Federal Court  Cour fédérale

Date: 20240812

Docket: IMM-1090-23

Citation: 2024 FC 1255

Ottawa, Ontario, August 12, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

DAWIT MENGESHA TEDLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Dawit Mengesha Tedla, seeks judicial review of a decision of a visa officer (the "Officer") rejecting his application for permanent residence as a refugee under the Convention refugee abroad class or the country of asylum class, pursuant to section 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicant submits that the Officer's decision was rendered in a procedurally unfair manner and is unreasonable.

[3] For the following reasons, I find that the decision was rendered in a procedurally fair manner and is reasonable. This application for judicial review is dismissed.

II. **Analysis**

A. *Background*

[4] The Applicant is a 52-year-old Eritrean citizen.

[5] According to his narrative, the Applicant was deported to Eritrea in 1998, whereupon he was conscripted into the Eritrean military. The Applicant states that in 2008, he was arrested for his religious practices and transferred to a military prison camp. He states that in 2010, he was coerced into signing a document denouncing his religious practices so that he could escape his imprisonment. He provides that upon release, he was sent to a company owned by Eritrea's ruling party.

[6] The Applicant further states that in 2015, he and others were caught practicing their faith by Eritrean authorities and subsequently tortured for three weeks. He provides that he was once more sent to a military prison. He states that after this release, on September 30, 2017, he travelled to Sudan, staying in a Sudanese refugee camp for two years, and in 2019, fearing for his life in this camp, fled to a different refugee camp in Ethiopia.

[7] On December 30, 2019, the Applicant's application for refugee status was received. In a letter dated August 11, 2020, IRCC told the Applicant that he and his spouse appeared to be eligible for refugee sponsorship. On June 22, 2022, the Applicant and his spouse were provided with an interview.

[8] In a letter dated November 1, 2022, an officer with the High Commission of Canada sent the Applicant a procedural fairness letter ("PFL"). The officer was concerned with the Applicant's omission of a previous United States visa application and refusal, previous possession of a passport, the Applicant's detention between 2015-2017, and the fact that he fled Eritrea within 30 days of being released from detention. The officer provided the Applicant with 30 days to respond to the concerns.

[9] On November 20, 2022, the Applicant responded. He explained that he had omitted the visa application and refusal owing to the person who helped him complete them. The Applicant explained that he was able to apply for a US visa—and be able to leave prison—because he had been able to receive a medical examination and occasionally leave prison for follow-ups. He further states that he had previously had an Eritrean passport, but lost it when he first crossed into Sudan.

[10] On December 1, 2022, the Officer found that the Applicant was not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") and was further not satisfied the Applicant was not inadmissible to Canada.

[11] Many of the reasons for refusing the application are found in Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[12] The Officer did not find the Applicant to be credible. The Officer found that the Applicant's explanations in the response to the PFL to be self-serving and implausible; specifically, the Officer found that the Applicant was not detained in Eritrea. The Officer found it implausible that Eritrean authorities would torture the Applicant but release him on bail for his medical appointments, recommend that he go abroad for treatment of the Applicant's conditions, release the Applicant from detention to be with his family, and issue him a passport while out of prison on bail. The Officer further found it implausible that the Applicant would be released from prison, allowed to apply for a US visa, and be issued a passport, only to be placed back in prison and then released again in 2017.

[13] The Officer therefore concluded that the Applicant was not detained in Eritrea between 2015-2017, and that his omission of his US visa application refusal and receipt of a passport from Eritrean authorities saw him contravene section 16 of the *IRPA*. The Officer therefore refused the Applicant's claim, as well as that of his spouse.

B. *Issues and Standards of Review*

[14] The application for judicial review raises the issues of whether the Officer's decision was rendered in a procedurally fair manner and is reasonable.

[15] The standard of review on the merits of the decision 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.

[16] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[17] 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).

[18] 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).

[19] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

C. *There was no breach of procedural fairness*

[20] The Applicant submits that the Officer breached procedural fairness by not alerting the Applicant to the "new information" raised in the interview regarding the Applicant's eligibility and subsequently hold another interview. The Respondent maintains that concerns with the Applicant's application were outlined in the PFL and the Applicant had the opportunity to respond to these concerns.

[21] I agree with the Respondent. There is no duty for decision makers to give a refugee claimant a "running score" of issues in their claim (*Santillan v Canada (Citizenship and Immigration)*, 2011 FC 1297 ("*Santillan*") at para 54, citing *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, 247 FTR 147). The Applicant had the opportunity to address the concerns in the PFL by way of a response after the interview, and the Officer considered this evidence in rendering the decision (*Santillan* at para 54). In my view, the

Applicant thus knew his case to meet and had the opportunity to respond to it. There was therefore no breach of procedural fairness.

D. *The decision is reasonable*

[22] The Applicant submits that the Officer made untenable implausibility findings, the Officer dismissing the Applicant's response to the PFL based on speculation and inferences about how Eritrean authorities would act. The Applicant further submits that the Officer focussed on "tangential" inconsistencies and contradictions in the Applicant's application, the Applicant nonetheless explaining these inconsistencies and contradictions. Additionally, the Applicant submits that such a focus was improper given that the Applicant had been previously found to be eligible for Convention refugee status.

[23] The Respondent submits that the Officer's credibility and implausibility findings were open to the Officer based on the record and that these findings deserve deference. The Respondent submits that the Officer was entitled to rely on their personal knowledge of country conditions, and that the omission of the Applicant's US visa application and refusal—as well as previous passport—was not tangential to the Applicant's claim, with the Officer being entitled to not accept the Applicant's explanation for the discrepancies in his application. Additionally, the Respondent submits that the Officer's conclusion about the Applicant's admissibility to Canada was reasonable.

[24] I agree with the Respondent. Decision-makers have certainly been cautioned against implausibility findings, these findings being reserved for "the clearest of cases" (*Valtchev v*

Canada (Minister of Citizenship and Immigration), 2001 FCT 776 at para 7). However, as my colleague Justice Grammond held, "[v]isa officers may use their knowledge of local conditions in the area in which they are posted to assess an application" (*Al Hasan v Canada (Citizenship and Immigration)*, 2019 FC 1155 at para 10, citing *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527, *Asl v Canada (Citizenship and Immigration)*, 2016 FC 1006, *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992, and *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781; see also *Kamal Bola v Canada (Citizenship and Immigration)*, 2023 FC 1579 at para 24, citing *Najjar v Canada (Citizenship and Immigration)*, 2022 FC 69 at para 27).

[25] In light of this jurisprudence and the Officer's knowledge of Eritrean country conditions, there is no issue with the Officer's implausibility findings. In my view, this is especially so given these findings are supported by the inconsistencies in the Applicant's application, including the omission of having been issued a passport by Eritrean authorities and that the Applicant had previously applied for and been refused a US visa. Contrary to the Applicant's arguments, these inconsistencies are not trivial: They go directly to whether the Applicant was detained in Eritrea during the period alleged. Thus, in my view the Applicant has failed to demonstrate that the decision is unreasonable, the decision being justified in relation to its legal and factual constraints (*Vavilov* at paras 99-101).

III. **Conclusion**

[26] This application for judicial review is dismissed. The Officer's decision was rendered in a procedurally fair manner and is reasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1090-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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