Federal Court  Cour fédérale

Date: 20190318

Docket: IMM-2739-18

Citation: 2019 FC 327

Ottawa, Ontario, March 18, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

YOHANNES BERHANE HABTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review by Yohannes Berhane Habte [the "Applicant"] in respect of a decision ["Decision"] of a visa officer [the "Officer"] in refusing the Applicant's application for permanent residence as a member of the Convention Refugees Abroad class. The Officer further held that the Applicant was not a member of the Humanitarian-Protected Persons

Abroad designation class pursuant to section 16 and section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["IRPA"].

[2] For the reasons below, I am dismissing this application.

II. Background

[3] The Applicant is a citizen of Eritrea and was born on or around January 1, 1988. He is unmarried and has no children. He has two siblings who reside in Calgary and six additional siblings who live throughout Eritrea and Ethiopia. The Applicant is currently living with a relative in Ethiopia.

[4] The Applicant said he was a practicing Pentecostal Christian and that the Pentecostal Church is banned in Eritrea. On February 2, 2009, a Pentecostal Christian church was raided by the Eritrean government and because the Applicant was there he was imprisoned for roughly 4 years. During his imprisonment, the Applicant said he was tortured and abused.

[5] The Applicant gave up his Christian beliefs so that he could escape persecution and return to college. However, upon being released in March 2013, the Applicant was dismissed from college and forced to join the military force instead.

[6] From March 2013 to June 2016, the Applicant served with the National Security Unit ["NSU"]. During his time serving with the NSU, the Applicant served at a border town called Adi Quala.

[7] The Applicant was deployed to spy on “any civilian movement who would come” to cross to Ethiopia illegally. The Applicant also served as a prison guard during that 4 year period, although it is unclear from the record as to how much time he spent as a prison guard, and how much time he spent in an undercover capacity.

[8] During his years serving with the NSU, the Applicant maintained he had witness numerous human rights abuses done by soldiers including witnessing bribery, human smuggling, sexual assault, torture, as well as Eritrean soldiers shooting innocent civilians.

[9] The Applicant claims to have stood against these abuses whenever he could. He asserted he attempted to try to support prisoners, including bringing them food and water. On one instance, in June 2016, the Applicant says he confronted an officer about taking bribes and being involved in human smuggling. He says that he was beaten by a superior officer, who kept him imprisoned for 50 days as a result of his apparent insubordination. When the Applicant was released, he vowed not to intervene again.

[10] However, the Applicant contends that on June 9, 2017, Major Teshome, a superior officer, took an underage girl to his office. The Applicant stated that he heard the girl shouting, and that he and another fellow NSU soldier knocked on the Major’s office door forcefully. His allegation is that the Major opened the door partially undress, then physically assaulted the Applicant, and vowed to kill him.

[11] The Applicant, realizing that his life was in danger, said he then deserted the army and fled across the Ethiopian border on June 10, 2017.

[12] On August 10, 2017, the Applicant's application for a permanent resident visa in Canada as a member of the Convention refugee Abroad class or a member of the Humanitarian-Protected Persons Abroad designation was received. The Applicant was privately sponsored by his two Canadian siblings.

[13] The Applicant was interviewed by the Officer on May 21, 2018, with the aid of an interpreter in Addis Ababa, Ethiopia.

[14] The Applicant had asserted during their interview that violence was never needed because:

a. Prisoners did not attempt to escape; and
b. Civilians being detained did not attempt to flee or fight with the armed soldiers.

[15] The Officer held that the narrative lacked credibility. The Officer did not think it was plausible that an individual that was part of the NSU could serve for 4 years as a prison guard and in an undercover capacity, and not participate in violence while arresting and guarding individuals. The Officer rejected the Applicant's claim on June 5, 2018.

III. Issue

[16] The issue is:

A. Did the Officer make an unreasonable finding that the Applicant's narrative was implausible?

IV. Standard of Review

[17] The Officer's decision on credibility should be on the basis of reasonableness. Implausibility findings are reviewable under the standard of reasonableness (*Saeedi v Canada (Citizenship and Immigration)*, 2013 FC 146 at para 29 ["*Saeedi*"]; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13).

V. The Law

[18] Section 11(1) of the IRPA states:

Requirements	**Formalités**
Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

VI. Analysis

[19] The basis of the Officer's decision was the following:

> 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 your narrative lacked credibility, specifically your account of your duties and actions during the 4 years you were a prison guard as part of your National Service. You stated that you never resorted to violence while on guard duty in the prison or while arresting individuals who were deemed a flight risk, and I do not find this to be credible, considering the length of time you worked as a prison guard, and the nature of your work and duties. Therefore, you do not meet the requirements of this paragraph.

[20] The Applicant suggests that in *Leung v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774, when internal inconsistencies of the applicant's testimony are not identified, but rather where there is an inference that the testimony is non-credible, there is a finding of implausibility. The Applicant submits that unlike credibility findings based on contradictions, implausibility findings should only be used in the clearest cases.

[21] The Applicant suggests that the Officer erred for the following reasons:

- The Officer erred by speculating that the Applicant's duties would have necessarily included using violence. Although the Officer asked the Applicant about the usage of violence, and also stated that they thought that the Applicant's story was not plausible. The Officer did not present any evidence or clear reason as to why it was so clear that being a guard and a undercover "spy" in this army and in that context necessitated committing violence;

- The Officer offered no reason as to why he or she thought it was implausible that the Applicant never had to use violence when arresting people; and
- The Officer noted that they did not find it credible that it took the Applicant four years to see what was happening at the prison in terms of human rights violations. However, the Applicant argues that the Officer drew an unreasonable implausibility finding arising from this, as guilt by association is not a reasonable inference to draw on this fact. The Applicant's own testimony is that there were other guards who did not mistreat prisoners; indeed it was one of his fellow guards who intervened with him to stop the Major during the attempted sexual assault.

[22] This Court has held that implausibility findings should only be made in the clearest of cases. At paragraph 69 of *KK v Canada (Citizenship and Immigration)*, 2014 FC 78, Justice Annis stated "…It is sufficient that the Board's adverse credibility findings be limited to situations where the underlying facts clearly support an inference that the witness was not truthful in his or her statement such that it would be highly unlikely that a reasonable person would disagree with the conclusion."

[23] I note that the Officer interviewed the Applicant in Addis Ababa, Ethiopia on May 21, 2018. The decision making officer would have specialized localized information and training regarding Eritrea.

[24] The Officer had a distinct advantage when assessing credibility during the interview with the Applicant. I find it was reasonable when the Officer found that the Applicant had no special

privileges in a place where prisoners were routinely mistreated and where human rights violations occurred. The Applicant acknowledged the above in the record. The Officer's finding, then, that it was not credible that the Applicant simply avoided this part of his job as a prison guard over a prolonged period of time was reasonable.

[25] Plausibility findings require that the decision maker relies on a clear rationalization process, and a clear explanation for the findings (*Saeedi*, above, at para 30). In the case at bar, there are clear explanation as to why the Officer found the Applicant's narrative implausible.

[26] It is reasonable that a practical and informed person would logically infer, as the Officer did, that it was not credible that a prison guard at a border city in Eritrea, who was tasked with guarding and arresting citizens over a 4 year period, would never resort to any violence. Especially given that he was under orders by superior officers regarding his performance of tasks and he himself said that when he was in prison he was beaten by guards.

[27] While I acknowledge that the Applicant also says he showed acts of kindness to the other prisoners, it is unlikely that he as a member of the militia could continue in his role as a prison guard in the presence of other prison guards and not have resorted to violence. Had the Applicant not engaged in his violence, it is reasonable to suspect that he would have been severely disciplined and the Applicant provided no evidence of being disciplined.

[28] Similarly, the Applicant, in his role as a spy, had to serve undercover. As part of his duties, he was dressed in civilian clothes, and was tasked with arresting civilians who were

reported as thinking of fleeing. His testimony is that even though he saw violence by others, he would never have resorted to violence to stop civilians from fleeing.

[29] During that time period, the Applicant was in the presence of other military personnel. If he had not done his job, the other military personnel would have reported him. Again there was no evidence presented by the Applicant that he was disciplined for not doing his job.

[30] I find that the officer when making the implausibility finding arrived at the conclusion through a transparent and intelligible approach.

[31] This case is distinguishable from the case of *Martinez Giron v Canada (Citizenship and Immigration)*, 2013 FC 7 [“*Giron*”] which was relied on by the Applicant. In *Giron*, there was documentary evidence provided by the applicant that the decision maker gave little weight to. This evidence was relevant and could have been used to refute the implausibility finding. In the case at bar, however, the Applicant did not provide any documentary evidence at all. Further, the onus is on the Applicant to demonstrate that he never resorted to violence.

[32] I do note that the Officer does not point to any country condition information, or any other evidence to support his or her finding that the Applicant’s duties as a spy would have included violence. However, I do not see that as a flaw, as it is not for role of an officer to seek out information. In this case, it is common sense that the locally engaged officer would have an informed and trained perspective by which to make his or her decision.

[33] Further, in this case, the Applicant did not provide any documentary evidence to support his version. Rather, the Applicant himself testified that there was significant violence from his compatriots. Although this does not *necessitate* that the Applicant himself participated in the violence, the Officer finding that this was not a credible explanation, combined with the fact that those in the same role were involved in violence, is supportive of the implausibility finding.

[34] The Applicant's explanations as to why he would be the exception to the violence were found not to be credible. I find that the Officer's reasons for not finding these explanations credible are reasonable. The Applicant provided explanations as to why he did not have to use violence, namely: that the threat of violence existed, and therefore people did not attempt to resist. I find that the Officer considered this explanation, but found that given that his duty included arresting people who were fleeing for their lives and risking their families' lives, it was implausible that in the Applicant's duties he never had to resort to violence because the threat was sufficient. Common sense shows that if the Applicant never utilized violence, over the course of years, it would have become known that he did not utilize violence.

[35] The Officer would have local knowledge of this border town or the general area. With no actual evidence that people were too frightened to resist arrest, the Decision of the Officer was within the spectrum of reasonability given that individuals with their families were fleeing for their lives. That evidence was from the Applicant himself.

[36] Given the visa officer doing the interview was in country staff, I do not think it can be expected that the Officer would have or would be required to have the same detailed reasons as a

RPD officer would have regarding their findings. That being said, in this case, there are detailed interview notes and quite extensive reasons, including dealing with the Applicant's written statement, which allow me to confirm that this decision is reasonable. The Officer was in a far better place to assess credibility, including making implausibility findings, than this Court is (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42).

[37] I find that it was reasonable for the Officer, under the "clearest of cases" test, to find that the Applicant's testimony was implausible.

[38] Given that the plausibility findings were reasonable, I do not find that the Decision warrants the Court's intervention. I find this decision to be reasonable.

JUDGMENT in IMM-2739-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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