements of an Applicant's narrative (*Amiryar v Canada (Citizenship and Immigration)*, 2016 FC 1023 at para 17; *Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at para 31).

[62] Here, the amendment was significant as it asserted a new basis for a fear of persecution. In the amended BOC narrative, the Applicant claimed that there was ethnic cleansing in some parts of Ethiopia. He claimed to be of mixed ethnicity as his mother is from the Amhara ethnic group and his father is Oromo. He stated that his family lived in the Oromia region and, after the change of government, the situation deteriorated. His mother had been harassed and intimidated by supporters of the OLF. He asserted that if he were to return to Ethiopia he could be attacked by the OLF because of his ethnicity since the OLF support ethnic cleansing of any group not belonging to the Oromo tribe.

[63] The RAD agreed with the RPD that the Applicant's explanation, that this concern arose later, was vague. While it was true that there was a change of Prime Minister in 2018, this did not explain why the Applicant did not amend his BOC until days before the hearing.

[64] In my view, while the delay in amending his BOC until the last minute might not alone suffice to support the RAD's negative credibility finding, the RAD also agreed with the RPD that the Applicant had not in fact established that he is actually of mixed ethnicity.

[65] The RPD found that in his BOC the Applicant identifies as Oromo-Ethiopian, but his Ethiopian residential identity card states his race as Oromo. He explained this discrepancy by stating that the ethnicity on his ID is determined by his father, an Oromo. The RPD found that this did not reasonably explain why the Applicant failed to mention his part-Amharic ethnicity and, on a balance of probabilities, the Applicant had failed to establish that he also belongs to the Amhara ethnic group. The RPD also noted that, when asked how people would know that he is

Oromo-Amhara, the Applicant stated that it would be because he does not speak Oromo. The RPD pointed out that in his BOC the Applicant stated that he spoke Oromo. The RPD did not accept as credible his explanation that he understands Oromo in light of the clear BOC instructions and Applicant's declaration that these were interpreted to him and that the information he provided was complete and true. This contradiction further undermined the Applicant's credibility in claiming Oromo-Amhara ethnicity. In its reasons, the RAD added that there was nothing on the Applicant's baptismal certificate indicating that his mother is a member of the Amhara ethnic group.

[66] In my view, the RAD did not err in its treatment of this issue. Further, it reasonably found that the Applicant failed to establish his Oromo-Amhara ethnicity as the RPD had concluded. Nor do I agree with the Applicant that the RAD failed to consider the country condition documentation, his offered explanation, or, conflated credibility with the sufficiency of the evidence. The Applicant simply failed to meet his onus. Accordingly, as this finding was determinative of his claim of forward-looking harm based on mixed ethnicity, any further issues he raised with respect to how the RAD treated this issue need not be addressed.

Sur place *claim*

[67] The Applicant submits that the RAD's *sur place* findings regarding the circumstances in Ethiopia were erroneous because they were based on a selective and flawed understanding of the situation. He submits that there was sufficient objective evidence showing that his activities will likely come to the attention of the Ethiopian authorities and that he will likely be persecuted as a dissident upon return.

[68] The Respondent submits that the RAD reasonably found that the Applicant failed to establish that his participation in a protest in Toronto could lead to a negative reaction from the Ethiopian authorities. The Applicant did not engage with the RAD's finding that he had not established that what he denounced could lead to such a reaction. Without establishing this, the issue of surveillance is a minor consideration. Nevertheless, the Applicant failed to meet his onus of establishing, on a balance of probabilities, the facts upon which he based his claim. The evidence he produced did not establish that simply attending a demonstration rendered it more likely than not that he would come to the attention of the Ethiopian authorities.

[69] With respect to the Applicant's *sur place* claim, the RPD noted that the Applicant provided three photographs to support that he participated in a protest in March 2019 in Toronto, which protest had the objective of stopping ethnic genocide in Ethiopia. However, that the Applicant did not know who organized the protest. Given its other credibility findings, the RPD found that it was likely that the Applicant participated in this event to bolster his claim. Further, it found that on a balance of probabilities, holding a placard at one demonstration was insufficient to incur a risk of persecution or harm from the Ethiopian authorities, nor had the Applicant provided any evidence that his involvement had come to the attention of those authorities. It afforded the photographs little weight in establishing a prospective risk.

[70] The RAD noted that the Applicant submitted that the RPD's finding that he participated in the protest to bolster his claim was not established and that the documentary evidence establishes that the diaspora is closely monitored by the Ethiopian authorities.

[71] The RAD pointed out that the three photographs produced by the Applicant indicated that the protest he participated in concerned displacement of 900,000 people from one region in Ethiopia, ending ethnic cleansing, and called for a transition government to be put in place. Referencing a NDP document, the RAD noted that its analysis identified five different causes of displacement in Ethiopia: natural disasters, conflicts, pastoralism, infrastructure, development projects and man-made disasters. Given this, the RAD found that it would not be possible to assign responsibility for displacements in one region, or the desire to carry out ethnic cleansing, to the Ethiopian authorities alone. Having reviewed other NDP documents, the RAD found that, while it was true that ethnic tensions has increased in recent years, they had not arisen from an ethnic cleansing plan adopted by the Ethiopian authorities – the violence was often citizen-on-citizen and the federal police had arrested numerous regional officials for participation in violence or failure to prevent violence. Thus, the Applicant had failed to establish that what he denounced in the March 2019 protest could lead to a negative reaction from the Ethiopian authorities or that his participation was brought to the attention of those authorities. While the Applicant had submitted that the documentary evidence clearly established that the diaspora is closely monitored, the Applicant did not indicate where this information was found and the RAD found no information confirming this claim in the NDP.

[72] The Applicant's submissions on this issue, made in support of this judicial review, are lengthy and include case references to *Mane v Canada (Citizenship and Immigration)*, 2007 FC 1000 and *Hailue v Canada (Citizen and Immigration)*, 2006 FC 980 in which this Court found that the Ethiopian government monitored its diaspora in Canada. In my view, these cases do not assist the Applicant as they pre-date the 2018 change in government. And, while the Applicant

insists that that surveillance by the Ethiopian government of the diaspora has continued since these cases, the only references he points to that concern surveillance in Canada are two Responses to Information Requests [RIR]. The first of these is *Ethiopia and Canada: Information on the Unity for Human Rights and Democracy (Unity), including activities and requirements and procedures to become a member; whether they provide verification of the political activities of their members in Ethiopia; whether Ethiopian authorities monitor or regulate the activities of Unity members* (2015-January 2017). The Applicant does not profess to be a member of Unity and this RIR predates the 2018 change in government. The second RIR is *Ethiopia: Information on the ability of the Ethiopian government to monitor and censor Ethiopian dissidents living in Canada, including scope and type of surveillance, and technology used; treatment of returning dissidents from Canada, including whether particular profiles face greater risks upon return* (2014-January 2017). This RIR also predates the 2018 change in government. It concerns monitoring and censoring of Ethiopian dissidents in Canada. Again, this would not include the Applicant given the RAD's finding that the Applicant was not credible regarding the fact that the authorities suspected him of being an OLF member. The other NDP documents referenced by the Applicant concern surveillance in Kenya, Europe and the US, not Canada.

[73] One of these NDP documents was *Political situation and treatment of opposition. Report based on interviews in Ethiopia* from the Danish Immigration Service dated September 2018. The Applicant excerpted s. 9.2 of the report to support surveillance in Canada, although it refers only to surveillance of anti-government demonstrators specifically in the US or European.

Notably, the two sections which follow this excerpt indicate that the situation of members of the diaspora has improved since the 2018 election:

9.3. After the nomination of the new Prime Minister, the situation for the diaspora would be less threatening and that members of the diaspora are less worried for their safety than before because of the significant change in political situation.

9.4. According to the representative of the British Embassy, members of the diaspora who decide to return to Ethiopia are allowed to reintegrate into society as citizens, and open private businesses, which many choose to do with quite some success.”
[citations omitted]

[74] And, contrary to the Applicant’s submission, the RAD did not accept that the Ethiopian government sends its informants and agents to attend political events organized by diaspora dissidents and record participants activates. The RAD states that this was the submission made by the Applicant in his memorandum but that the Applicant did not indicate where this information could be found in the documentary evidence and that the RAD found no confirmation of this in the NDP.

[75] While I agree that the RAD should, perhaps, have acknowledged the above NDP documents, given that the Applicant was found not to be credible in his claim of being an alleged OLF member, as well as the 2018 the change of government, the failure to do so is not fatal in these circumstances. Further, and in any event, as the Respondent points out, the Applicant fails to engage with the RAD’s finding that the subject matter of the protest would not engage the Ethiopian authorities.

Conclusion

[76] While the RAD's reasons are certainly not perfect, for the above reasons I am not persuaded that a reviewable error has been established.

JUDGMENT IN IMM-4774-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4774-22

STYLE OF CAUSE: SEMIR AHMED v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 24, 2023

JUDGMENT AND REASONS: STRICKLAND J.

DATED: JUNE 12, 2023

APPEARANCES:

Teklemichael Ab Sahlemariam FOR THE APPLICANT

Nicholas Dodokin FOR THE RESPONDENT

SOLICITORS OF RECORD:

The Law Office of Teklemichael Ab Sahlemariam FOR THE APPLICANT
Barrister, Solicitor and Notary
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario