

Federal Court



Cour fédérale

**Date: 20180302**

**Docket: IMM-886-17**

**Citation: 2018 FC 240**

**Ottawa, Ontario, March 2, 2018**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**BERHANE TESWOLD BERAKI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2003, Mr Berhane Teswold Beraki arrived in Canada from Eritrea with his family. They were granted refugee status and then applied for permanent residence. An immigration officer denied their applications on the basis that Mr Beraki was a former member of the Eritrean Liberation Front (ELF), a group the officer found was a terrorist organization. That finding was overturned on judicial review, but a second officer came to the same conclusion.

[2] The second officer found that Mr Beraki had at various times admitted to being a member of the ELF. The officer went on to consider whether the ELF was a terrorist organization, reviewing various reports and documentary evidence about the group. The officer found that the ELF had kidnapped civilians and hijacked planes, and that Mr Beraki was likely aware of those activities and had contributed to the ELF's objectives.

[3] Mr Beraki submits that the officer's decision was unreasonable on the evidence because, while he admitted to being a member of the ELF, he was not actually involved in any terrorist activities. Further, Mr Beraki maintains that the officer unreasonably refused to grant him permanent residence on humanitarian and compassionate grounds (H&C). He asks me to quash the officer's decision and order another officer to reconsider his application.

[4] I can find no basis for overturning the officer's decision. The officer reasonably concluded that the ELF had been involved in terrorist activities and that Mr Beraki was a member. In addition, the officer reviewed the relevant H&C factors and reasonably found that they did not amount to grounds meriting exceptional relief. Therefore, I will dismiss this application for judicial review.

[5] There are two issues:

1. Was the officer's conclusion that Mr Beraki was a member of a terrorist group unreasonable?
2. Did the officer unreasonably refuse to grant Mr Beraki permanent residence on H&C grounds?

II. The Officer's Decision

[6] Mr Beraki admitted to the officer that he was a member of the ELF for 30 years, and the evidence supported that admission. Mr Beraki had been trained by the ELF, organized youth meetings, promoted the ELF's objectives, collected funds for the group, and distributed information about the war with Ethiopia.

[7] The officer went on to consider whether the ELF was a terrorist group. The officer reviewed documentary evidence from a number of sources. The evidence showed that the ELF had been involved in military operations since the early 1960s. In the 1970s, a faction of the ELF broke away to form the Eritrean People's Liberation Front (EPLF) and a civil war broke out between the ELF and the EPLF.

[8] Other evidence described the ELF's involvement in hijackings, assassinations, extortion, and kidnappings. Some characterized the ELF's activities as being tied to Eritrea's fight for independence and, therefore, not properly categorized as terrorist acts. The officer concluded, however, that the ELF's actions met the definition of terrorist activity under Canadian law (*ie* under the *Criminal Code*). Further, by virtue of his decades-long association with the ELF, Mr Beraki was likely aware of the group's activities and shared information about them with other members, notwithstanding his claims to the contrary.

[9] From this evidence, the officer concluded that there were reasonable grounds to believe that the ELF was an organization engaged in terrorism, and that Mr Beraki was inadmissible to

Canada on the basis of his membership in that group, even though he was not directly responsible for any terrorist acts.

[10] The officer went on to consider whether Mr Beraki might be entitled to Ministerial relief on H&C grounds. The officer considered Mr Beraki's establishment in Canada, financial circumstances, and family situation. According to the officer, the evidence did not show that Mr Beraki had firmly established himself in Canada or that his family ties here were significant. The officer also considered the best interests of Mr Beraki's children and found that there was little evidence of any adverse impact on the children if Mr Beraki did not obtain permanent residence in Canada. Given his refugee status, Mr Beraki cannot be removed. Any adverse impact on the children by virtue of his being found to be a member of a terrorist organization was, according to the officer, speculative.

[11] Overall, therefore, the officer found that H&C factors did not outweigh the fact of his membership in a terrorist organization.

III. Was the officer's conclusion that Mr Beraki was a member of a terrorist group unreasonable?

[12] Mr Beraki submits that the ELF consisted of multiple factions, and that he was never involved in any of the divisions responsible for violence. Further, Mr Beraki contends that the officer wrongly concluded that he would have been aware of any of the group's violent acts. The ELF had a broad objective of achieving independence and all members may have sought the same result, but that does not mean, in Mr Beraki's view, that they should all be regarded as

members of a terrorist group. Mr Beraki relies on an opinion of the Canadian Council of Refugees stating that the ELF has never been recognized as a terrorist organization, and that members should not be considered inadmissible to Canada.

[13] I disagree. The evidence before the officer provided reasonable grounds to believe that that the ELF had engaged in various terrorist acts with a goal of obtaining Eritrean independence. The fact that Mr Beraki did not personally engage in terrorist activities does not mean that he was a non-member. A person can be inadmissible to Canada for engaging in terrorism (s 34(1)(c)) or for being a member of a terrorist group (s 34(1)(f)). A finding of inadmissibility on the latter ground does not require proof of the former; otherwise, s 34(1)(f) would be redundant (*Nassereddine v Canada (Minister of Citizenship and Immigration)* 2014 FC 85 at para 44).

[14] Accordingly, the officer's finding that there were reasonable grounds to believe Mr Beraki was a member of a terrorist group was not unreasonable.

IV. Did the officer unreasonably refuse to grant Mr Beraki permanent residence on H&C grounds?

[15] Mr Beraki submits that he has lived peacefully in Canada for 13 years. The officer, he says, failed to explain how his past membership in the ELF outweighed the positive H&C factors in his favour.

[16] I disagree. The officer reasonably found that Mr Beraki had failed to show that he had firmly established himself in Canada during his 13 years here. Further, since there was no risk

that Mr Beraki, a Convention refugee, would be removed from Canada, there was little evidence that there would be an adverse impact on his children if his permanent residence application were denied.

[17] The officer took note of Mr Beraki's non-violent role in the ELF but found that there were no persuasive countervailing factors pointing to a positive H&C finding. The officer's conclusion was not unreasonable on the evidence.

V. Conclusion and Disposition

[18] The officer reasonably concluded that Mr Beraki was a member of a terrorist group and that the H&C factors in his favour did not point to a positive outcome on his permanent residence application. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-886-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
and no question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-886-17

**STYLE OF CAUSE:** BERHANE TESWOLD BERAKI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 18, 2017

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MARCH 2, 2018

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