

Date: 20080908

Docket: IMM-4716-07

Citation: 2008 FC 1000

Ottawa, Ontario, September 8, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**ALEMAYEHU WORKIE GELAW,
ELFINESH ADEM MEHAMED, and
YEROME ALEMAYEHU WORKIE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a family of Ethiopian citizens who received a negative Pre-removal Risk Assessment. They now seek judicial review of that decision, asserting that the PRRA Officer erred in unreasonably disregarding the bulk of their documentary evidence regarding current conditions within Ethiopia.

[2] For the reasons that follow, I am not persuaded that the officer erred as alleged. As a consequence, the application for judicial review will be dismissed.

Background

[3] Alemayehu Workie Gelaw is a career diplomat, who began working for the Ethiopian government in 1987. In 1991, the Tigrean party took control of Ethiopia. Mr. Gelaw did not support the Tigrean party, and took part in a protest against the party in 1991. Notwithstanding the change in regime, however, Mr. Gelaw continued to serve as a diplomat, and in 1993, he was posted to Rome, where he represented the Ethiopian government until he left for Canada in 1997.

[4] Mr. Gelaw asserts that the posting to Rome was intended as a form of punishment for his failure to support the Tigrean regime, and because of his Amhara ethnicity.

[5] In 1994, Mr. Gelaw's wife, Elfinesh, was attacked by an associate of the Tigrean party during an attempted kidnapping in Italy. The applicants also claim that their vehicle was vandalized by associates of the Tigrean party in 1995, and that they began receiving threatening telephone calls. According to the applicants, by 1997, the Ethiopian government had effectively placed Mr. Gelaw under house arrest while the family was living in Italy.

[6] The family then fled to Canada, where they sought refugee protection, based exclusively on risks related to Mr. Gelaw. These claims were refused by the Convention Refugee Determination Division of the Immigration and Refugee Board in 1999. The Board found Mr. Gelaw not to be credible in relation to the central elements of his claim.

[7] In particular, the Board noted that Mr. Gelaw continued to be promoted after the change in government in 1991. Moreover, the Board found it to be implausible that the Ethiopian government would have sent Mr. Gelaw to what the Board viewed as a “plum posting” in Rome if he were perceived to have political views contrary to those of the government of the day, or if his loyalty to the government was believed to be in doubt because of his ethnicity.

[8] The applicants sought judicial review of the Board’s decision, but leave was denied by this Court.

[9] The applicants have also received negative PDRCC and H&C decisions, and their applications for leave in relation to each of these decisions have been dismissed. A decision in relation to a second H&C application is evidently still outstanding.

The Applicants’ PRRA Application

[10] In relation to their PRRA application, the applicants submitted that Mr. Gelaw would be at risk in Ethiopia, because of his political opinion, and because he would be perceived as wealthy after living for more than a decade overseas.

[11] Elfinesh Adem Mehamed asserted that in addition to the risk that she faces as Mr. Gelaw’s wife, she would also be at risk because of the psychological trauma that she suffered as a consequence of the attempted kidnapping. She also claimed that she faces an additional risk from her abusive step-father.

[12] The couple's daughter, Yerome, asserted that she faced a number of risks in Ethiopia, primarily related to the poor living conditions in that country. She also says that she risked being exposed to female genital mutilation if she were returned to Ethiopia.

Standard of Review

[13] It is common ground that the decision of the PRRA officer is to be reviewed against the reasonableness standard. In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47.

Analysis

[14] Given that the risks asserted by each of the applicants were different, I will address the arguments advanced by each applicant in turn.

[15] Before turning to do so, however, it should be observed that the applicants' refugee claims were decided prior to the enactment of the *Immigration and Refugee Act*, which introduced a restriction on the type of evidence that may be adduced in relation to a Pre-removal Risk Assessment to new evidence, or evidence that could not have been adduced before the Immigration and Refugee Board with the exercise of reasonable diligence (see IRPA, at subsection 113(a)). As a result, the applicants were not limited to presenting only new evidence in support of their PRRA

application, and they did in fact submit numerous documents concerning country conditions in Ethiopia.

Mr. Gelaw's Risk

[16] As was noted earlier, Mr. Gelaw asserted that he would be at risk in Ethiopia, because of his political opinion and because of his perceived wealth.

[17] Insofar as Mr. Gelaw was concerned, the PRRA officer noted the CRDD's concerns about his credibility due to the implausibility of various elements of his story.

[18] The officer then went on to examine country condition reports regarding conditions within Ethiopia, such as those emanating from the United States Department of State and the United Kingdom Home Office. The officer also considered the various documents submitted by the applicants in this regard, reviewing the content of each, and explaining why each was given little weight.

[19] After carrying out this analysis, the officer concluded that there was insufficient evidence that Mr. Gelaw was involved in any political activities after 1991, or that he had expressed any political views that would have brought him to the attention of the Ethiopian authorities.

[20] The officer was further of the view that Mr. Gelaw had not demonstrated that he was of any interest to the authorities, with the result that it was entirely speculative to think that he would be persecuted on his return to Ethiopia, and that his fears were not objectively well-founded.

[21] The applicants assert that the officer erred in discounting the country condition information that they provided in support of Mr. Gelaw's application on the basis that it did not specifically refer to him. I do not accept this argument. It is clear from a fair reading of the decision that the officer did not give the documentary evidence much weight because of the officer's finding that Mr. Gelaw did not fit the profile of those identified in the reports as being the targets of the current Ethiopian government.

[22] Mr. Gelaw takes particular issue with the decision not to give significant weight to a June 17, 2006, article relating to the persecution of diplomats by the Ethiopian government. The officer reviewed the contents of this article in some detail, declining to attribute significant weight to it on the grounds that Mr. Gelaw had not worked as a diplomat since 1997. This was a decision that was reasonably open to the officer, and it is not the task of this Court sitting in judicial review of a PRRA officer's decision to re-weigh the evidence that was before the officer.

[23] I agree with Mr. Gelaw that the officer did err in stating that the "Crime and Nourishment" article did not identify the sources upon which it relied, as these sources are clearly identified in the endnotes to the article. This was, however, only one of several reasons cited by the officer for

giving the article little weight, and does not provide a sufficient basis, by itself, for setting aside the decision.

Elfinesh Adem Mehamed's Risk

[24] In addition to the risk that she claims to face as Mr. Gelaw's wife, Ms. Adem Mehamed also claims to be at risk in Ethiopia because of her psychological vulnerability resulting from the attempted kidnapping. She also claims to be at risk from her abusive step-father.

[25] The PRRA officer noted that while a psychological assessment had been provided in support of Ms. Adem Mehamed's PRDCC application, no such report had been filed in connection with the PRRA application. As a result, the officer concluded that Ms. Adem Mehamed had not established that she suffered from PTSD.

[26] Insofar as Ms. Adem Mehamed's alleged fear of her stepfather was concerned, the officer found that there was insufficient evidence that she would be at risk in this regard, given that she had not been in contact with her step-father for 13 years.

[27] Ms. Adem Mehamed has not challenged the officer's decision as it relates to the risk posed by her stepfather, but does assert that the officer erred in finding that she did not suffer from PTSD. The officer was clearly aware of a July, 1999, psychological assessment documenting that Ms. Adem Mehamed had been diagnosed with Post-traumatic Stress Disorder, as extracts of the report that were cited in the PDRCC decision are referred to in the PRRA officer's decision. Ms. Adem

Mehamed argues that the officer erred by ignoring the findings of the report, submitting that there was no evidence before the officer to say that she did not still suffer from PTSD.

[28] I do not agree that the officer erred in this regard. The onus was on the applicants to establish that they would be at risk if returned to Ethiopia, and thus it was up to the applicants to provide the officer with whatever evidence they believed would support their PRRA application. The onus was therefore on the applicants to show that Ms. Adem Mehamed was still psychologically vulnerable. They chose not to provide the officer with any evidence as to Ms. Adem Mehamed's current psychological state.

[29] Although the applicants did not even provide the PRRA officer with the eight year old psychological report regarding Ms. Adem Mehamed, the contents of the 1999 report were clearly considered by the officer. The officer concluded that the evidence before him did not establish that Ms. Adem Mehamed still suffered from PTSD at the time of the PRRA assessment. In the absence of any evidence regarding Ms. Adem Mehamed's current psychological state, this was a conclusion that was reasonably open to the officer.

Yerome Alemayehu Workie's Risk

[30] Yerome Alemayehu Workie claims to face a number of risks in Ethiopia, primarily arising from the poor living conditions in that country. Before this Court, her submissions focused on her alleged risk of being exposed to female genital mutilation if she were returned to Ethiopia.

[31] In relation to the female genital mutilation issue, the PRRA officer found that there was no evidence to suggest that Yerome's parents would subject her to female genital mutilation, nor was there any evidence to suggest that the child would face such a risk in the absence of parental approval.

[32] The applicants have directed the Court to documentary evidence as to the prevalence of female genital mutilation within Ethiopia. With respect, the fact that female genital mutilation may be prevalent within Ethiopian society does not detract from the officer's finding that the risk to Yerome had not been established, given that there was no suggestion in the evidence that her own parents would subject her to this procedure.

The Bias Argument

[33] Although not pursued in oral argument, the applicants assert in their memorandum of fact and law that the PRRA officer's "systematic dismissal" of all of their documentary evidence gives rise to a reasonable apprehension of bias on the part of the officer.

[34] I have concluded that apart from the officer's error in finding that one of the articles provided by the applicants did not list the source materials relied upon, the officer did not err in his treatment of the documentary evidence. As a consequence, the applicants have not demonstrated that an informed person, viewing the matter realistically and practically, and having thought the matter through, would have a reasonable apprehension of bias on the part of the officer.

Conclusion

[35] For these reasons, I am satisfied that the PRRA officer's decision was reasonable, in that it falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law. As a consequence, the application for judicial review is dismissed.

Certification

[36] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4716-07

STYLE OF CAUSE: ALEMAYEHU WORKIE GELAW ET AL v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 2, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH, J.

DATED: September 8, 2008

APPEARANCES:

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