Federal Court  Cour fédérale

Date: 20091029

Docket: IMM-1004-09

Citation: 2009 FC 1109

Ottawa, Ontario, October 29, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MELAKU KENENE WAGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and MINISTER OF PUBLIC SAFETY

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Notes1 This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Applicant's Pre-Removal Risk Assessment, dated January 9, 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is an Ethiopian citizen who came to Canada as a visitor on August 17, 2002, as the head of Organization, Management and Training Services of the Ethiopian Civil Aviation Authority to attend a workshop in Montreal. The Applicant made a refugee claim on September 6, 2002. His claim was heard by the Refugee Protection Division (RPD) on February 20, 2004, and was rejected shortly thereafter. The Applicant's application for leave for judicial review of this decision was denied.

[3] The Applicant then submitted an application for a PRRA. The PRRA Officer (Officer) rejected the Applicant's application on January 9, 2009, finding that the application did not meet the requirements of sections 96 and 97 of the Act. On March 2, 2009, the Applicant filed an application for judicial review of the negative PRRA decision.

[4] Justice O'Keefe then granted the Applicant a stay of his removal order until the PRRA Decision had been judicially reviewed.

DECISION UNDER REVIEW

[5] The Officer did not consider the Applicant's newly-submitted documentary evidence that pre-dated the RPD decision, since the Applicant had not provided any reason as to why the documents submitted had not been reasonably available to the RPD for its consideration.

[6] The Officer discusses briefly the decision made by the RPD and notes that the Applicant's credibility was seriously doubted by the RPD, that the Applicant's well-founded fear was not proven, and that the RPD had doubts as to the existence of both the subjective and objective basis of his claim.

[7] The Officer explains that a PRRA is not intended to be an appeal of the RPD decision. The RPD decision is final, except for any new or different risks that could not have been considered by the RPD in its determination.

[8] In her Decision, the Officer recognizes the evidence of the Applicant's participation in a demonstration in Ottawa on May 20 of 2004, but notes that the Applicant has not participated in similar events since that demonstration. What is more, the Officer was not satisfied that the Applicant has shown that his participation in this demonstration had attracted the attention of the Ethiopian authorities, or that he had experienced any negative repercussions as a result of his participation. Moreover, the Officer cites what she considers to be current objective documentation to find that there is no proof of the surveillance of demonstrations by the Ethiopian government officials against Ethiopians in either Europe or North America.

[9] The Officer also makes note of the letter submitted by the chairman of the Advocacy for the Fundamental Rights of Oromos and Others (AFRO-O) which stated that, based on the assessment of the Applicant's background and previous human rights violations in Ethiopia, the life and safely

of the Applicant would be in danger if he were to return to Ethiopia. The Officer notes there are documents attached to this letter, including a letter from the Oromo Parliamentarians Council.

[10] The Officer was not satisfied that the author of the AFRO-O letter specified the basis on which the assessment was performed. Moreover, she notes that the organization's address is in Maryland, U.S.A., and questions how the organization conducted its assessment of the Applicant. The Officer finds the Chairman's assumption that the Applicant's life and safety would be in danger if returned to Ethiopia speculative because he does not indicate any first-hand knowledge of the Applicant's life situation in Ethiopia, or why he believes the Ethiopian government would be targeting the Applicant years after his departure. As a result, the Officer affords the document low probative value.

[11] The Officer also gives little weight to an undated letter from the Oromo-Canadian Cultural Association of Ottawa Carlton. The Officer dismisses this document as being self-serving, since it is signed by a friend of the Applicant. What is more, the Officer gives no weight to the Applicant's submission that his friends had been dismissed from his employment due to his suspected support of the Oromo Liberation Front (OLF), since the Applicant provided no explanation as to how this information was received, nor any objective proof to support it.

[12] The Officer also considers a November 2008 report from the OLF which confirmed the arrest of the Applicant's friend. The Officer notes that this report is not on official letterhead, there is no signature or name of the report writer on the document, and in one instance Oromo is

misspelled. Additionally, the Officer finds that this report does not disclose the source of its information. Based on a consideration of all these factors, the Officer affords this document little weight.

[13] The Officer finds that, while the Applicant provided submissions describing the country conditions in Ethiopia, he failed to link this evidence to any personalized risk. Moreover, the Officer contends that the Applicant's submissions do not provide new material evidence of a significant change in country conditions from those that existed at the time of the RPD decision. The Officer finds that the Applicant has failed to provide objective documentary evidence to show that his situation in Ethiopia would be similar to the situation of those in the country who are currently at risk of persecution or harm.

[14] The Officer takes account of the fact that the Applicant has not been in Ethiopia since 2002, and there is no evidence that the Ethiopian authorities have been seeking him because of his political activities. The Officer finds insufficient evidence to show that the Applicant faces a personalized, forward-looking risk of persecution if returned to Ethiopia.

[15] The Officer also canvasses evidence of current country conditions and finds that there are several domestic and international human rights groups operating in Ethiopia with only limited government restriction. The Officer finds that anyone who has been involved with (or is suspected to have been involved with) the non-combat activities of the OLF, and has previously come to the adverse attention of the authorities, is at real risk of persecution. However, the Officer finds that

"ordinary, low-level non-combat members who have not previously come to the adverse attention of the authorities are unlikely to be at real risk of persecution."

[16] In conclusion, the Officer determines that the evidence presented does not support the Applicant's assertion of a personalized risk in Ethiopia based on his membership in the OLF, and that he faces "less than a mere possibility" of persecution. Moreover, there are no substantial grounds to support a finding that the Applicant may be facing a danger of torture, or a risk to life, or a risk of cruel and unusual treatment or punishment due to the inability of the state to provide protection. Accordingly, the Officer finds that the Applicant's application does not meet the requirements set out in sections 96 and 97 of the Act.

ISSUES

[17] The issues raised by the Applicant can be summarized as follows:

1) Whether the Officer ignored material evidence or incorrectly dismissed the probative value of certain documents that were before her when she rendered her Decision?

2) Whether the Officer was obliged to offer the Applicant an interview or hearing?

3) Whether the Officer erred in her application of section 96 and 97 of the Act?

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au

Article 1 of the Convention Against Torture; or

sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[19] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review” (*Dunsmuir* at paragraph 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[20] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] Questions of fact, mixed law and fact, discretion and policy attract a standard of reasonableness (*Zambrano v. Canada (Minister of Citizenship and Immigration*), 2008 FC 481; *Dunsmuir* at paragraphs 51 and 53). In considering whether the Officer ignored material evidence or incorrectly dismissed the probative value of certain documents, the appropriate standard is one of reasonableness.

[22] The Board's application of sections 96 and 97 of the Act to the facts will also be considered on a standard of reasonableness (*Dunsmuir* at paragraph 164).

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[24] The Applicant has also raised a procedural fairness issue to which the standard of review is correctness: see *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1, and *Dunsmuir* at paragraph 60.

ARGUMENTS

The Applicant

The Officer did not address, and incorrectly dismissed, material evidence

[25] The Applicant submits that the Officer ignored many pieces of material evidence that were brought before her regarding the risks faced by the Applicant if he is forced to return to Ethiopia.

Response to Information Request

[26] The evidence relied on by the Officer to dismiss the Applicant's concern that the Ethiopian government may target him because of his attendance at the 2004 Ottawa demonstration was contrary to other evidence found in the same document. Paragraphs two and three of this document contain an explanation of the government's "strategic plan" for foreign embassies to target Ethiopians who are perceived to be against the government. In this case, the Officer relied on the first paragraph of this evidence to infer that the Applicant's presence at the demonstration would not have caught the attention of Ethiopian authorities, without having regard to the second and third paragraphs of the evidence which do not support this inference. The Applicant submits that the Officer used the portion of the evidence that supported her claim while ignoring the portions that did not, and this resulted in a perverse finding of fact. The Applicant suggests that the revelation of the government's "strategic plan" demonstrates that there is more than a mere possibility that he will suffer persecution if he is returned to Ethiopia. Moreover, the Applicant submits that the evidence submitted as part of his PRRA application demonstrates that the extent of persecution experienced by the Oromo people has grown considerably worse since the RPD decision.

Letter from Friend

[27] The Applicant argues that the Officer's lack of discussion of the letter sent to the Applicant by his friend was unacceptable. Based on the fact that the Officer discussed several other pieces of evidence and explained why she was affording little probative value to each document, the

Applicant believes that the Officer either overlooked or ignored this letter. The Applicant submits that this letter demonstrates that the extent of persecution experienced by the Oromo has worsened since the time the RPD decision was made.

Spouse's Story

[28] The Applicant also raises a concern that the Officer did not consider the evidence he had provided regarding the situation of his spouse. While the Applicant explained that his wife had left Ethiopia fearing persecution as an ethnic Oromo and because she was suspected of involvement with the OLF, the Officer neglected to consider these matters in her reasons. As such, there is no indication that the Officer was aware of the Applicant's statements regarding his spouse. If the Officer was aware of the statements made by the Applicant's spouse, but had discounted them for some reason, she should have said why in her reasons because these statements relate directly to the Applicant's subjective fear of return to his country.

Letter from the Chairman of AFRO-O

[29] The Officer dismissed the letter written by the chairman of AFRO-O because of a lack of information concerning the basis upon which the assessment was performed, and because the author's assumptions about the Applicant's risk in Ethiopia were speculative. However, the Applicant submits that the letter clearly states that the assessment was based on the Applicant's background and the human rights violations that occur in Ethiopia. The end of the letter discloses

that the findings are based on AFRO-O's study as well as the personal knowledge of the two Oromo American members of the Board of Directors. Moreover, there were documents attached which supported the contents of the letter.

[30] The Applicant submits that it was unreasonable for the Officer to find that there was no stated basis for the assessment. The express wording of the letter contradicts such a finding. The Officer's finding that the author's presumption of the Applicant's risk was speculative is unreasonable, since the Applicant is a member of the Oromo community and there is much evidence to establish the risks faced by members of this group.

2008 OLF Report Confirming Arrest

[31] Although the Officer acknowledged this report, she gave it little weight because it was not on official letterhead, lacked a name or signature of the writer, and was silent as to the source of its information.

[32] The Applicant submits that this type of report is not one on which a signature would usually be found, just as other trustworthy documents - such as a United States Department of State report - would not contain a signature. Further, the author of the report was referred to on the report as the Oromo Parliamentarians Council at the bottom of the second page.

Dismissal of the 2008 Report

[33] The Applicant contends that the Officer made a credibility finding in dismissing the November 2008 report on the basis that there was no letterhead or signature. As such, the Applicant says that the duty of procedural fairness was breached because a finding of credibility requires a hearing. Moreover, if the Officer had concerns about the authenticity of this report, or doubted the friendship between Mr. Kitili and the Applicant, then the Officer should have posed these questions to the Applicant at an interview.

[34] The Applicant submits that if the report had been on official letterhead, or if it had contained a name and a signature, then the Officer would not have questioned the document's authenticity. The Officer's finding of fault with the report demonstrates the Officer's disbelief in the Applicant's credibility and make it clear that she might have believed the Applicant if the report had been more professional, with letterhead and a signature.

[35] The Applicant suggests that the Officer's finding constitute a conclusion about his credibility. Accordingly, the Applicant says he should have been given a hearing. The case at hand is similar to *Liban v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1252, in which it was found that a finding of "insufficient objective evidence" was, in fact, a finding that the officer in that case disbelieved the applicant, and that if more objective evidence had been shown to support his assertions, then the officer would have believed him. It was found in *Liban* that these findings were actually conclusions about the applicant's credibility. The Applicant submits that the same is

true in the case at hand. In *Liban*, the officer had emphasized the credibility findings of the Immigration Appeal Division and found that the applicant had not provided sufficient objective evidence to support his claims. Moreover, the officer in *Liban* did not seem to accept that the groups to which the applicant belonged were subjected to mistreatment in Ethiopia.

[36] Each of the preceding points in *Liban* is similar to the points made and considered by the Officer in the case at hand. For instance, the Officer's treatment of the Applicant's evidence regarding his friends losing their jobs because of their ethnicity was similar to the impugned decision made in *Liban*. In the present case, the Officer found that the Applicant should have explained how he obtained his information, and because he did not provide objective evidence to support this statement, it was not given the weight it was due. The same issue arises over the Officer's consideration of the evidence regarding the arrest of the Applicant's friend.

[37] The findings of the Officer constitute a finding of credibility because the Officer insisted that if there had been documentary evidence to support the Applicant's claims, then the Officer would have believed them. Accordingly, the Applicant was owed a hearing as a matter of procedural fairness.

The Officer misapplied sections 96 and 97 of the Act

[38] The Applicant also submits that the Officer misapplied sections 96 and 97 of the Act by failing to find that the Applicant would be targeted as a member of the Oromo ethnic group in

Ethiopia, and by claiming that additional personalization was required. However, the Applicant submitted many items of evidence after the RPD hearing which the Officer accepted as legitimate and which identified the situation facing Oromo nationals in Ethiopia. The Applicant canvasses numerous examples of the documentary evidence before the Officer, including a report by Amnesty International, a Human Rights Watch report, an Ethiopian Human Rights Council report, and a United States Department of State report.

[39] The Applicant submits that Officer did not impugn these reports. She simply did not believe that this evidence specifically linked the Applicant to the risks each report described. Even though the Applicant was not mentioned specifically in any of the evidence provided, he submits that it was open to the Officer to find that he would be at risk upon his return to Ethiopia. However, the Officer found instead that the Applicant had not demonstrated a personalized risk, and that he had not proven that his profile was similar to those in Ethiopia who are at risk of persecution and harm.

[40] The Applicant submits that the Officer erred in not identifying him as a member of the Oromo subgroup which is targeted by agents of the Ethiopian government. The Officer committed an error of law by requiring that the Applicant prove a more specific personalization of risk than being a member of the Oromo community. In fact, the use of such a rule of “particularized evidence” was rejected by the Federal Court of Appeal in *Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250.

[41] The Applicant suggests that the Officer misapplied that portion of the PRRA Manual that discusses the personalization of risk. The Applicant says he does not need to prove that he, as an individual, would be at risk. He only needs to show that he is part of a larger group of people who are at risk, as opposed to other groups in the country. Neither the RPD nor the Officer ever disputed that the Applicant is an ethnic Oromo national. As such, the Applicant submits that it makes no difference whether he is an active member in any opposition group. It is sufficient that he is an ethnic Oromo national and there is an abundance of evidence that establishes a risk for any Oromo national in Ethiopia.

[42] Moreover, the Applicant submits that section 97 of the Act does not use the terms “specific risk” or “personalized risk.” Rather, section 97 simply requires that the risk not be one that is experienced generally within the country. Since the Applicant belongs to a subgroup that is more at risk than the general population, he satisfies the definition of risk under section 97. Indeed, based on Justice Dawson’s analysis in *Surajnarain v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1165, the Applicant contends that he is included under section 97 because he is experiencing fear based on his ethnicity. According to Justice Dawson, the threat need not be personalized. Rather, it can be a risk that is faced by an individual and which may be shared by others who are similarly situated. Since the Applicant in this instance is Oromo and his fear is based on his ethnicity, this fear falls under the scope of the *Surajnarain* analysis.

Conclusions

[43] The Applicant concludes that numerous errors were made by the Officer in this case. For instance, she did not understand the full extent of how the persecution experienced by the Oromos has worsened based on the documentary evidence provided by the Applicant. What is more, the Officer relied on five-year-old evidence to determine that some Oromos experience persecution while others do not. As such, the Officer mistakenly based her analysis on the Applicant's particular profile instead of his membership in the Oromo Community. The Officer also erred in determining that the evidence relied on by the Applicant regarding the conditions he faced in Ethiopia revealed conditions faced by the general population as opposed to just the Oromo ethnic community. Finally, the Officer erred in not finding that Oromo ethnics are persons similarly situated to the Applicant.

[44] The Applicant suggests that these numerous errors ought to result in the quashing of the Decision and that the matter be sent back for reconsideration.

The Respondents

The Decision

[45] The Respondents submit that the Officer provided a thorough and well-reasoned assessment, and gave careful consideration to the Applicant's submissions regarding his life being at risk if he is returned to Ethiopia due to his political opinion and as an Oromo suspected of supporting the OLF. The Decision reflects a careful and detailed analysis of the Applicant's submissions and evidence.

Evidentiary Issues

[46] The Respondents submit that the Officer was correct in not giving consideration to documents submitted by the Applicant that pre-dated the RPD decision. No explanation was given as to why such evidence could not have been presented to the RPD. The PRRA process is not intended to be an appeal of an RPD decision so that the only new evidence for consideration is new, additional or different risks that could not have been considered by the RPD.

[47] The onus is upon the Applicant to provide the Officer with new evidence supporting the PRRA application rather than the same evidence that was before the RPD, and to demonstrate how this new evidence meets the requirements set out in section 113 of the Act: *Kaybaki v. Canada (Solicitor General of Canada)*, 2004 FC 32 at paragraph 11.

[48] The Respondents also say that the Officer correctly distinguished between supporters of the OLF who have come to the attention of the authorities and those who have not, and determined that the Applicant's life would not be at risk if returned to Ethiopia. Moreover, the Officer refers to the United Kingdom Home Office Operational Guidance Note which supports her finding that the Applicant does not have a profile that would make him a target.

[49] The Respondents contend that it was reasonable of the Officer to consider and apply the Guidance Note which concluded that individuals did not face danger upon their return to Ethiopia simply because of their Oromo ethnicity, or on the basis of a low-scale level of involvement with

the OLF. Such a finding was also made in the recent case of *Mohamed v. Canada (Citizenship and Immigration)*, 2008 FC 315 at paragraph 25: “the thrust of the objective documentary evidence is that the Ethiopian government targets OLF members and sympathizers, not all 35 million people of Oromo ethnicity.” Moreover, the Officer found that there was no evidence to suggest that the Applicant was being sought by the authorities because of his political involvement, and that there was no new material evidence in the PRRA application to suggest a change in country conditions since the decision made by RPD.

[50] The Respondents also submit that the Officer did not commit an error by referring only to a portion of the (Response to Information Request (RIR) in her reasons. While the paragraphs not relied on by the Officer may lend some support to the submissions made by the Applicant, this information is prefaced in the report by the statement that “evidence of surveillance by government officials of demonstrations against Ethiopia in Europe and North America could not be found among the sources consulted by the Research Directorate.” As such, the Respondents suggest that it was reasonable for the Officer to reach the conclusion she did. Not having mentioned the entirety of the RIR in her reasons is not fatal to her Decision. This is especially true because there was nothing in the unmentioned portions of the RIR to establish that the Applicant’s presence at the demonstration attracted the attention of the Ethiopian authorities, or that the Officer erred in concluding that the Applicant faced less than a mere possibility of persecution if returned to Ethiopia.

[51] Simply because this evidence was not mentioned outright by the Officer in her reasons does not mean that it was not considered. An officer is allowed to reject evidence if it does not establish that the country conditions as of the date of the PRRA application are materially different from those that existed at the time of the RPD assessment. The Applicant has failed to demonstrate that the Officer failed to consider this evidence, or made an error in omitting discussion of those portions of the RIR that refer to Ethiopian spy agents posted at embassies, and the existence of the "Strategic Plan."

[52] In addition, the Respondents submit that Justice O'Keefe's ruling on this matter in the context of the stay motion is not determinative of the issue. The onus is now on the Applicant to convince the Court that the Decision was incorrect or was not reasonable, which is a higher standard than simply demonstrating that his issue is not frivolous or vexatious.

Letter from Friend

[53] The Respondents submit that the Officer did not err by failing to mention the letter written by the Applicant's friend, Bahiru Duguma, in her Decision. In his PRRA application, the Applicant described this letter as "a letter from my friend…indicating that he has stopped visiting Ethiopia since 2003 because of his fear of being an Oromo."

[54] The Applicant failed to show how this evidence related to his PRRA application. Much of the content of this letter, including the reference to mutual friends of the writer and the Applicant,

and the potential treatment of the Applicant, is referred to in other documents that the Officer considered expressly in her reasons. The Respondents submit that simply because the Officer did not make specific reference to this letter does not mean that the letter was not considered. What is more, the letter does not contain any new evidence of a significant change in Ethiopia's country conditions since the RPD decision that would suggest any additional personalized risk for the Applicant upon his return to Ethiopia.

The Applicant's Spouse

[55] The Respondents submit that the Officer did not err by not referring to the evidence regarding the Applicant's spouse and her departure from Ethiopia. The Applicant now suggests that his wife feared persecution as a result of being an ethnic Oromo and because of her suspected involvement with the OLF. However, the Applicant's affidavit contains no mention of his wife having suspected involvement with the OLF.

[56] There was nothing in the Applicant's wife's departure from Ethiopia that contradicts the Officer's conclusion that this evidence "did not support the applicant's assertion that he has a personalized risk in Ethiopia based on his membership in the OLF." As such, the Officer committed no error in not making reference to the Applicant's spouse, since relevant evidence is only ignored where it is squarely at odds with a tribunal's finding of fact, or where it is of such weight in support of the Applicant's position that it requires a separate assessment: *Singh v. Canada (Minister of*

Citizenship and Immigration), 2008 FC 494 at paragraphs 19, 20, 24. This was clearly not the case with this Decision.

Letters of Low Probative Value

[57] The Officer committed no error in giving low probative value to the letter from the Chairman of AFRO-O and the November 8, 2008 report from the OLF. The Officer has specialized expertise in the weighing of evidence, and the Respondents submit that it is not the role of the Court to reweigh the evidence that was before the Officer. Indeed, the Federal Court has held that "Pre-Removal Risk Assessment Officers are specialized administrative tribunals with decision-making responsibilities, and that significant deference is owed to their decision and, in particular, their decisions regarding the weight to be given to evidence presented before them": *De Mota v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 386 at paragraph 15.

[58] The Officer's reasons make it clear that she considered the contents of the letter signed by the Chairman and the Board of Directors of AFRO-O. The Officer notes that this letter suggests that the Applicant would be in danger upon returning to Ethiopia, but she also finds that it is unclear what contact this organization had with the Applicant prior to making its assessment. Moreover, the Officer did not dismiss this letter; she gave it a low probative value after finding that the author did not indicate what understanding he had of the Applicant's personal situation. The Respondents submit that the Officer's analysis of the document was thorough and that her conclusion to afford it low probative value was reasonable.

[59] As for the November 8, 2008 report, the Respondents submit that it was reasonable for the Officer to afford this document little weight because of her concern about its authenticity: *Dzey. v. Canada (Minister of Citizenship and Immigration),* 2004 FC 167 at paragraph 25, *Hossain v. Canada (Minister of Citizenship and Immigration*), [2000] F.C.J. No 160 at paragraph 4. While the Officer referred to this report in her Decision, she determined that it merited little weight, and provided a detailed explanation as to why: (1) the document was unsigned; (2) it was not on official letterhead; (3) it contained a misspelling of Oromo; and (4) it was silent as to its source of information. Based on this evidence, it was clearly reasonable for the Officer to attribute little weight to this document, and the Respondents submit that there is little basis for the Court to intervene with the Decision on this basis.

Hearing is Unnecessary

[60] The Respondents submit that, pursuant to section 167 of the Act, an officer has no obligation to interview an applicant when credibility is not at issue. The credibility of the Applicant was not the determining issue of the Decision. Hence, a hearing was not required. In this case, the Applicant was found not to be in need of protection since he did not provide sufficient evidence to demonstrate additional personalized risks upon his return to Ethiopia that had not already been contemplated by the RPD. This was not a determination of credibility.

[61] In the case of *Ferguson v. Canada (Minister of Citizenship and Immigration),* 2008 FC 1067, the Court held that a PRRA applicant must prove, on a balance of probabilities, that he/she

would be subject to the risk of persecution, danger of torture, risk to life or a risk of cruel and unusual punishment upon return to his/her home state. The determination of whether an applicant's evidence has reached this threshold depends on the weight ascribed to the evidence. In considering credibility, as compared to a sufficiency of evidence, the Court in *Ferguson* determined that the assessment of credibility is completely different from the assessment of weight to be assigned to evidence. As such, the Respondents submit that the Officer made no finding of credibility regarding the November 8, 2008 Report; the Officer simply gave reasons as to why she afforded little weight to this document. Since the Officer made no finding of credibility regarding this report, she did not breach the duty of fairness in failing to provide the Applicant with an interview or a hearing. This case is distinguishable from the case of *Liban* cited by the Applicant. In this instance, the Officer made no findings concerning the Applicant's credibility in making her Decision. While the Officer referred to credibility findings made by the RPD, a mere reference to credibility findings does not mean that the Applicant is entitled to a hearing.

No Error in Applying the Act

[62] The Respondents submit that the Decision was reasonable and refers to *Raza v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385 at paragraph 29:

> Sections 96 and 97 require the risk to be personalized in that they require the risk to apply to the specific person making the claim. This is particularly apparent in the context of section 97 which utilizes the word "personally." In the context of section 96, evidence of similarly situated individuals can contribute to a finding that a claimant's fear of persecution is "well-founded."

[63] While the Applicant asserts that all ethnic Oromos are targeted in Ethiopia, the determination made by the RPD was that the documentary evidence supported a finding that some Oromos support the government, while others do not. The Officer reviewed the evidence submitted by the Applicant and found no new material evidence to demonstrate any further risks since the RPD decision. Rather, the Officer found that the Applicant had failed to provide any objective evidence to demonstrate that his profile in Ethiopia is similar to those in the country who experience a risk of harm. The documents provided related to conditions experienced by the general population or described specific conditions faced by people who were not similarly situated to the Applicant. The Officer also determined that the evidence did not support a finding that the Applicant was being sought by Ethiopian authorities because of his political activities, and did not support the Applicant's claim of a personalized risk.

Summary

[64] In conclusion, the Respondents submit that PRRA officers have extensive experience with assessing country conditions and deference should be given to the determinations made by the Officer in this case. It is not the role of the Court to re-weigh evidence that has been given thorough consideration and examination by the Officer. The Applicant has failed to demonstrate that the Decision was not supported by the evidence, or that the Officer failed to consider all relevant evidence.

ANALYSIS

[65] As the Respondents point out, the determination of risk on return to a particular country is in large part a fact-driven inquiry and the Officer's Decision is entitled to considerable deference from this Court.

[66] As the Decision makes clear, after reviewing the available evidence, the Officer concluded that the Applicant did not have the profile "which would cause him to be targeted by the government upon his return to Ethiopia." The Applicant disagrees and says that he is at risk because he is an ethnic Oromo. The RPD has already disagreed with the Applicant's assertions in this regard and the Officer found that there was little in way of new evidence to suggest that anything had changed since the time of the RPD Decision.

[67] The crucial distinction made by the Officer is with regard to OLF membership:

> Recent documentary evidence informs that the OLF is an outlawed armed opposition group that is known to have carried out organized attacks against the state authorities in Ethiopia. If it is accepted that a person has been involved in or is suspected of involvement in non-combat activities on behalf of this group and has previously come to the adverse attention of the authorities then they would likely be at real risk of persecution by the state authorities. However, ordinary, low-level non-combat members who have not previously come to the adverse attention of the authorities are unlikely to be at real risk of persecution.

[68] Clearly then, the Officer felt that the Applicant's ethnic identity as an Oromo was not sufficient to place him at risk and, as regards OLF activities, the Applicant could be no more than a

low-level, non-combat member who had not previously come to the attention of the authorities. The Applicant has raised various grounds to show why the Decision contains reviewable errors. In my view, none of them suffice to render the Decision incorrect or unreasonable.

[69] The Applicant has made an attempt to re-characterize his PRRA claim as part of this application. He says that the basis of his PRRA claim was his Oromo ethnicity alone. However, as his PRRA submissions make clear (pp. 218-219 of the Certified Tribunal Record), the Applicant connected the risks not just to his Oromo identity but to his political opinions and connections with the OLF. This is a significant problem for the Applicant because the RPD found that the Applicant was "not seen by the government as an Oromo organizer against the government and that he had made up the story of his arrests for the purpose of this refugee claim." In other words, the Applicant lacked the profile to be at risk. The Officer's characterization of the Applicant's profile for purposes of the PRRA claim was entirely in accord with the Applicant's PRRA submissions. The Applicant has shifted his ground because there is little to support future risk as an Oromo who organizes against the government.

Ignoring evidence that spy agents were posted at Ethiopian embassies and the issuance of a 52-page "Strategic Plan" to foreign embassies – a plan to target Ethiopians believed to be against the government

[70] The Applicant provided affidavit evidence that he had participated in a demonstration in Ottawa on May 20, 2004 opposing the genocide and brutal treatment of the Oromo people by the Ethiopian government.

[71] The Applicant argues that, to reach a conclusion that evidence of surveillance by government officials could not be corroborated by reliable resources, the Officer relied upon paragraph 1 of the RIR but ignored paragraphs 2 and 3.

[72] Paragraphs 2 and 3 refer to articles published on Ethiopian news web sites based in the United States and an article published on the Nazret web site.

[73] However, paragraphs 2 and 3 do not contradict paragraph 1, and the Officer's conclusions that surveillance in Europe and North America "could not be corroborated by reliable sources." Paragraph 1 is a commentary upon paragraphs 2 and 3. There is nothing selective about the Officer's approach to this document, and the Officer gives cogent reasons for his conclusion that the Applicant's presence at the Ottawa demonstration in 2004 would not have caught the attention of the Ethiopian authorities. The Applicant's argument is no more than conjecture that his presence at the 2004 demonstration may have been observed. The Officer gives entirely adequate reasons as to why this is not enough to support a forward-looking risk.

Personal Letter from Close Friend – Bahiru Duguma

[74] The Applicant says that the Officer makes no mention of this letter in the reasons and that it is evidence he would be at risk if he is returned to Ethiopia.

[75] The letter does contain some evidence relevant to the Decision in that it asserts that the government of Ethiopia is "currently conducting mass arrests and torturing of innocent Oromo professionals and students."

[76] This is a position that the Officer does not accept, as she explains in the Decision. The Officer explains why she cannot accept this position and refers to evidence on point.

[77] Failure to mention the letter specifically does not lead, in the context of the Decision as a whole, to an inference that the Officer overlooked the letter or failed to consider the position put forward in the letter.

[78] The Officer is not obliged to mention every piece of evidence and there is nothing in the Decision to suggest that this evidence was overlooked.

[79] This letter does not contradict the Officer's finding that the Applicant does not have a profile to be at risk. It did not have to be specifically mentioned.

Information that the Applicant's spouse had left Ethiopia for the same reasons that the Applicant fears returning

[80] As the Respondents point out, there was no mention in the affidavit filed by the Applicant with his PRRA application that his wife was suspected of being involved with the OLF. So failure to mention the Applicant's spouse in the reasons is understandable from this perspective. The RPD

has already found that the Applicant is not someone who has organized against the government of Ethiopia.

[81] As regards fears of targeting for being an ethnic Orono, the wife's having stated the same fears does not really advance the Applicant's position on targeting or require a specific mention in the reasons. The Officer adequately explains why she cannot accept the Applicant's position on targeting.

[82] We just do not know enough about the wife and her situation to ascertain whether she has the same profile as the Applicant. The Decision is based upon profile.

[83] Once again, what little evidence there is about the Applicant's spouse does not contradict the Officer's finding that the Applicant does not have a profile to be at risk in Ethiopia. Failure to refer to the wife does not amount to a reviewable error.

Letter dated November 21, 2008 from the Chairman of Advocacy for the Fundamental Rights of Oromos and others, which specifically identified the risks faced by the Applicant if he is returned to Ethiopia

[84] The Officer afforded this document "low probative value" for the reasons given. The Applicant disagrees with this approach.

[85] The letter does say that the TPLF government has recently intensified its terror activities "specifically targeted against Oromos … ."

[86] The letter also says that the government "has arrested and incarcerated over 100 individuals, including Oromo members of its own parliament, business owners, university professors, students, and ordinary citizens."

[87] The letter tells us that Oromos make up 40% of the population. So, clearly, not every Oromo is being targeted. This means that the profile of those targeted becomes crucial.

[88] The letter says that if he is returned to Ethiopia, the Applicant "will most likely end up in TPLF's prison and face extreme and sustained torture or death." However, the letter does not explain why the Applicant's profile will place him with those who are being targeted except to the extent of saying "based on AFRO's assessment of [the Applicant's] background and human rights violation practices in Ethiopia … ."

[89] We just do not know how the Applicant was assessed. The Officer's reservations about this document and the reasons why she gave it a low probative value are entirely reasonable in the circumstances. This is a weighing issue and the Court should not interfere on this ground.

Report dated November 8, 2008 from the OLF confirming arrest of the Applicant's friend as a suspected supporter of the OLF

[90] In my view, this is another complaint about the weight afforded to a particular piece of evidence. Once again, the Report tells us that the "TPLF Ethiopian government has put under unlawful detention more than 100 Oromo's (*sic*) of different background (*sic*) in different cities of

Oromiya including the capital city under the notorious pretext of supporting the Oromo Liberation Front (OLF)."

[91] So the letter makes it clear that not all Oromos are being targeted, and we do not know if the Report deals with individuals who have the Applicant's profile. The fact that Mr. Ishetu Kitili may be the Applicant's friend, does not mean that he has the same profile as the Applicant. So the Officer was put in a position of having to weigh this evidence. She notes, among other things, that "the report is silent as to the source of their information." In other words, this report just does not reveal enough about the people mentioned and its relevance to someone with the Applicant's profile to be afforded a lot of weight. There is nothing unreasonable about the Officer's conclusions on this report.

Credibility Finding Regarding November 8, 2008 Report

[92] I do not accept that the Officer makes a credibility finding with regards to this report. This is not like the *Liban* case cited by the Applicant. Here, the issue is simply what weight should be afforded to this Report in the context of all of the other evidence before the Officer.

[93] The Officer does not say that she does not believe the Applicant's subjective fears or that the Report is bogus. She merely notes deficiencies in the Report that go to the weight it should be given.

[94] Justice Zinn recently addressed the distinction between credibility and weight in *Ferguson v. Canada (Minister of Citizenship and Immigration)* 2008 FC 167 at paragraph 27:

> …When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[95] In the present case, the Officer was dealing with probative value and not credibility. There was no obligation to grant the Applicant an oral interview.

Misapplying section 96 and 97 of the Act by not finding that the Applicant would be specifically targeted

[96] The passages quoted by the Applicant refer to people who are "government critics." The Decision is based upon "profile" and the Applicant's personalized risk is based upon his profile. Even the Applicant's own documents do not say that all Oromos are being targeted. Hence, the Officer had to do a profile assessment, which is obviously concerned with the Applicant's personalized risk.

[97] The Applicant argues that the only issue is whether he is an ethnic Oromo. This position is not supported by the statements of risk put forward in his PRRA application. The key document relied upon by the Officer was the Home Office, Operational Guidance Note, 2008. That document makes the following point very strongly:

> The OLF, ONLF and IUP are outlawed armed opposition groups that are known to have carried out organised attacks against the state authorities. If it is accepted that a claimant has been involved in or is suspected of involvement in non-combat activities on behalf of one of these groups and has previously come to the adverse attention of the authorities then they are likely to be at real risk of persecution by the state authorities. The grant of asylum in such cases is therefore likely to be appropriate. Ordinary low-level non-combat members who have not previously come to the adverse attention of the authorities however are unlikely to be at real risk of persecution and the grant of asylum in such cases is therefore unlikely to be appropriate.

[98] In the end, the risk for Oromo people is all about profile. As Justice Kelen pointed out in *Mohamed v. Canada (Minister of Citizenship and Immigration)* 2008 FC 315 at paragraph 25, "The thrust of the documentary evidence is that the Ethiopian government targets OLF members and sympathizers, not all 35 million people of Oromo ethnicity." The same can be said for the documentary evidence before the Officer in the present case. All documentary evidence that did not pre-date the RPD decision was accepted and reviewed by the Officer. The Applicant's evidence was weighed against respected and well-used country condition documents. The Officer's weighing of the evidence and her conclusions were entirely reasonable.

[99] But the Applicant says that the Officer misapplied sections 96 and 97. This is primarily based upon the following words from the Decision:

> The applicant's remaining submissions describe the general country conditions in Ethiopia, and he has not linked this evidence to his personalized risk. The submissions do not recount new material evidence of a significant change in country conditions since the applicant was before the RPD. The applicant has not provided objective documentary evidence to support that his profile in Ethiopia is similar to those persons that would currently be at risk of persecution or harm in that country. I find that the documents relate

> to conditions faced by the general population, or describe specific events or conditions faced by persons not similarly situated to the applicant. The applicant has not been in Ethiopia since 2002. Evidence does not support that the applicant is being sought by the Ethiopian authorities, due to his political activities. I find that the evidence before me does not support that the applicant faces a personalized, forward-looking risk in Ethiopia.

[100] The Applicant invokes *Salibian v. Canada (Minister of Employment and Immigration),* [1990] 3 F.C. 250 for the proposition that he need not prove that he himself would be persecuted in the future, and that he may prove that his fears of return to Ethiopia are not the result of acts committed directly against him, but acts committed, or liable to be committed, against the members of a group to which he belongs.

[101] In the present case, the Applicant says he need only show that the acts he fears are liable to be committed against Oromos; he does not have to show that he is personally being sought by the Ethiopian authorities.

[102] A plain reading of the Decision in general, and the paragraph quoted by the Applicant in particular, makes it clear that the Officer did not require the Applicant to show either persecution or harm directed against him personally. When the Officer says that the Applicant has not linked the generalized country conditions in Ethiopia to personalized risk, the Officer means that the Applicant's submissions "do not recount new material evidence of a significant change in country conditions since the Applicant was before the RPD" and the Applicant "has not provided objective documentary evidence to support that his profile in Ethiopia is similar to those persons that would

currently be at risk of persecution or harm in that country." (Emphasis added). The same observations are made at the conclusion of the Decision.

[103] When the Officer points out that the evidence does not support that the Applicant is being sought by the Ethiopian authorities, the Officer is merely pointing out that, as far as the Applicant's personal experience is concerned, he has at no time, either before the RPD or in his PRRA application, produced a shred of acceptable evidence that he is being sought by the Ethiopian authorities. Pointing this out does not mean that the Officer required the Applicant to prove persecution or harm directed only against him personally.

[104] The law on the issue of personalized risk has been clearly set out in various decisions of this Court. See, for example, the decision of Justice Mosley in *Raza v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1385 at paragraph 29 and the decision of Justice Lemieux in *Pillai v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1312 at paragraph 42.

[105] In my view, the Officer correctly applied sections 96 and 97 and the jurisprudence concerning personalized risk to the facts of this case.

Certification

[106] The Applicant has asked the Court to consider the following question for certification:

> To what extent is particularization of the applicant required in the case of section 97 of the Act?

[107] In my view, this question is too abstract and it is not responsive to facts of this case. The Officer makes it quite clear that, in considering persecution or harm, she was focussed upon the Applicant's profile, and her conclusion was that the Applicant could neither demonstrate that he personally had been persecuted or harmed, or would be persecuted or harmed if returned, or that he belonged to a group of people who were subject to persecution or harm. To once again borrow Justice Kelen's words from *Mohamed*, the thrust of the documentary evidence in the present case is that the Ethiopian government targets OLF members and sympathizers, not all 35 million people of Oromo ethnicity.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed;

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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