

Federal Court



Cour fédérale

**Date: 20191126**

**Docket: IMM-880-19**

**Citation: 2019 FC 1508**

**Ottawa, Ontario, November 26, 2019**

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

**BETWEEN:**

**M.T.A.**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated January 18, 2019, wherein the RAD dismissed the Applicant's appeal and confirmed a decision of the Refugee Protection Division [RPD] that the Applicant was not a Convention refugee or a person in need of protection.

[2] For the reasons that follow, the application for judicial review is dismissed.

## II. Facts

[3] The Applicant is a citizen of Ethiopia. Her allegations are set out in her Basis of Claim [BOC] form and further addressed in her testimony at the RPD hearing.

[4] In summary, the Applicant alleges she fears persecution in Ethiopia because of (i) her politics and protests against the Ethiopian authorities in Ethiopia and Canada, (ii) her Amharic ethnicity, and (iii) her HIV status.

[5] The Applicant claims that she and her family have long been involved in protests against the Tygrian-dominant regime. She claims that she came to the attention of the Ethiopian authorities in 2002 when the authorities came to her home, looking for her uncle. The police allegedly assaulted the Applicant and her mother, who was badly beaten and died two weeks later. The Applicant was then detained for three weeks, during which time she was raped and beaten by her captors, leading to her contracting HIV. When she was released, she claims she was warned she would “pay the price” if she was found to be involved in anti-government activities. Her uncle was found dead three months later.

[6] The Applicant claims that “[t]his kind of abuse and human right violation has been a day to day experience to the people of Ethiopia especially to the Amharas, for unknown reasons people get kidnapped and jailed and get killed. For us this is a silent genocide against the Amharas and also the Oromo people of Ethiopia [sic]”.

[7] The Applicant alleges she participated in a demonstration in support of Wolkayet persons in July 2016. The Applicant alleges “[g]overnment forces did not use any force to disperse the crowds but rather watched in silence, taking pictures of the protest and the protesters.”

[8] In August 2016, the Applicant participated in another demonstration in the same city as the first. This demonstration was forcibly put down by the authorities, who opened fire on people, killing some, wounding others and arresting many. The Applicant claims that she and six other people escaped the authorities and hid at a church about five kilometres from the city while preparing to escape to Sudan. She claims that the Special Forces then raided the church and took her friend. The Applicant allegedly escaped.

[9] The Applicant’s cousin found different places for the Applicant to stay while working to get the Applicant out of Ethiopia. After her cousin obtained false documents to acquire a visa, she fled from Ethiopia to Canada in May 2017.

A. *The RPD’s decision*

[10] The RPD rejected the Applicant’s claim on the basis that the Applicant lacked credibility and did not provide credible evidence in support of her claim.

[11] The RPD concluded that the 2002 alleged events leading to the death of the Applicant’s mother and uncle did not occur in light of a number of discrepancies in the Applicant’s evidence.

[12] The RPD further determined that the Applicant's testimony regarding the army raid on the church was not credible. In the BOC form, the Applicant asserted the authorities "raided the church while we were still there". However, the Applicant testified, in response to a question about how she had escaped, that she was not in the church when the army arrived, but that she was hiding in a nearby forest.

[13] The RPD determined, on a balance of probabilities, that the Applicant did not take part in protests, as her answers to the RPD's questions were vague. In her BOC form, she stated she went to two demonstrations in 2016. She testified, however, she had attended prior demonstrations. When asked how many demonstrations she attended, she said, "I cannot remember this, there are so many times". When asked to estimate how many demonstrations she attended, she did not answer at all. She did not remember when she went to her first demonstration or what that demonstration was about.

[14] The RPD also drew negative credibility inferences from her lack of knowledge about her political activity, stating as follows:

The panel is aware of the importance of avoiding microscopic analysis of a claimant's testimony. However, a core issue of the claim is the claimant's political profile as a result of her attendance at anti-regime demonstrations. As such, the panel would expect that the claimant would have significant, spontaneous, and in-depth detail regarding her history of such activities and her knowledge of her family's such activities. This sort of detail was not forthcoming in this case.

[15] The RPD concluded the Applicant did not subjectively fear remaining in Ethiopia as she unreasonably delayed leaving her country of persecution.

B. *The RAD's decision*

[16] The RAD accepted new evidence on appeal, including photographs of the Applicant attending a rally in Canada on December 12, 2017, medical letters stating that the medication currently being taken by the Applicant was unavailable in Ethiopia, and articles from Amnesty International and Human Rights Watch about Ethiopia's state of emergency.

[17] The Applicant argued before the RAD that the RPD erred: (i) in its assessment of the Applicant's testimony about the church raid in September 2016, (ii) in its overall assessment of the Applicant's evidence about her political profile and that the Applicant does not have a sufficient political profile, (iii) in its assessment of the Applicant's evidence about the persecution of her family as a result of political activities, (iv) in its assessment of the Applicant's political activities in Canada and its finding that they do not create a *sur place* claim, and (v) in its finding that the Applicant would not face persecution in Ethiopia as a member of a particular social group as a woman with HIV.

[18] The RAD found that the determinative issues on appeal were the Applicant's credibility regarding her political profile and whether her HIV status creates a situation where she would be persecuted if she were to be returned to Ethiopia.

[19] After conducting an independent analysis of the record, the RAD found that the RPD did not err in its findings that the Applicant was not credible. The RAD further found that she would not face a serious possibility of persecution due to her HIV status.

[20] The RAD concluded that the Applicant's testimony about the church raid in September 2016 was not credible. The RAD found that the testimony lacked "internal coherency and consistency".

[21] The RAD agreed with the RPD that the Applicant was vague about her political involvement, including details about the first demonstration she attended, approximately how many she attended and about what she was protesting. The RAD stated that "[o]ne would expect at the very least that she could give details about her first demonstration, as this would have been a seminal moment in her life, about something that is allegedly important to her." The RAD also noted that the discrepancy between the times the Applicant first came to the attention of the Ethiopian authorities, 2002 or 2016, was "particularly troubling, especially as the allegation in the BOC is that she was raped as part of the 2002 capture, and that this is how she contracted HIV". The RAD agreed with the RPD's finding that the Applicant's allegations about her family's political involvement were not credible.

[22] The RAD also accepted that the RPD did not err in assessing the Applicant's documents, finding there was not enough to overcome the adverse credibility findings made.

[23] The RAD concluded that the Applicant's activities in Canada, as evidenced by photographs of the Applicant at protests in June 2017 and December 2017 would not bring the Applicant to the attention of the Ethiopian authorities. The RAD found that the RPD did not err in its analysis and attendance at another protest did not change that finding.

[24] The RAD accepted that the Applicant was HIV positive, but noted that other than mentioning that she contracted HIV after being raped in 2002, “the Appellant never once mentions persecution in Ethiopia as a result of her HIV status” and that she “had lived with HIV in Ethiopia, including receiving treatment, for 15 years until 2017 when she left Ethiopia.” Given the lack of evidence and allegations by the Applicant about systemic discrimination due to her HIV status, the RAD concluded the RPD did not err in its analysis and its finding that the Applicant would not face a level of discrimination arising to persecution due to her medical condition.

[25] The RAD noted that while the new medication prescribed to the Applicant was not included in Ethiopia’s current HIV/AIDS treatment guidelines or available in Ethiopia, the lack of availability was not persecutory.

[26] The RAD also concluded that the RPD did not err regarding its finding that only Amharic persons with political profiles would face a serious possibility of persecution, and that the Applicant did not face a serious possibility of persecution as she did not have such a political profile.

### III. Issues to be Determined

[27] The Applicant submits that the RAD erred when confirming the RPD’s negative credibility assessment and the RPD’s findings that the Applicant did not face persecution as a person with HIV and is not a refugee *sur place*.

IV. Standard of Review

[28] The applicable standard of review to the RAD's findings is reasonableness. The Court must determine whether the RAD's decision is justifiable, transparent and intelligible – and whether it falls within a range of possible outcomes, defensible in respect of the evidence before the RAD and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48).

V. Analysis

A. *Whether the RAD erred when confirming the RPD's negative credibility assessment*

[29] The Applicant argues the RAD engaged in a microscopic examination of her claim, which was inappropriate. I disagree. The very same argument was made by the Applicant on appeal and was rejected by the RAD. The Applicant's argument simply amounts to a disagreement with the RAD's findings.

[30] In my view, the RAD's findings are reasonable in light of a number of shortcomings in the Applicant's evidence, including inconsistent evidence, evolving testimony and lack of corroborating documentary evidence.

[31] By way of example, in her BOC form narrative, the Applicant claimed that she and six others were hiding in a church outside the city in preparation to escape to Sudan. She claimed that Special Forces then "raided the church while we were still there". At the hearing, however, she testified that she was in a forest around the church when the army raided, and could not be seen. She did not mention the forest in her narrative.



[32] The RAD's concerns were not simply that the Applicant did not mention details that were connected to the fringes of her narrative. Rather, it was the fact that the Applicant's testimony that she was in the forest near the church ran counter to her written statement and evolved upon the RPD's probing throughout the hearing. It was reasonable for the RAD to find that the raid was a major part of the Applicant's reason for seeking protection in Canada and to expect the Applicant to provide consistent evidence on this important event. I see no error in the RAD's finding that the Applicant's evidence lacked internal cogency.

[33] The same was true of the Applicant's past political involvement. It was open to the RAD to doubt the Applicant's past political involvement when she was unable to speak to the first demonstration she attended, how many she attended or what she was protesting.

[34] The RPD and RAD decisions are based on general findings of credibility. Findings of fact and determinations of credibility fall within the core of the expertise of these tribunals, and by reason of their specialized knowledge and experience, determinations of credibility are entitled to considerable deference.

[35] The Applicant has failed to establish that the RAD's conclusion that the Applicant was not credible is unreasonable. The Applicant may disagree with the RAD's findings, however, she has not pointed to an error with its exercise of discretion in assessing credibility.

B. *Whether the RAD erred when confirming the Applicant did not face persecution as a person with HIV*

[36] The Applicant submits that the RAD erred in determining she does not face persecution because of her status as a person living with HIV/AIDS. She argues that objective and subjective evidence establishes she has a well-founded fear of persecution in Ethiopia because of her status as a person living with HIV. The Applicant maintains that the fact that she did not explicitly state that she faced persecution on this ground when her claim was heard does not excuse the RAD from considering this risk when raised on appeal. This argument is wholly without merit.

[37] The RAD was sitting in appeal of the RPD. While the RAD must conduct its own assessment of the evidence, absent new evidence on an issue, it cannot consider a new argument, developed for the first time on appeal. The Applicant stated at the RPD hearing that she had contracted HIV as a result of being raped in 2002, however, she did not mention persecution in Ethiopia as a result of her medical status. The RAD conducted the only assessment it was permitted to do under the *Immigration and Refugee Protection Act*, SC 2001, c 27, that is to assess the Applicant's argument based on the evidence and submissions presented to the RPD. Upon considering the Applicant's submissions and evidence and the new evidence admitted on appeal, the RAD concluded that the Applicant had failed to demonstrate that any discrimination raised to the level of persecution. The Applicant has failed to establish any reviewable error in this finding.

[38] The RAD's finding that a lack of availability of medication or treatment is not persecution or a refugee ground is also sound (*Chalita Gonzalez v Canada (Citizenship and Immigration)*, 2011 FC 1059 at paras 41-43).

C. *Whether the RAD erred in confirming the Applicant is not a refugee sur place*

[39] The Applicant submits her political involvement while in Canada may have come to the attention of the Ethiopian authorities, and that she faces a reasonable chance of persecution in the event of return to Ethiopia.

[40] The RAD concurred with the RPD that the Applicant's evidence did not demonstrate that her political involvement in Canada had brought her to the attention of Ethiopian authorities. The Applicant has failed to establish an error on the part of the RAD in so concluding.

[41] The Applicant provided photographs of her participation in protests in Canada and speculated that her presence in the protests may have come to the attention of the Ethiopian authorities. The RPD found that the Applicant's activities in Canada were minimal and that her profile is such that she is not of interest to the Ethiopian authorities. This finding was reasonably open to the RPD on the evidence before it. The photographs by themselves do not demonstrate or are not enough to demonstrate the Applicant's participation in those protests was likely to come to the attention of the Ethiopian authorities, which was essential to making out her *sur place* refugee claim (*Gebremedhin v Canada (Citizenship and Immigration)*, 2017 FC 497 at paras 23-29; *Ye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 647 at para 24). I find the RAD's assessment of the RPD's finding to be reasonable.

VI. Conclusion

[42] For the above reasons, the application for judicial review of the decision of the RAD dated January 18, 2019 is dismissed.

[43] There are no questions for certification.

**JUDGMENT in IMM-880-19**

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

1. The application for judicial review is dismissed.
2. No questions are certified.

“Roger R. Lafrenière”

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Judge

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

**DOCKET:** IMM-880-19

**STYLE OF CAUSE:** M.T.A. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 5, 2019

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**DATED:** NOVEMBER 26, 2019

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