

Federal Court



Cour fédérale

**Date: 20200129**

**Docket: IMM-5262-18**

**Citation: 2020 FC 144**

**Ottawa, Ontario, January 29, 2020**

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

**BETWEEN:**

**EFREM ESTIFANOS REDAE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of a visa officer [Officer] dated August 29, 2018. The Officer refused the Applicant's application for permanent residence

outside Canada under the convention refugee abroad class or the country of asylum class listed under *IRPA* ss 96 and 147.

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

## II. Background

[3] The Applicant, Efrem Estifanos Redae, is a citizen of Eritrea. His narrative is as follows: In 2010, he claims he was conscripted to a “non-ending” period of national military service in Eritrea. His duties included playing in a military marching band, manual labour, construction, and watching the Eritrea-Ethiopian border, although his official job title was that he played in the marching band.

[4] In 2014, the Applicant decided to leave the national service. He was granted leave in November 2014. He visited his family, then departed for Sudan. The Applicant used a bus to reach Barentu, Eritrea, then travelled for two weeks on foot to Hamadayt, a Sudanese village on the Sudan-Eritrea border. It was now “early December” 2014. Upon his arrival in Hamadayt, the Applicant claims he was kidnapped but subsequently escaped after eight days. He travelled eight hours to another Sudanese village, spoke with police, and, on in December, arrived in a UNHCR refugee camp. The Applicant stayed in the camp for two days, but he did not apply for UNHCR identification documents there.

[5] The Applicant then travelled to Khartoum, Sudan, arriving “shortly before the New Year” in 2014. Later, he obtained a temporary 6-month Sudanese ID card—valid from February to

August 2015—that he claims could not be renewed. The Applicant also applied for an Eritrean passport there, hoping to travel to Canada with it. He did not fear using the Eritrean Embassy to obtain his passport because he had spoken with other Eritreans in similar circumstances who were able to obtain them without issue.

[6] Now, the Applicant lives in Sudan without legal status. In 2017, he was attacked and lost his expired Sudanese identification documents. He fears that if he returns to Eritrea, he will be detained and mistreated for fleeing the country from his national service position.

### III. Decision under Review

[7] In 2016, the Applicant applied for permanent residence from Sudan and he was interviewed in April 2018. The Officer noted a number of concerns and in July 2018 offered a chance for the Applicant to respond to those concerns by email. Among these concerns were that the Applicant had a lack of subjective fear of persecution because he applied for a passport at the Eritrean embassy in Sudan, that the Applicant was not forthcoming about his military duties, and that the Applicant provided inconsistent testimony in a number of areas.

[8] The Applicant responded to each of these concerns via email in August 2018.

[9] The Officer was not satisfied by these responses. On August 29, 2019, the Embassy of Canada in Italy refused his application because they found that the Applicant lacked credibility. Considering the evidence, including the application, the interview, and the Applicant's written responses to the Officer's concerns after the interview, the Officer found, on a balance of

probabilities, that the Applicant’s declarations were “more likely false than true” and that his declarations were “not credible”. The Officer found that he failed to answer questions truthfully as required by *IRPA* s 16:

16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the Officer reasonably requires.

16 (1) L’auteur d’une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

#### IV. Issues and Standard of Review

[10] The Applicant characterizes the issues as, “Were the Officer’s credibility findings regarding [the Applicant’s] admissibility unreasonable?” and “Was the Officer’s finding that the Applicant did not subjectively fear removal to Eritrea unreasonable?” The Respondent frames the issue as, “Was the Officer’s assessment of the evidence reasonable?”

[11] As there are no alleged errors of law, the only question is whether the Officer’s decision was reasonable. The decision as a whole will be assessed on a reasonableness standard, as there are no statutory appeal mechanisms, legislated standards of review, or exempting questions of law at play. Reasonableness is now the presumptive standard of review. It can be rebutted when legislation prescribes otherwise—through a statutory appeal mechanism or a legislated standard of review—or when dealing with, “constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies.” Reasonable decisions must be based on an

internally coherent and rational chain of analysis; they are justified in relation to the facts and the law that constrain the decision maker. (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 85).

[12] The Applicant argues that the Officer has made two errors of mixed fact and law. First, in his assessment of the evidence toward the Applicant's credibility; second, in his assessment of whether the Applicant had subjective fear. The Respondent argues that the Officer decided reasonably on both issues.

[13] On the first point concerning credibility, the Applicant cites decisions that purportedly show that credibility findings should not be based on insignificant or irrelevant facts (*Owusu-Ansah v Canada (Minister of Employment and Immigration)*, (1989) 8 Imm LR (2d) 106 (FCA); *Shaheen v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 670 at paras 13-14).

[14] The Applicant contends that the Officer's assessment of the Applicant's credibility was unreasonable on three grounds: first, the Officer found that the Applicant was not forthcoming regarding his military duties in spite of the evidence; second, the Officer found that he received special military training without an evidentiary basis; and third, the Officer relied on "insignificant discrepancies" in the Applicant's story. In addition, the Applicant argues that adverse credibility findings for part of a claim do not free the Officer from assessing the risk that the applicant faces arising from other credible parts (*Ghirmatsion v Canada (Minister of Citizenship and Immigration)*, 2011 FC 519).

[15] The Respondent takes the opposite position. It argues that the Applicant simply seeks a reweighing of the evidence in his favor; and that, in any case, the Applicant did not meet his onus to provide a “complete and credible” picture of his background, which is grounds for refusal (*Kabran v Canada (Immigration, Refugees, and Citizenship)*, 2018 FC 115). It also notes that this Court has held that an adverse finding of credibility can be grounds for refusing an entire application (*Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164 at para 13 [*Ameni*]). The Respondent highlights the purported inconsistencies in the Applicant’s application that, for it, support an adverse finding of credibility.

[16] Turning to the second point on subjective fear of persecution, the Applicant claims that the Officer was obliged to overlook a lack of subjective fear because, where an objective basis for the Applicant’s fears has been established, an Applicant’s claim shall not be denied for lack of subjective fear. He cites *Han v Canada (Minister of Citizenship and Immigration)*, 2009 FC 978 at para 22 as authority for this. For him, the objective evidence about conditions in Eritrea establishes his fear.

[17] The Respondent submits that the Officer was not obliged to perform this analysis after making an adverse credibility finding. For it, the evidence before the Officer supported his decision to reject the Applicant.

## V. Analysis

[18] Although the Officer is entitled to substantial deference in his findings, I find that his decision overstrains the boundaries of reasonableness. Although it is true that a refugee applicant

can be refused when they lack credibility (*Ameni* at para 13), Justice Gascon's words from *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23 (CanLII) also ring true:

[...] [t]he decision-maker must not conduct a too granular or overzealous analysis of the evidence. In other words, not all inconsistencies or implausibilities will support a negative finding of credibility; such findings should not be based on a "microscopic" examination of issues irrelevant to the case or peripheral to the claim [...]

[19] I find that there are several instances where the Officer looks too deeply into the evidence, contrary to the above guidance. The Officer's concerns about the Applicant's job description as part of the "marching band" as declared on his initial application appear to be contrary to most of the evidence that the Applicant gave, where he noted that the "marching band" designation was in name only. I note that this was included in his initial narrative as well, as highlighted by the Applicant in his arguments.

[20] Perhaps the Officer put too much focus on the words of the Applicant to the effect that his military training consisted of "training on targeting, military secret training". In his email in response to the Officer's various concerns, the Applicant attempted to clarify the duties that he performed. The Officer did not adequately engage with these attempted clarifications.

[21] The Officer also seemed to make conclusions without a factual basis or an explanation when he declared that the Applicant had "different privileges and training which is not typical of most conscripts." The Officer did not explain in his reasons how he came to this conclusion based on the evidence. As the Applicant states, the only evidence on the record indicates that the

Applicant's training was typical. Although the Officer was entitled to disbelieve this evidence, he was not entitled to conclude in the opposite direction absent supporting evidence.

[22] The Officer did identify several inconsistencies, which included the Applicant's remuneration and leave, Sudan entry dates, and information about his Sudanese ID card. I am persuaded by the Applicant's argument that these inconsistencies, taken together, were too minor to support the Officer's conclusions.

[23] Accordingly, I find that the Officer's decision was unreasonable due to the microscopic analysis through which he made his credibility finding.

[24] In light of my finding the Officer's analysis of the Applicant's credibility, it is not necessary for me to address the subjective fear arguments.

## VI. Conclusion

[25] For all of the reasons above, the judicial review is allowed. The decision will be remitted for redetermination by another officer. There is no question for certification and none arises.



**JUDGMENT in IMM-5262-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed and the matter is remitted to be re-determined by a different officer. There is no question for certification and none arises. There is no order as to costs.

“Paul Favel”

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Judge

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

**DOCKET:** IMM-5262-18

**STYLE OF CAUSE:** EFREM ESTIFANOS REDAE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** JANUARY 29, 2020

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