Date: 20081008

Docket: IMM-549-08

Citation: 2008 FC 1137

OTTAWA, Ontario, October 8, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

TIGIST DAMTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Pre-removal Risk Assessment (PRRA) Officer, dated December 3, 2007, which found that there were not substantial grounds to believe that the applicant would be subjected to persecution if returned to Ethiopia.

[2] Ms. Damte left Ethiopia to study in Germany in 1990. During a brief return to her home country to visit her ailing father in 1998, she claims that she was accused of being involved with an opposition political party and detained. After her release, she returned to Germany in October 1998.

[3] After completing her studies in January 2001, Ms. Damte claimed asylum in the United States, which was denied. She came to Canada on November 2, 2004 and claimed refugee protection at the port of entry. On January 24, 2006, the Refugee Protection Division (RPD) found that she was neither a Convention refugee nor a person in need of protection. Leave for judicial review of that decision was denied.

[4] The PRRA Officer noted that applicants whose cases have been assessed by the RPD are only entitled to an assessment of new evidence which arose after that hearing or which was not reasonably available at the time of the hearing. It was further stated that Ms. Damte relied on largely the same risks and allegations she invoked in her refugee claim, namely that she faces persecution as a member of the political opposition party EPRP.

[5] The PRRA Officer then surveyed recent political history in Ethiopia on the basis of the country conditions documentation. The Officer noted that the government had arrested political opposition leaders and held demonstrators without charge after violent antigovernment protests in 2005. It was noted that, while evidence provided by the applicant indicated that opposition members generally were at risk in Ethiopia, the incidents put forward in support of these claims were cases of prominent political figures and those with significant links to them.

[6] Accepting that the applicant had attended demonstrations in Canada against the current government of Ethiopia, the Officer considered that they were well-attended and found that there was insufficient evidence to show how she would personally have come to the attention of the

Ethiopian authorities and as a result be at risk on her return to that country. The Officer also found that, given the applicant's 17 year absence from Ethiopia, there was insufficient evidence that her support of a political opposition party would be noticed by the Ethiopian authorities. On the totality of the evidence, the Officer rejected the PRRA application.

[7] The applicant raises two issues for the Court's review:

a. Did the PRRA Officer err in the legal test for determining whether the applicant is a Convention refugee?

b. Did the Officer make and rely on errors of fact?

[8] On reviewing the Officer's decision, the Court may rely on previous case law to determine the standard of review, where the appropriate standard in the circumstances is well established: *Dunsmuir v. New Brunswick*, 2008 SCC 9. As such, the question of the appropriate legal test will be reviewed against a correctness standard; factual findings will be set aside only if unreasonable.

[9] I would begin by noting that the applicant's first issue is poorly stated. It is not for the PRRA Officer to determine whether the applicant is a Convention refugee. Ms. Damte had a full hearing of her case before the RPD, which made a negative determination on that question. The PRRA is not an appeal of that decision.

[10] That said, however, the question remains open whether the language used by the Officer, including questioning whether the applicant would be of 'particular interest' or be somehow

'distinguishable', implies that an incorrect standard was applied. The applicant asserts that she need only show that there would be 'more than a mere possibility' of risk of persecution on return.

[11] The respondent asserts that the use of words such as 'would' and 'will' in the reasons of a PRRA Officer do not necessarily indicate that an incorrect test was applied: *Sivagurunathan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 432. In stating that there was 'less than a mere possibility' of persecution in concluding that the PRRA application should be dismissed, the Officer showed that she was aware of and applied the correct test.

[12] In assessing the reasons as a whole, it appears clear to me that the PRRA Officer did not apply the wrong test. The Officer found from the documentary evidence that only prominent opposition members faced persecution and that there was no evidence that Ms. Damte fit that category. In assessing the level of risk to her based on her political activities during her time outside Ethiopia, the Officer was clearly looking to see if there was evidence to show that she would personally be known to authorities there as a sufficiently notable opposition party member to target. To prove personal risk, Ms. Damte needed to show that she would personally come to the attention of authorities. This was not an incorrect assessment, and the decision will not be vacated on this point.

[13] Second, the applicant submits that the Officer made errors of fact, which caused the decision to be unreasonable. She points to the Officer's conclusion from the one large anti-government protest in Ethiopia that all demonstrations she attended had many participants. She alleges that this

error caused the Officer to ignore the evidence that the Ethiopian embassy staff closely monitor such demonstrations and that she would thereby be likely to come to their attention.

[14] The respondent counters that the PRRA Officer's reasons show that she carefully considered all of the evidence and came to a reasonable conclusion thereon. She notes that the documentary evidence does not include incidents of the Ethiopian government monitoring anti-government demonstrations.

[15] The applicant's reading of the sentence on which this contention is based is only one of several. After noting that the applicant had provided evidence that she had attended a number of demonstrations and vigils in Toronto and Ottawa, the Officer concluded that the applicant had failed to show what "distinguished her from the thousands of other supporters at these different demonstrations". The applicant appears to believe that the Officer thereby meant that thousands of people were at each event. This finding is, however, reasonably susceptible to the reading that thousands of supporters attended all demonstrations and vigils combined. Given that it is noted that 1500 people attended the demonstration in Ottawa, it is not unreasonable for the Officer to conclude that 500 or so people might have attended the other two events.

[16] According to the Supreme Court's guidance in *Dunsmuir*, the Court is to consider whether a decision under review falls within the spectrum of decisions to which the tribunal could reasonably have come on the evidence. If it does, then the Court should not intervene. On the evidence

provided by the applicant and in the country conditions documentation, I cannot see that the PRRA Officer's decision was unreasonable and it will stand.

[17] Accordingly, this application for judicial review is dismissed.

[18] Counsel for the applicant has requested that the following question be certified :

> Does s. 113(a) of IRPA prevent an officer deciding a Pre-Removal Risk Assessment application from considering documents that contain only country conditions information, if these documents were previously submitted to the Refugee Protection Division at the time of the applicant's refugee hearing?

[19] While counsel for the respondent did not agree that the question should be certified, she nevertheless has agreed to the wording of same if I should decide to certify. The argument against certification is that the answer to the question has already been given by the Federal Court of Appeal in *Raza v. M.C.I.*, 2007 F.C.A. 385.

[20] I agree that the decision of the Federal Court of Appeal in *Raza*, above, deals exhaustively with section 113(a) of IPRA and, accordingly, there is no need to certify the proposed question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

No questions are certified.

"Louis S. Tannenbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-549-08
STYLE OF CAUSE:	TIGIST DAMTE v. M.C.I. ET AL
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 4, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	TANNENBAUM D.J.
DATED:	October 8, 2008

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