

Federal Court



Cour fédérale

**Date: 20170330**

**Docket: IMM-3292-16**

**Citation: 2017 FC 337**

**Ottawa, Ontario, March 30, 2017**

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

**BETWEEN:**

**EDEN TEKESTE TESFAMICHAEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of the decision of an immigration officer [the Officer] at the Canadian High Commission in Dar es Salaam, Tanzania, dated August 11, 2016, dismissing her application for permanent residence in Canada as a member of the Convention Refugee Abroad Class or of the Humanitarian-Protected Persons Abroad Class on the basis of credibility concerns.

[2] The relevant facts can be summarized as follows. The Applicant is a national of Eritrea. She moved to Uganda in August 2007 where she sought refugee protection, claiming persecution from the Eritrean authorities due to her religious beliefs. The Applicant claims to be a born again Christian of Pentecostal faith. In 2008, she applied for permanent residence in Canada under the Convention Refugee Abroad Class. However, her application was closed as she failed to appear for her scheduled interview.

[3] In March 2013, the Applicant married Samuel Habtemichael Yebyo, who is also of Eritrean nationality and a follower of Pentecostal faith. Mr. Yebyo is claiming asylum in Uganda on the basis of his religious beliefs. In 2014, the Applicant submitted her current application for permanent residence in Canada and listed her husband as a dependant. She claims that she suffered greatly due to her religious beliefs since 2002 when the government of Eritrea decided to ban minority faith groups, close worship places and indiscriminately detain members of the Pentecostal faith. According to her narrative, she was arrested by government security officials in December 2006 while attending a prayer program at a friend's home, detained for six months and, while in detention, subjected to torture and humiliation and at gun point, ordered to change her faith.

[4] On June 14, 2016, the Applicant and her husband were interviewed by the Officer. The Officer noted a number of contradictions in the Applicant's evidence, specifically with regard to her escape from Eritrea and her detention where she responded "no" when asked if she had been tortured. He also noted that the Applicant claimed to be three or four years older than her husband while the later claimed to be one or two years older than the Applicant. Given that the

Applicant alleges being born in 1979 and that her husband was supposedly born in 1985, these inconsistencies raised concerns concerning the Applicant's identity.

[5] The Officer concluded as follows in his letter for decision:

After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed because I am not satisfied of your eligibility. There are contradiction on facts and dates provided and the chronology of your story is unclear. I have concerns on your credibility, which affects the basis of your claim. I also am not satisfied of your identity; as date of births for you and your husband were unclear and contradictory. I have also assessed your husband's eligibility, but given the contradictions and gaps in his timeline, I also have concerns on his credibility, which affects the basis of his claim. Therefore, I am also not satisfied that he is eligible. I considered your responses and your husband's responses when given an opportunity to provide an explanation, but I do not find them sufficient to explain the issues stated above. Therefore, I am not satisfied that either you or your husband meet the Convention refugee definition nor the asylum class. Therefore you do not meet the requirements of this paragraph [...]

[6] In his interview notes, the Officer had this to say regarding his concerns:

Eligibility concerns: REFUSED I have significant concerns on PA's eligibility. There are contradiction on facts and dates and the chronology is unclear. For example, the PA first said she fled Eritrea in 2006. She later said 2007. Flight dates are therefore unclear. The PA also wrote in her application that she was tortured when she was in prison. However, when asked if she was tortured in prison, she responded "no". When prompted about that contradiction, the PA responded "It has been a long time, it was 9 years ago so I'm forgetting some". I do not find that explanation satisfactory, as someone who has gone through torture – a traumatic experience – would remember. When I explained to the PA the contradictions in her claim and my concerns on her credibility, she responded "It has been a long time and I forget things. If you can help me please because I am totally confused." I also do not find that the fact it has been a long time explains the contradictions in her claim. I also have concerns on the PA and the husband's ID. The applicant says that her husband is 3 or 4 years

younger than her. The husband says he is 1 or 2 years younger than the PA. He also claims that the DOB on his refugee ID card is wrong and that it is not 1985. It is odd that they would not know their age difference or their actual DOB, even though they claim to have been married since March 2013. They do not seem to know basic information about each other. I therefore have concerns about the genuineness of the relationship. Since DOB is essential to identification, I also have concerns about their ID. [...].

[7] The Applicant submits that the Officer erred in four ways: (i) by failing to recognize the Ethiopian calendar when concluding that there were contradictions on the date she fled Eritria; (ii) by making unreasonable findings on evidence of torture; (iii) by doubting the Applicant's identity without regard to the material before her; and (iv) by questioning the Applicant's credibility on the basis of the Applicant's husband own credibility.

[8] Decisions as to whether or not an applicant is a member of the Convention Refugees Abroad Class or the Country of Asylum Class involve questions of fact or mixed fact and law, and as a result, are to be reviewed using the reasonableness standard (*Sivakumaran v Canada (Citizenship and Immigration)*, 2011 FC 590 at para 19). Reasonableness, as is now well-settled, is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, and whether the impugned decision falls within a range of possible, acceptable outcomes (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] With respect, I see no reason to interfere with the Officer's decision.

[10] First, I do not find the Applicant's arguments based on the Ethiopian calendar compelling. As the Respondent points out, the difference between the Ethiopian and Western calendars was not raised by the Applicant when she was confronted by the Officer about the inconsistencies regarding the date she fled Eritria. She rather attributed her memory failures to the passage of time. There is no evidence either suggesting that this difference may have been the source of the Applicant's inconsistent evidence. As for the Applicant's claim that the Officer was under a duty to consider the existence of the Ethiopian calendar irrespective of the fact she herself never raised it when asked about the inconsistencies, I find this Court's decision in *Haji c Canada (Citizenship and Immigration)*, 2015 FC 868, where this argument was dismissed, to be persuasive authority.

[11] Second, I consider the Officer's findings respecting the evidence of torture to be reasonable. The fact that the Applicant responded "no" to the question "Did they torture you?" contradicts her narrative in support of her permanent residence application in which she stated "[...] we were taken to Mysirwa detention center where we were subjected to torture and humiliations". The Applicant's contention that the question was ambiguous, particularly given the various legal definitions of the notion of torture, is without merit. The question was straightforward and unambiguous.

[12] Again, the Applicant was given a chance to answer the Officer's concern regarding this contradiction and responded that "it had been a long time, it was 9 years ago so I am forgetting some". Her further contention regarding possible memory suppression or post-traumatic syndrome disorder as a reason for her forgetting the torture is also without merit since there is no

evidence whatsoever on record to support it. Also, it does not explain, as the Respondent rightfully puts it, why the Applicant remembered having been tortured when she wrote her application's narrative but said she was not at the interview with the Officer. The fact the Officer told the Applicant that if she had been tortured she would remember was, in these particular circumstances, a reasonable and logical assumption.

[13] Third, the Applicant claims that the Officer's concerns about her identity are unreasonable given that she gave a consistent date of birth in her application materials and at the interview. The Officer's concerns arose from the inconsistent evidence given by the Applicant and her husband about their age difference despite being married since 2013. The Applicant first testified that she was three to four years older than her husband. Then, when confronted with her year of birth and that of her husband, she indicated that the age difference was about five to six years. The husband testified that he was a year or two older than the Applicant.

[14] The Respondent agrees that the Officer could not use the husband's credibility finding against the Applicant. However, he claims that the Officer was permitted, as is often done in cases with multiple applicants being interviewed together (*Musse v Canada (Citizenship and Immigration)*, 2012 FC 883 [*Musse*]) to consider the husband's answers to assess the credibility of the Applicant's own evidence provided she was aware of her husband's answers. The Respondent contends that this is the case here as the Applicant and her husband, who had also put forth a permanent residency claim although he was not the principal applicant, were interviewed together.

[15] I am prepared to accept that the Officer was allowed to consider the contradictions with regards to age difference and to conclude as he did on that point. But even assuming that the Officer was not entitled to do so or exceeded what *Musse* allowed him to do, this, in my view, would not affect the reasonableness of the Officer's decision when considered as a whole.

[16] Finally, the Applicant contends that the Officer erred by blending his assessment of the Applicant's application and that of her husband's. In other words, she claims that the Officer was not entitled to assess them as a couple. I agree that the Officer was not empowered to do so but when one looks at the Officer's interview notes I am satisfied that the Officer proceeded to make an independent assessment of the Applicant's claim and that he came up with separate findings with respect to the Applicant and her husband's claims based on their respective evidence. As the Respondent correctly points out, ultimately, the Officer's findings regarding the Applicant's credibility and her claim were based on evidence that she submitted and concerns that were put to her. Again, I see no reason to interfere with these findings.

[17] The judicial review application is dismissed. No question is certified.

**JUDGMENT**

**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**

**DOCKET:** IMM-3292-16

**STYLE OF CAUSE:** EDEN TEKESTE TESFAMICHAEL v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** FEBRUARY 15, 2017

**JUDGMENT AND REASONS:** LEBLANC J.

**DATED:** MARCH 30, 2017

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