

Federal Court



Cour fédérale

Date: 20171228

Docket: IMM-2385-17

Citation: 2017 FC 1195

Ottawa, Ontario, December 28, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**YESHIHAREG ALEMU MENGESHA
DINAH HAILU KEBEDE AND
NAZAWIT KEBEDE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Yeshihareg Alemu Mengesha [the Applicant] and her minor children Dinah Hailu Kebede and Nazrawit Hailu Kebede are citizens of Ethiopia. The Applicant worked as an Executive Secretary for the Lesotho Embassy in Addis Abada from 2009-2012.

[2] She alleges that in April 2012 she was asked by Ethiopian security officials to retrieve information from the Embassy regarding individuals who had alleged links to the Ginbot 7 party.

The Ginbot 7 party is an opposition group based in Eritrea. The Applicant denied having the knowledge or ability to obtain this information, and was subsequently detained by security forces for one night.

[3] The Applicant fled to the United States of America with her children in August 2012, where they made an asylum claim six months later. In August 2013, before their claim was heard, the Applicant and her children returned to Ethiopia, after her husband bribed an Ethiopian security official who provided assurances of her safety.

[4] The Applicant alleges that since her return she has been harassed by security officials for information they believe she has as a result of her former employment. In 2014 the Applicant travelled to Dubai on a business matter. In 2015 the Applicant travelled to Bangkok seeking treatment for her sick husband.

[5] In May 25, 2016, the Applicant was taken to a police station and asked to identify individuals from photographs provided by the police. When she was unable to identify the individuals, she was threatened and accused of having association with the Blue Party (an opposition party also referred to as the Semayawi party) and collaborating with Ginbot 7. The Applicant testifies that in fear for her life and safety she began to plan to flee from the country, and thus applied for and secured Canadian Visas for herself and the minor Applicants.

[6] The Applicant was once again brought to the police station in June 20, 2016. The Police demanded that she read a statement prepared by security agents on national television. She was

taken to the TV station and shown how to read the statement. She was told she must read out the statement when the program was ready. The Applicant agreed to do so because she knew she would be fleeing to Canada shortly.

[7] The Applicant arrived in Canada on July 7, 2016. She learned from her husband that the police came to her home looking for her on July 14, 2016 and July 16, 2016, and that she was sent a letter from the Foreign Minister asking her to appear at the nearest Embassy to sign a witness statement.

[8] She filed an application for refugee protection based on her imputed political opinion, her lack of cooperation with the authorities, and her support for the Blue Party. The Refugee Protection Division [RPD] dismissed her claim. It had numerous credibility concerns regarding the evidence she proffered in support of her allegations that she is being pursued by the Ethiopian authorities. It further found that she had failed to establish that she was an active supporter of the Blue Party, or was being pursued because of her support for it.

[9] An appeal to the Refugee Appeal Division [RAD] was dismissed. The RAD stated that “after conducting an independent assessment of the entire record of the proceedings, the RAD agrees with the RPD that the Applicant and her children have not established the material allegations in their claims.”

[10] The Applicant asks the Court to set aside the decision of the RAD on two bases: (1) that its rejection of documentary evidence that corroborates her claim was unreasonable, and (2) it erred in its assessment of her credibility.

[11] For the following reasons, I am not persuaded that the RAD made any error or unreasonable finding and thus the application must be dismissed.

[12] Having read both the RPD and the RAD decisions, I confess that I find the RPD decision better reasoned and more persuasive. However, it is the RAD decision that is under review and my preference for the RPD decision does not mean that the RAD decision is deficient or ought to be set aside. Although the RAD's view of some of the evidence differed from that of the RPD, I find nothing unreasonable in the outcome or analysis of the RAD.

[13] The Applicant complains of the RAD's treatment of three documents: (a) the Police letters dated May 25, 2016 and July 16, 2016; (b) the Letter from the Ministry of Foreign Affairs, and (c) the Letter from the Applicant's husband.

[14] The Applicant submits that the RAD's decision to grant the two Police letters little weight was unreasonable. She says that the RAD gave no weight to the May 25, 2016 letter because the letterhead is cut off at the top and because it does not name the Applicant, and gave no weight to the July 16, 2016 letter solely because the letterhead was cut off at the time. The Applicant submits that the RAD did not have sufficient evidence before it to decide to give no weight to these letters. She notes that the RAD did not state it had a specialized knowledge of

the features of police letters from Ethiopia, nor did they have a sample of police summons or letters to compare with those the Applicant submitted. The Applicant submits that while the RAD is an expert in weighing evidence concerning the authenticity of documents, it is not an expert in the authenticity of documents *per se*.

[15] I agree with the Respondent that the RAD's concerns regarding the May 25, 2016 letter was reasonable and it provided an acceptable explanation for granting the letter little weight. The RAD had no way of confirming that the letter was intended for the Applicant because it did not name her. It thus reasonably afforded it low probative value.

[16] I also agree with the Respondent that it was not unreasonable for the RAD to also give little weight to the July 16, 2016 letter because the very top of the letterhead was cut off. The RPD discounted this evidence for two reasons. The letter in question was a summons that the husband stated had been left with him on July 16th. When the Applicant was asked if the officials left anything with her husband she twice responded that they did not, before being informed by the panel that such a letter was in the record. She then testified that "it was a notice and that they do not come without a notice." The RPD stated that it found this explanation to be unreasonable "because the panel asked a direct question on more than one occasion regarding whether or not the security agents left any documentation with her husband and on two occasions she indicated that they did not." It continued, "In addition to the claimant's failure to mention this highly relevant document, on the face of it, the letterhead is cut off at the top." These together led the RPD to give it no weight to corroborating her allegations that she was actively being pursued.

[17] The RAD found that the RPD was “overzealous in its finding that the Appellant did not mention the summons, when it was submitted in evidence.” Nonetheless it also found that it could not be assigned “much probative value on its face, given that the letterhead was cut off.” There is no real dispute that the letterhead was cut off. The document was thus not complete. Despite its legible portions, it cannot be said to be unreasonable to discount its value when it is incomplete and one has no way of knowing what has been removed from it.

[18] The second document that was discounted was the letter from the Ministry of Foreign Affairs. The Applicant submits that the only reason the RAD provided for discounting the letter was because of its lack of identifying features. The Applicant submits a “lack of identifying features” is a very vague term, especially as the letter has a letterhead, was signed and stamped, and appears authentic on its face.

[19] The Respondent submits the RAD’s statement was not vague. At paragraph 27 of its reasons the RAD wrote: “In the absence of the Appellant’s name, her address or where the letter from the Ministry of Foreign Affairs was sent, coupled with the aforementioned credibility concerns, the RPD found, on a balance of probabilities, that this letter did not provide any additional credible corroborating evidence.”

[20] In fact, the letter does contain the Applicant’s name – a fact noted by the RPD. The RPD’s reasons for discounting the letter were as follows:

[I]t indicates that she is to go to a Consulate or embassy where she resides to sign a witness statement. While it indicates the claimant’s name, it does not contain her address or to where the letter was sent. Given the aforementioned credibility concerns

noted with respect to the claimant's testimony, the panel finds, on a balance of probabilities, the letter does not overcome or outweigh the numerous credibility concerns already stated.

[21] In short, the only difference between the RAD and RPD decisions on this point appears to rest on the Applicant being named in the letter. In my view, that error on the part of the RAD is not sufficient to overcome the reasonableness of the assessment otherwise.

[22] The third document addressed by both boards is a letter from the Applicant's husband.

[23] The Applicant submits that the RAD gave no weight to the letter from her husband because it was self-serving and added nothing to what was already in the testimony and Basis of Claim form. The Applicant submits that this finding misses the point of the husband's letter, which was not to add new facts into evidence, but rather to corroborate the Applicant's allegations of persecution. The Applicant submits that letters must be considered for what they say, not what they do not say.

[24] Regarding this letter, the RAD stated:

With due respect, the RAD finds that the [Applicant] has lost sight of what is missing in the letter from the [Applicant's] husband. The RAD finds that with this in mind, this letter ought to be given minimal, if any, weight in terms of establishing fears on behalf of the family, including future fears to the children.

[25] What the letter failed to state, and which was testified to by the Applicant, was that the husband had been required to relocate numerous times since the Applicant had fled Ethiopia because of his fears of the authorities. The RPD and RAD reasonably found that it would expect

the husband to mention this critical fact in his letter. In my view, the absence of any mention of that fact reasonably reduces to near zero the weight to be given to this letter.

[26] I also find that the overall credibility of the Applicant was assessed reasonably. She purported to travel to the United States to escape persecution, but failed to file an asylum claim for six months. She travelled outside and returned to Ethiopia at least twice with no consequences. She purported to be an active supporter of the Blue Party, but had no knowledge of its ideology, platform, or of when the last election occurred.

[27] The Applicant relies on a letter from the Blue Party and receipts for donations she made to it as further corroborating evidence. In my view, the contradictions between the letter and the Applicant's testimony as to how she supported the party were sufficient to justify the RAD giving it little weight. Further, the contradictions in her testimony as a whole, as noted in the preceding paragraph, were significant enough that the receipts were insufficient to establish her claim to be a supporter of the party.

[28] These difficulties with her testimony coupled with the lack of strong corroborating evidence of her claim, renders the RAD's overall decision reasonable.

[29] No question for certification was proposed.

JUDGMENT in IMM-2385-17

THIS COURT'S JUDGMENT IS that the application is dismissed and there is no certified question.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2385-17

STYLE OF CAUSE: YESHIHAREG ALEMU MENGESHA ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 11, 2017

JUDGMENT AND REASONS: ZINN J.

DATED: DECEMBER 28, 2017

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