

Federal Court



Cour fédérale

**Date: 20161214**

**Docket: IMM-1111-16**

**Citation: 2016 FC 1375**

**Ottawa, Ontario, December 14, 2016**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**MOHAMMED ZOHEB NEZERALI  
SHUKRIYA MOHAMMED SEYFEDIN  
IHSAN MOHAMMED ZOHEB**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division [RPD], dated February 24, 2016, in which the RPD determined that the Applicants were neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection*

*Act*, SC 2001, c 27 [the Act]. The RPD also determined that the Applicants' refugee claim had no credible basis as per subsection 107(2) of the Act.

I. Background

[2] The relevant facts to this case can be summarized as follows. The Applicants, a husband, wife and minor child, are citizens of Ethiopia. They arrived in Canada in August 2015 as visitors and sought refugee status shortly thereafter, alleging that there was a risk that the husband, Mohammed Zoheb Nezeralli [Mr. Nezeralli], would be detained and tortured if he was to return to Ethiopia.

[3] In support of the claim, Mr. Nezeralli alleges that in 2007, he moved to Dubai to work for Emirates Airlines as a passport and visa specialist and that in June 2013, while still in Dubai, he became a member of the Blue Party, a legally registered opposition political party in Ethiopia. He says that his involvement with that party was centered on the printing and shipping of Blue Party's t-shirts to Ethiopia but also included attendance to monthly meetings with the Dubai chapter, distribution of brochures and recruitment of new members.

[4] Mr. Nezeralli claims that on September 1, 2014, he flew to Ethiopia to attend a friend's wedding but was arrested upon his arrival at the airport and then taken for interrogation, detained, abused and assaulted due to his political involvement with the Blue Party. He alleges that while in detention, he lost two teeth due to the beatings and had his passport and cellular phone confiscated. He says that he was released from detention on September 3, 2014 upon the payment of bail and conditions which included not leaving Addis Ababa without the knowledge

and consent of the police. However, he claims he flew back to Dubai the next day with a new passport that another friend, by the name of Michael, obtained through bribery in order to allow him to flee the country. Mr. Nezeralli states that he never returned to Ethiopia and left Dubai for Canada in August 2015 as his employment contract in that country was about to expire.

[5] In support of his refugee claim, Mr. Nezeralli submitted medical reports on the injuries and psychological harm sustained in detention, some documents from the Blue Party (letter, membership card and receipts) as well as a letter from a friend confirming his political activities in Dubai. He also submitted a letter from his friend, Michael confirming his detention in Addis Ababa and his return to Dubai upon release. Finally, he provided a copy of a summons addressed to him on September 23, 2014 by the Addis Ababa Police indicating that he was wanted for questioning.

[6] The RPD rejected the Applicants' refugee claim on the basis that their evidence was not credible. First, it found that Mr. Nezeralli had provided contradictory evidence about previous political activities in Ethiopia and had failed to mention in his narrative that he distributed brochures, recruited members and attended meetings when working for the Blue Party in Dubai.

[7] Regarding the issuance of the new passport, the RDP held that it was implausible that it would have been issued on September 4, 2014, as contended by Mr. Nezeralli, while it bore the date of September 2, 2014 as the issue date. It noted that there was no reliable documentary evidence before it to show that immigration officials in Ethiopia would willingly alter the date of issue of a passport or that such practices were customary. Being satisfied that the new passport

had been issued on September 2, 2014, the RPD held that this impacted negatively on the credibility of Mr. Nezeralli's assertion that he was in detention that day. The RPD also noted that Michael's letter, which was brought forward as corroborative evidence of Mr. Nezeralli's detention, omitted to mention that he had helped Mr. Nezeralli to obtain the new passport. It found that the inconsistencies between Mr. Nezeralli's evidence and Michael's letter undermined the credibility of both accounts of events. In sum, in rejecting Mr. Nezeralli's evidence regarding the new passport, the RPD also rejected his testimony regarding his detention.

[8] The RPD then gave no weight to the other documents submitted by Mr. Nezeralli as corroborative evidence of his detention and political activities. First, following unsuccessful attempts to reach the Blue party through official channels, the RPD held that the Applicant's Blue Party's membership card and letter were not credible. The RPD then noted that the medical reports obtained in Canada did not address or overcome its credibility concerns as they were based on information recounted by Mr. Nezeralli himself. As for the medical certificate obtained in Addis Ababa, the RPD noted that it did not specify how the Mr. Nezeralli had sustained his injuries.

[9] As for the police summons, the RPD gave it no corroborative weight either as it found Mr. Nezeralli's allegations of detention and political involvement not credible. Finally, the RPD noted that Mr. Nezeralli's spouse and co-claimant, Shukriya Mohammed Seyfedin (Ms. Seyfedin), had travelled to Ethiopia with their child on January 11, 2015 and had remained in that country until the end of February (2015). The RPD drew negative inferences from the fact that Ms. Seyfedin willingly subjected herself and her son to the risk of travelling to Ethiopia

knowing her husband was allegedly detained by the authorities a few months prior. The RDP found Ms. Seyfedin not to be a credible witness and not fearing any risk of harm in Ethiopia.

II. Issue and Standard of Review

[10] The issue to be determined in this case is whether the RPD committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985 c F-7 by dismissing the Applicants' refugee claim as not being credible and by going a step further in finding that there is no credible basis to that claim pursuant to subsection 107(2) of the Act.

[11] It is well-established that the standard of review applicable to the RPD's credibility and plausibility findings is that of reasonableness as these matters raise questions of fact or mixed fact and law falling within the RPD's area of expertise (*New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 [*Dunsmuir*], at para 53; *Nava Flores v Canada (Citizenship and Immigration)*, 2010 FC 1147, at paras 25-26; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 274 at para 33). As a result, such findings are owed significant deference and the Court will only interfere with them if they lack justification, transparency, intelligibility or fall outside the range of possible, acceptable outcomes (*Dunsmuir*, at para 47). In determining whether it should interfere or not with such findings, the Court must be careful not to reweigh the evidence before the RPD and come up with its preferred outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

III. Analysis

A. *The Sections 96 and 97 Finding*

[12] The Applicants concede that the RPD's findings regarding Mr. Nezeralli's political involvement in Ethiopia prior to leaving for Dubai fall within a range of possible and acceptable outcomes. However, they claim that the RPD's findings regarding the credibility of Mr. Nezeralli's detention in September 2014 and political involvement with the Blue Party in Dubai are unreasonable and should be set aside. In particular, they submit that the RPD unreasonably gave no weight to Mr. Nezeralli's independent documentation corroborating his story.

[13] It is trite law that the RPD is entitled to draw negative credibility findings from inconsistencies in a claimant's testimony and ultimately find the claimant lacking credibility when these inconsistencies are based on rational inferences (*Toma v Canada (Citizenship and Immigration)*, 2014 FC 121 at para 11). I believe this avenue was open to the RPD in the circumstances of the present case.

[14] First, the Applicants left a number of the RPD's credibility findings unchallenged with regards to Mr. Nezeralli's political involvement in Ethiopia and they were unable to explain why Mr. Nezeralli's Basis of Claim Form (BOC) failed to include his other political activities for the Blue Party in Dubai, namely his attendance to monthly meetings, the distribution of brochures and the recruitment of new members. This, in my view, provided a rational basis to the RPD to doubt the credibility of Mr. Nezeralli's alleged political profile and involvement.

[15] Second, I cannot say that the credibility concerns regarding Mr. Nezeralli's detention were unreasonable as it was open to the RPD to discount Mr. Nezeralli's testimony that the new passport, which bore the issuing date of September 2, 2014, would have been issued on September 4, 2014. The RPD noted that there was no objective documentary evidence to support the allegation that officials in Ethiopia would alter the date of issue of passports. It also noted that the letter from Michael, who allegedly bribed the officials to alter the issuance date on the passport, did not mention his involvement in helping Mr. Nezeralli to obtain a new passport. Having found that the new passport could only have been issued on September 2, 2014, the RPD inferred that Mr. Nezeralli could not have been issued a passport that day if he had been detained with no means of contacting anyone as his cellular phone had been confiscated. This, according to the RPD, undermined the credibility of the allegation that Mr. Nezeralli was detained. I cannot say that this inference is unreasonable.

[16] The Applicants contend that there was no reason for Mr. Nezeralli to travel to Ethiopia to get a new passport when he could have obtained one through consular services in the United Arab Emirates. However, I agree with the Respondent that regardless of this contention, the fact remains that Mr. Nezeralli has obtained a new passport in Ethiopia in circumstances where the alleged detention of Mr. Nezeralli was reasonably held not to be credible.

[17] Third, I find that it was reasonably open to the RPD to conclude that the re-availment of Ms. Seyfedin and her son in January 2015 undermined the credibility of Mr. Nezeralli's story. I agree with the Respondent that there is no merit to the argument that the re-availment was of no consequence because it is only Mr. Nezeralli who was sought by the authorities. It was open to

the RPD to discount Ms. Seyfedin's assertion, if her husband's story was true, that she would have been unaware of the risks she would face by returning to Ethiopia especially given the fact that the objective documentary shows that security forces in Ethiopia detain family members of persons sought for questioning by the government. It was not unreasonable either for the RPD to find that the fact that Ms. Seyfedin and her son did not encounter any problems with the Ethiopian authorities during their six-week stay in that country undermined the credibility of Mr. Nezeralli's story. These findings fall, in my opinion, within the range of possible, acceptable outcomes.

[18] With respect to the supporting documents filed by the Applicants, I find that the RPD did not err in concluding that they deserved no weight as this finding, in my view, was reasonable given the problems with the credibility of the Applicants' story as a whole. As this Court stated in *Odurukwe v Canada (Citizenship and Immigration)*, 2015 FC 613 [*Odurukwe*]:

[37] On judicial review, the Court cannot reweigh the evidence. The Board's finding that the numerous other documents submitted by the applicant deserved no weight was reasonably open to it, given the problems with her credibility. On reasonableness review, it does not matter that the Court might have given different weight, since the Court is not "developing, asserting and enforcing its own view of the matter". (...) Moreover, it is "well-established that an applicant's overall credibility may affect the weight to be given to the documentary evidence". (*References omitted*)

[19] In addition, the RPD noted that these supporting documents failed to corroborate some central aspects of the Applicant's storyline, namely, the alleged involvement of Michael in helping Mr. Nezeralli getting a new passport and Mr. Nezeralli's alleged activities for the Blue Party in Dubai, namely distributing brochures and recruiting new members. In these circumstances, the RPD was entitled to consider what the supporting documents did not say,



given the materiality of the omissions, in assessing the weight to be given to them in light of its credibility concerns regarding Mr. Nezeralli's testimony.

[20] The Applicants contend that the RPD misconstrued the evidence regarding the authenticity of some of the documents, namely the letter from the Blue Party and Mr. Nezeralli's Blue Party membership card. However, even assuming that this was the case, this was not the sole basis for discounting the probative value of these documents as the RPD also had serious concerns with their actual content as they tended to corroborate a storyline that the RPD had already found not to be credible. As *Odurukwe* provides, the RPD was entitled to so conclude. Therefore, despite this error, assuming there was one, there would still be a rational basis to the RPD's decision to accord no weight to these documents.

[21] Finally, while Mr. Nezeralli's medical certificate corroborates the allegation that he suffered injuries around the same period of time he was allegedly detained, the RDP's finding that such certificate does not establish Mr. Nezeralli's detention due to his political identity was reasonable. The present case is distinguishable from *Ismayilov v MCI*, 2015 FC 1013 [*Ismayilov*] and *Talukder v MCI*, 2012 FC 658 [*Talukder*] relied on by the Applicants on that issue. Indeed, even if the RPD refers to the lack of information regarding the cause of the injuries, unlike *Ismayilov* and *Talukder*, the RDP did not reject the medical evidence on that basis. It accepted that Mr. Nezeralli may have been injured on September 3, 2014. However, it assessed the medical certificate in light of Mr. Nezeralli's testimony and gave it no weight in establishing the latter's detention and political profile. Such conclusion was reasonable given that the evidence as a whole demonstrates the implausibility of Mr. Nezeralli's testimony regarding his detention.

[22] The same finding applies to the consideration, by the RPD, of the medical reports issued in Canada. As the Respondent points out, this evidence was not ignored by the RPD. However, it was considered in light of the fact that the medical professionals based their opinion on what Mr. Nezeralli told them. These reports were given no weight because Mr. Nezeralli was found to be not credible. It was open to the RPD to conclude as it did on this point (*Shah v Canada (Citizenship and Immigration)*, 2013 FC 280 at paras 15-16). I see no reason to interfere with this finding.

[23] In sum, I find that it was reasonably open to the RPD to conclude that the Applicants are neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the Act.

B. *The Subsection 107(2) Finding*

[24] The Applicants rightfully point out that a finding pursuant to subsection 107(2) of the Act that a refugee claim has no credible basis has some significant consequences since it deprives those concerned of an appeal to the Refugee Appeal Division with the benefits of a statutory stay. This is why the threshold for such a finding is a high one as it can only be reached “when there is no trustworthy or credible evidence that could support the recognition of the claim” (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, at para 51 [*Rahaman*]). In other words, as the Court has put it in *Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 [*Levario*], “if there is any credible evidence or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for

the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities” (*Levario*, at para 19).

[25] This does not mean however that the existence of some credible or trustworthy evidence will necessarily preclude a “no credible basis” finding. This will be the case when that evidence is insufficient in law to sustain a positive determination of the claim (*Rahaman*, at para 30; *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at paras 29-31; *Naeem v Canada (Citizenship and Immigration)*, 2014 FC 1134 at para 15).

[26] Here, I am satisfied that there is no credible or trustworthy evidence in the supporting documents that could support a positive determination of the Applicants’ refugee claim or, assuming there is, that would be sufficient in law to sustain such outcome. As indicated previously, the RPD identified a number of credibility concerns with the Applicants’ claim, some of which were not even challenged on judicial review. It weighed the supporting documentary evidence in light of its previous negative credibility findings and noted the failure of such evidence to corroborate some central features of the claim. It also noted the lack of corroborating objective documentary evidence. As we have seen, the RPD was entitled to extend its negative credibility findings to the other elements of the Applicants’ claim, including their supporting documents (*Odurukwe*, at para 37; *Sheikh v Canada (Minister of Citizenship and Immigration)*, [1990] 3 FC 238 at para 8 (CA)).

[27] But even assuming that there was credibility or trustworthy evidence of Mr. Nezeralli’s membership with the Blue Party and/or of the authenticity of the supporting documentation

emanating from that Party, this would not overcome, in my opinion, the lack of credibility of Mr. Nezeralli's claim on three central aspects of his alleged fear, that is: (i) that he was detained when he returned to Ethiopia in September 2014, (ii) that his detention was the result of his political activities, and, (iii) that the police has issued a summons a few weeks after his release from detention in order to question him on his political affiliation and involvement with the Blue Party. Furthermore, this would not overcome either the negative inference that was reasonably drawn by the RPD from the fact that Ms. Seyfedin re-availed herself of her country's protection when she returned to Ethiopia with her son in January 2015 for a six-week stay.

[28] Therefore, even assuming that there was some credibility or trustworthy evidence on record, this would not be sufficient in law, on a reasonableness analysis, to sustain a positive determination of the Applicants' refugee claim.

[29] For these reasons, I see no reason to interfere with the RPD's "no credible basis" finding in the circumstances of this case.

[30] No questions were proposed for certification.

**ORDER**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review application is dismissed;
2. No question is certified.

"René LeBlanc"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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**STYLE OF CAUSE:** MOHAMMED ZOHEB NEZERALI, SHUKRIYA  
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