Federal Court  Cour fédérale

Date: 20240102

Docket: IMM-9391-22

Citation: 2024 FC 8

Ottawa, Ontario, January 2, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SEMHAR GEBREZGIABEHER HABTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Semhar Gebrezgiabeher Habte, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") refusing her application for permanent residency as a family member pursuant to subsection 176(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Officer was

not satisfied that the Applicant was the legally adopted child of her sponsor as required under sections 3(2) and 4(2) of the *IRPR*.

[2] The Applicant submits that the Officer's decision is unreasonable for ignoring evidence and failing to analyze her application as a *de facto* family member of her sponsor, as well as failing to consider the best interests of the child ("BIOC").

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 22-year-old citizen of Eritrea. She is currently residing in Uganda.

[5] On August 18, 2003, the Applicant was allegedly adopted by her aunt, Mulu Habte Haile (Ms. Haile), in Eritrea. Her biological mother died in 2002.

[6] The Applicant provided various documents to support this adoption, including an adoption certificate, birth certificates of her parents, and a death certificate for her mother.

[7] On November 27, 2017, Ms. Haile sought refugee protection in Canada. She listed the Applicant as an adopted child in her refugee claim. In a decision dated January 31, 2018, the Refugee Protection Division accepted Ms. Haile's claims.

[8] On February 11, 2018, Ms. Haile applied for permanent residence.

[9] On October 14, 2021, IRCC sent a letter requesting that the Applicant prove she is the lawfully adopted child of Ms. Haile and that Ms. Haile has a parental relationship to her. IRCC's list of requested documents included "a death certificate for your mother; a letter from your father (if you know his whereabouts), baptismal/church records, or any other documents/photographs to establish that you are the lawfully adopted child of the principal applicant in Canada." IRCC also requested the Applicant to send a police certificate from Uganda.

[10] On November 4, 2021, the Applicant replied to IRCC's request, providing her birth certificate, adoption certificate, a picture with Ms. Haile when the Applicant was a child, a police certificate from Uganda, evidence of money transfers from Ms. Haile to her, and screenshots of communications.

[11] On January 12, 2022, IRCC responded to the Applicant with a procedural fairness letter stating that the officer was not satisfied, based on the new evidence, that the Applicant is the legally adopted daughter of Ms. Haile and met the definition of a "family member" for the purposes of the *IRPR*.

[12] IRCC found that the names of her parents on her birth certificate and adoption certificate did not match the names listed by Ms. Haile on her refugee application form. IRCC further found that the aunt's application form stated she resided in Durko, Eritrea, which is 76 kilometres away from Asmara, where the Applicant resided, thus making it unclear how the

Applicant was Ms. Haile's adoptive child if they resided in different cities for a large period of the Applicant's childhood. Additionally, IRCC did not find the adoption certificate to be authentic and noted that no death certificate had been provided for her mother.

[13] On February 7, 2022, the Applicant responded to this procedural fairness letter and provided birth certificates listing her biological parents' names, a death certificate for her mother, and a letter of support.

B. *Decision under Review*

[14] In a decision dated August 30, 2022, the Officer found that the Applicant was not a legally adopted child for the purposes of subsection 176(1) of the *IRPR*.

[15] The Officer's reasons included that:

> Based on the information before me, I am not satisfied that you are the legally adopted child of Mulu Haile Habte. You were given an opportunity on two separate occasions to submit additional evidence to support your application. The last documents provided are recently issued birth certificates and a death certificate. The names listed on the birth certificates are MULU and GEBREZGIABHER. No other supportive documents were provided to legally connect those names to your father and aunt. You state in an accompanying letter that you have no proof that you and your aunt lived together in Eritrea. There is no further documentation provided as requested with respect to your adoption.

[16] For these reasons, the Officer was not satisfied that the Applicant was a legally adopted child and refused her application pursuant to subsection 176(1) of the *IRPR*.

III. **Issue and Standard of Review**

[17] The sole issue raised in this application is whether the Officer's decision is reasonable.

[18] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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, 133-135).

[20] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every

piece of evidence, a decision's reasonableness may be called into question where the decision exhibits a "failure to meaningfully grapple with key issues or central arguments" (*Vavilov* at para 28).

IV. **Analysis**

[21] The Applicant submits that the Officer's decision is unreasonable in three regards: by finding the Applicant is not an adopted daughter of Ms. Haile; in failing to analyze the Applicant's application as a *de facto* family member of Ms. Haile's family; and in not considering the best interests of the child ("BIOC"). I agree. The Officer's decision is not justified in relation to its legal and factual constraints (*Vavilov* at paras 99-101).

[22] The Applicant submits that the Officer erred in finding her not to be an adopted daughter of Ms. Haile. The Applicant maintains that the Officer did not explain why her adoption certificate was inauthentic, failing to corroborate this finding with reference to any evidence. Furthermore, the Applicant maintains that the Officer's reasons for rejecting the evidence corroborating the Applicant's relation to Ms. Haile and the adoption are inadequate, and that a detailed analysis of conflicting evidence is necessary for administrative decision-making. The Applicant further submits that the Officer failed to analyze her application as a *de facto* family member of Ms. Haile, despite the facts of this case indicating such an analysis was required. Additionally, the Applicant submits that the Officer erred by failing to analyze the BIOC of the Applicant, given her dependency upon her adoptive mother.

[23] The Respondent submits that the Officer's decision is reasonable. The Respondent maintains that the Officer did not ignore evidence and that the procedural fairness letters made it clear to the Applicant which documents were required, but the Applicant did not address nor respond to these letters' concerns. The Respondent submits that the Officer considered the evidence provided and that the onus was on the Applicant to provide sufficient documentation. Additionally, the Respondent contends that the Officer provided adequate reasons based on the concerns expressed and the evidence before the Officer, and that the Officer did not have to consider the de facto family member nor BIOC analysis given the Applicant did not request these analyses. The Respondent maintains that the Officer was not required to conduct these analyses given that the Applicant did not request them (*Essindi v Canada (Citizenship and Immigration)*, 2018 FC 288 ("*Essindi*") at paras 16, 19).

[24] I disagree with the Respondent. First, in *Essindi*, my colleague Associate Chief Justice Gagné, dealt with proceedings before an appeal division (the Immigration Appeal Division) (*Essindi* at para 15). The matter before this Court is distinguishable, involving a different governmental agency, under a different statutory mandate, and with an officer of first-instance. The Respondent's reliance upon *Essindi* is not of assistance.

[25] I accept that the relevant *de facto* family member facts were "staring [the Officer] in the face" (*John v Canada (Citizenship and Immigration)*, 2010 FC 85 at para 14) such that the Officer erred by failing to conduct this analysis. The Officer was aware of evidence establishing that the Applicant and her sisters lived together as a family and evidence of proof of financial support. The Officer was also aware the Applicant has left her country and lives in exile without her family. The Officer erred by failing to conduct an analysis of the Applicant as a *de facto*

family member, given the evidence warranted answering the question of whether the Applicant "is a vulnerable person who is emotionally and financially dependent on individuals living in Canada" (*Sioco v Canada (Citizenship and Immigration)*, 2019 FC 1286 at para 20, citing *Frank v Canada (Citizenship and Immigration)*, 2010 FC 270). The Officer's decision is not justified with regard to its legal and factual constraints (*Vavilov* at paras 99-101).

[26] Furthermore, I agree with the Applicant that the Officer unreasonably found that the Applicant had provided insufficient evidence to satisfy the Officer she was the legally adopted child of her sponsor. Foreign documents purporting to have been issued by a competent foreign public officer should be accepted unless there is reason to doubt their authenticity (*Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at paras 19-20).

[27] Here, the Officer's reasons about the adoption certificate are unreasonable. The Officer found the adoption decree, provided by the Social Court of Eritrea, to be inauthentic without reference to any piece of objective evidence stating that a document from the Social Court of Eritrea is not binding and without reference to requirements that it needed a professional translation and/or an original in the Applicant's local language. Furthermore, findings including that the document was "on plain paper" cannot form part of a decision to deem evidence inauthentic without reference to evidence establishing that such documents are not typically on plain paper. The Officer found this document to be inauthentic without grounding this finding in the evidence (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 24). This shortcoming is sufficiently serious to render the decision unreasonable (*Vavilov* at para 100).

V. **Conclusion**

[28] This application for judicial review is granted. The Officer's decision is not justified in light of its legal and factual constraints. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-9391-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter is remitted for reconsideration by a different decision maker.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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