Federal Court  Cour fédérale

Date: 20210105

Docket: IMM-7312-19

Citation: 2021 FC 11

Ottawa, Ontario, January 5, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

BARNABAS AYELE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, which upheld the decision of the Refugee Protection Division [RPD]. The RPD determined the Applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c. 27 [*IRPA*] [Decision]. The main issue is the Applicant's identity.

II. Facts

[2] The Applicant alleged he was born in Addis Ababa, Ethiopia to an Ethiopian mother and an Eritrean father. The Applicant's father was deported from Ethiopia to Eritrea following a war between the two countries. The Applicant, his mother and his siblings were not deported because of his mother's Ethiopian citizenship.

[3] The Applicant moved to Sudan in 2005 and then moved to Germany on or about December 2012.

[4] The Applicant claimed refugee protection in Germany claiming to be a citizen of Eritrea. His claim was accepted and he was granted refugee status and residence status in Germany in May 2016. He says he obtained this status based on his misrepresentation that he was deported from Ethiopia because he was an Eritrean citizen – that was not true.

[5] In April 2016, the Applicant visited Ethiopia on a visa. The visa was issued on a German travel document that described the Applicant as an Eritrean citizen. During the Applicant's visit to Ethiopia, he and his brother attended a protest or demonstration. Prior to the demonstration, police surrounded the area and detained the Applicant's brother. The Applicant was able to run away and hid with a relative. He thereafter returned to Germany.

[6] The Applicant alleges he could not remain in Germany for two reasons. First, he was unable to sponsor his wife and child who were in Ethiopia at the time because his religious marriage was not recognized in Germany as a legal marriage. Second, the Applicant says he was threatened by a friend who said he would expose the Applicant and tell German authorities he misrepresented facts in his refugee claim.

[7] The Applicant left Germany and arrived in Canada on September 24, 2017 on a fraudulent German passport with a different identity. The Applicant made a refugee claim at the airport on arrival to Canada.

[8] The RPD heard the Applicant's claim over the course of three days and in its decision dated November 21, 2018, determined the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of *IRPA*. The RPD highlighted "numerous inconsistencies, omissions, and contradictions" in the evidence and found he had "not established on a balance of probabilities that he is Barnabus Ayele and a citizen of Ethiopia". I note the Applicant's German resident permit stated his nationality was Eritrean but at the RPD he claimed he was an Ethiopian citizen.

III. Decision under review

[9] In its Decision dated October 8, 2019, the RAD upheld the decision of the RPD and dismissed the Applicant's appeal.

[10] On appeal to the RAD, the Applicant filed additional evidence to establish his identity. He says the RPD erred by not finding him to be a stateless person, and also erred by making adverse credibility findings based on what he claims are minor inconsistencies.

[11] The new evidence he filed at the RAD was all rejected because it could have reasonably been available to be submitted to the RPD prior to its decision. The RAD agreed with the RPD's conclusions that the Applicant had not established his identity due to the "various omissions, contradictions and inconsistencies" in his evidence. The RAD also agreed with the RPD's finding of an overall lack of credibility.

[12] The RAD found the RPD made no error in concluding the Applicant had not established his identity. The RAD found that there was no reliable evidence upon which to conclude the Applicant is a stateless person. It also concluded he had not established himself as a Convention refugee or a person in need of protection.

IV. Issues

[13] The only issue in this application is whether the Decision is reasonable.

V. Standard of Review

[14] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] Justice Rowe said that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] set out a revised framework for determining the applicable standard of review for

administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption can be rebutted in certain situations, none of which apply in this case. Therefore, the Decision is reviewable on a standard of reasonableness.

[15] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[16] The Supreme Court of Canada in *Vavilov*, at para 86 states "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies." The reviewing court must be satisfied the decision maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
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> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[17] Furthermore, *Vavilov* makes it clear that the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances":

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[18] See also *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 [Gascon J]:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.
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> [Emphasis added]

[19] See also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [Binnie J]:

> [64] In this case, both the majority and dissenting reasons of the IAD disclose with clarity the considerations in support of both points of view, and the reasons for the disagreement as to outcome. At the factual level, the IAD divided in large part over differing interpretations of Khosa's expression of remorse, as was pointed out by Lutfy C.J. According to the IAD majority:
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> > It is troublesome to the panel that [*Khosa*] continues to deny that his participation in a "street-race" led to the disastrous consequences. . . . At the same time, I am mindful of [*Khosa's*] show of relative remorse at this hearing for his excessive speed in a public roadway and note the trial judge's finding of this remorse . . . . This show of remorse is a positive factor going to the exercise of special relief. However, I do not see it as a compelling feature of the case in light of the limited nature of [*Khosa's*] admissions at this hearing. [Emphasis added; para. 15.]

According to the IAD dissent on the other hand:

> . . . from early on he [*Khosa*] has accepted responsibility for his actions. He was prepared to plead guilty to dangerous driving causing death . . . .
>
> I find that [*Khosa*] is contrite and remorseful. [*Khosa*] at hearing was regretful, his voice tremulous and filled with emotion. . . .
>
> . . .
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> The majority of this panel have placed great significance on [*Khosa's*] dispute that he was racing, when the criminal court found he was. And while they concluded this was "not fatal" to his appeal, they also determined that his continued denial that he was racing "reflects a lack of insight." The panel concluded that this "is not to his credit." The panel found that [*Khosa*] was remorseful, but concluded it was not a "compelling feature in light of the limited nature of [*Khosa's*] admissions".
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> However I find [*Khosa's*] remorse, even in light of his denial he was racing, is genuine and is evidence that [*Khosa*] will in future be more thoughtful and will avoid such recklessness. [paras. 50-51 and 53-54]

It seems evident that this is the sort of factual dispute which should be resolved by the IAD in the application of immigration policy, and not reweighed in the courts.

[Emphasis added]

VI. Analysis

[20] The Applicant submits the RAD erred in two main ways. First, the RAD erred in finding the Applicant was not stateless. Second, the RAD erred in its credibility assessment of the Applicant. I will discuss each in turn.

A. *Did the RAD err in finding the Applicant was not stateless?*

[21] The Applicant submits that the RAD erred by failing to seriously engage with evidence that showed the Applicant is neither a citizen nor a habitual resident of any country and is therefore a stateless person deserving protection in Canada.

[22] The Respondent submits the Applicant is attempting to impermissibly request this Court reweigh his evidence to find he is stateless. The Respondent urges this Court to resist the temptation to reweigh the evidence instead of focussing on specific errors identified by the Applicant.

(1) Insufficient Reasons

[23] The Applicant submits the RAD merely stated, without any analysis, that there is no reliable evidence to conclude the Applicant is a stateless person. He says the RAD did not provide any rationale in its determination not to accept the Applicant's contention that he is stateless. The Applicant also submits the RAD failed to decide if the Applicant was a habitual resident of Germany and if he could be returned.

[24] In support, the Applicant points to a number of cases which are quite dated, see: *Armson v Canada (Minister of Employment & Immigration)*, 1989 CarswellNat 91 (FCA), [Heald JA, Mahoney and Desjardins JJA concurring] at paras 4 and 20; *Ramirez v Canada (Minister of Citizenship & Immigration*, 1999 CarswellNat 777 [McKeown J] at para 3; *Guzman v Canada (Minister of Citizenship & Immigration)*, 1997 CarswellNat 2732 [Nadon J] at paras 14-15; *Tung*

v Canada (Minister of Employment & Immigration), 1991 CarswellNat 834 [Stone JA] at para 23.

[25] With respect, I prefer to rely on the recent decisions of the Supreme Court of Canada in *Vavilov* at paras 85, 86, 99 and *Canada Post* at paras 31-33. When I do, I am driven to conclude there is no merit in the Applicant's submissions regarding inadequacy of reasons. The RAD's reasons are justified, transparent and intelligible. The conclusions follow the facts and respect the governing law. I am able to see a rational chain of analysis leading from the record to the result.

(2) Identity

[26] The Respondent submits it is trite law that the first step in a refugee claim is that the claimant must establish their identity. I agree; this is recently confirmed in *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903, where Justice Grammond described the law requiring a refugee claimant to establish identity as a core preliminary and fundamental issue:

> [22] The identity of a refugee protection claimant is a preliminary and fundamental issue, and failure to establish identity is fatal to a claim for refugee protection (*Daniel* at para 28; *Bah v Canada (Citizenship and Immigration)*, 2016 FC 373 [*Bah*] at para 7). As Justice Norris wrote in *Edobor*, "[i]t is incontrovertible that proof of identity is a pre-requisite for a person claiming refugee protection"; in the absence of such proof, "there can be no sound basis for testing or verifying the claims of persecution or, indeed for determining the Applicant's true nationality" (*Edobor* at para 8, citing *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26).
>
> [23] A refugee protection claimant's identity, it should be recalled, remains the cornerstone of Canada's immigration system. Identity establishes the uniqueness of an individual. It is what sets a person apart and differentiates him or her from all others. Also, identity is the basis for issues such as admissibility to Canada, assessment of the need for protection, evaluation of potential threats to public

safety, and the risks of a subject evading official examination by authorities (*Bah* at para 7, citing *Canada (Minister of Citizenship and Immigration)* v Singh, 2004 FC 1634 at para 38 and *Canada (Citizenship and Immigration) v X.*, 2010 FC 1095 at para 23).

[24] Both the IRPA and the *Refugee Protection Division Rules*, SOR/2012-256 [Rules] expressly state that, in order to be recognized as a refugee, a refugee protection claimant must first establish his or her identity on a balance of probabilities. This obligation is expressly set out in section 106 of the IRPA and section 11 of the Rules. Section 11 expresses the importance of establishing the identity of claimants as follows:

11. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.	11. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

[25] For its part, section 106 of the IRPA creates a direct link between the requirement to produce acceptable documents to establish identity (or to explain why they were not produced) and the credibility of the claimant. It reads as follows:

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[26] Ms. Terganus therefore had the burden of establishing her identity based on "acceptable documentation".

[27] While these cases point to the need to establish identity to establish factors under sections 96 and 97 of *IRPA*, they apply equally to a case such as this where the issue is statelessness. Thus, without establishing their identity to the satisfaction of the relevant tribunal, a claimant is unable to succeed under sections 96 or 97 of *IRPA*, and cannot be successful in claiming to be a stateless person.

[28] I also agree with the Respondent that the RAD was precluded from considering whether the Applicant could have obtained Ethiopian or Eritrean citizenship because the panel member "could not figure out who the Applicant was". The Respondent suggests and I agree it would have been impossible for the RPD or RAD to make any conclusion on these factual allegations because neither tribunal could determine the Applicant's identity.

[29] Needless to say, the Applicant in a case like this has the onus to establish his or her identity.

[30] The RPD engaged in a lengthy analysis about the discrepancies in the evidence. In particular there are no less than five names for the Applicant in the record. The name listed on his BOC is "Barnabas Ayele". His German travel document says his name is "Bernabas Ayele Mola", his birth certificate says his name is "Baramas Ayele Mola" (his birth certificate was issued in 2015), information obtained by the CBSA from Germany says his name is "Ayele Barnabas" or "Ayete Barnabas" (I note the RPD placed limited weight on this information and did not find it was reliable because it is possible the CBSA or German government obtained information for a different person).

[31] Based on this information, and discrepancies and inconsistencies on which country the Applicant was claiming against, the RPD found he had not established his identity. A finding that was upheld by the RAD.

[32] In reply, the Applicant relied on *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494 [Rennie J]:

> [5] Refugee claims involve fundamental human rights. Accordingly, it is critical that the Board consider any ground raised by the evidence even if not specifically identified by the claimant: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689; *Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526, para 13. It is, in most circumstances, a serious and potentially fatal error to ignore part of a refugee claim: *Mersini v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1088, para 6.
>
> [6] The failure of the Board to address a ground of persecution, raised on the face of the record, is a breach of procedural fairness, reviewable on a correctness standard. Reasonableness and deference can have no role when there is no assessment of the evidence.

[33] Furthermore, the Applicant submits, "the duty to consider all relevant grounds arising from the record does not "evaporate" when an applicant is found not to be credible". Rather, decision-makers "must still assess personal factors that can be objectively identified or verified to determine whether the Applicant's profile would put him/her at risk upon return" (*Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 [de Montigny J as he then was] at para 20).

[34] I am unable to apply either of these cases because of the Court's jurisprudence on identity being established just discussed.

[35] The Applicant, in relying on them, puts the cart before the horse and asks the Court to assume identity is established and proceed with a section 96 or section 97 analysis. That with respect is what the RAD essentially did in analyzing the Applicant's possible citizenship, nationality or country to which he might possibly be returned including Germany where he has refugee and residence status. I will look at each because they are examined below.

(i) Ethiopia

[36] The Applicant has continuously asserted that his father is Eritrean and his mother is Ethiopian. The Applicant submits he has evidenced he is not an Ethiopian citizen because the Ethiopian authorities issued the Applicant a visa to enter Ethiopia based on his German travel document which described the Applicant "as an Eritrean born in Addis Ababa". The Applicant submits this is sufficient to show he does not have Ethiopian citizenship and if he had said citizenship in the past, it can no longer be accessed.

[37] The RAD accepted the Applicant's German travel document as genuine, i.e., on its face, but rejected what it purported to stand for. The Applicant submits this implies the RAD accepted it as a genuine travel document, issued by German authorities. I note that the Decision actually states: "[w]hile I accept the travel document at face value, the Appellant himself states that the information contained in the German travel document is a result of a misrepresentation and I therefore give it no weight in regard to the establishment of the Appellant's true identity."

[38] Based on this information, the Applicant submits his connection to Ethiopia is only that of birth and childhood residence. He says that being born in Ethiopia does not amount to

nationality when there is clear evidence that an individual has lost his access to the nationality of that country.

[39] The Applicant also submits the RAD erred in deciding the Applicant could return to Ethiopia. The RAD ignored the fact the Applicant had an Ethiopian visa on his German travel document. In *Teklewariat v Canada (Citizenship and Immigration)*, 2016 FC 1026 [Tremblay-Lamer J] found that an absence of key evidence in a decision under review is suspicious and the Court cannot speculate whether or not key evidence would have influenced the RAD's credibility findings:

> [17] I am concerned that the Officer appears to have ignored a piece of evidence that goes to the heart of the applicant's allegations of risk. Although a decision-maker is not required to mention all pieces of evidence in his analysis because he is presumed to have reviewed all of them, the absence of any mention of a key piece of evidence is suspicious, especially in this context where the Officer thoroughly reviewed eleven sets of documents and ignored only one.

[40] Respectfully, I am unable to agree that the Applicant adduced any real evidence to show he is not a citizen of Ethiopia and cannot now attain citizenship of that country. The Applicant was born in Ethiopia and asserted Ethiopian nationality in his Basis of Claim [BOC]. The RAD did not specifically state the Applicant could return to Ethiopia. With respect, on this record, the RAD was reasonably entitled to find the "there is no reliable evidence upon which [the RAD] could conclude the Appellant is a stateless person."

(ii) Eritrea

[41] The Applicant argues he does not have any connection to Eritrea, except through his father who is or was a citizen of Eritrea. The Applicant has never been registered as an Eritrean citizen, and does not have and he says he cannot access Eritrean citizenship. The Applicant described himself as a Protestant Christian in his BOC. The RPD did not ask the Applicant questions about his religion and made no findings on this issue. The Applicant submits the RAD accepted he is a Protestant Christian by not discussing it in the Decision. He adds he is unable to go to Eritrea because of his religion because Protestant Christianity is outlawed in Eritrea and followers are persecuted.

[42] In my respectful view neither the RAD nor the RPD concluded the Applicant was Eritrean. Neither could determine his identity. In particular the RAD found that he had "not established with reliable or trustworthy evidence that he would be persecuted in Ethiopia where he alleges he was born and educated or in Eritrea where he alleged to German authorities he is a citizen. I find there is no reliable evidence upon which I could conclude that the Appellant is a stateless person and I find this allegation of the Appellant to be without merit."

[43] The Applicant's argument based on his religion and not being able to go to Eritrea is irrelevant because the RAD reasonably found "[f]ear of religious persecution in Eritrea or elsewhere was not raised as an issue before the RPD. I therefore reject the submission of this new evidence by the Appellant."

(iii) Germany

[44] The Applicant submits the RAD did not directly decide the issue of whether the Applicant could return to Germany. The RPD decision and the Applicant's submissions before the RAD were largely focussed on this issue.

[45] The Applicant argued the RAD found the Applicant could return to either Ethiopia or Eritrea; in my view this is an incorrect assertion because the RAD made no such finding.

[46] The Applicant submits the RAD impliedly accepts that the Applicant cannot return to Germany, and the Applicant accepts this implication. This submission has no merit, again because the RAD made no such finding.

[47] In this context, the central issue in this case is the Applicant's ability to return to Germany. The RAD reasonably found:

> [15] It is the person claiming refugee protection and not the RPD or the RAD that bears the onus of establishing the need for refugee protection. It is the responsibility of the RPD or the RAD to weigh the documentary and testimonial evidence and to draw conclusions as to whether the evidence is sufficient to establish whether the Appellant is a refugee or a person in need of protection.
>
> [16] I find no error in the RPD's conclusions that the Appellant has not established his identity before either the RPD or the RAD pursuant to Rule 11 of the Refugee Protection Rules. I also find that the RPD has made no error in finding that in this case the Appellant's various omissions, contradictions and inconsistencies in providing his evidence provides reasons to doubt his truthfulness. For example, from the outset at the Port of Entry the Appellant could not keep his story straight in regard to the country of alleged persecution. I have reviewed, but will not recite here the

> many discrepancies which are well noted by the RPD in its reasons for decision.

[48] The Respondent submits the allegations that the Applicant's lie to German immigration officials made it impossible to go back to Germany and legally obtain citizenship were not made before the RPD and were only raised on appeal. In reply, the Applicant submits that he had raised this matter before the RPD and said:

> In claimant's respectfully submission, as he stated in his basis of claim and testimony before the panel, he has currently lost his status in Germany. Further, he is considered a citizen of Eritrea in Ethiopia, as evidenced in his birth certificate, his admission into Ethiopia on a German travel document issued to him as a refugee from Eritrea. However, the state of Eritrea has not recognized the claimant as a citizen and issued him no document to that effect. Given the above circumnutates (*sic*), the claimant respectfully submits that at this point in time no state recognizes him as a citizen and there is no country to where the claimant could be returned to from Canada.

[49] With respect, other than the Applicant's speculative "say so", there is nothing in the record that would allow the RAD to reasonably find the Applicant could not return to Germany where he has both refugee and residence status.

[50] The Applicant does not argue a risk under either sections 96 or 97 if he is returned to Germany. Therefore neither need be considered further in relation to his status in Germany.

B. *Did the RAD err in assessing the Applicant's credibility?*

[51] The Applicant submits the RAD failed to provide any reasons in its conclusion that the inconsistencies and contradictions in the Applicant's claims are not minor. There is no merit to

this line of argument. With respect, the RAD provided many reasons in its decision to impugn the Applicant's credibility. In my view the Applicant is simply disagreeing with the RAD's finding on its assessment as to the weight of the evidence.

[52] I see no exceptional circumstances that would allow me to reweigh and reassess the record in this case. In any event, and on my review, the RPD engaged in a very detailed analysis of the facts "which showed myriad inconsistencies & omissions and which the [RAD] was not prepared to regurgitate". I see no reason why the RAD should list once again all the deficiencies found by the RPD where the RAD could simply incorporate them by reference having decided to agree with the RPD. Nor with respect is there anything wrong with the RAD agreeing with the RPD provided the RAD conducts its own analysis.

[53] I agree the RAD must review the entire record before it in making its decision; however, in my respectful opinion that is what the RAD did in this case.

VII. Conclusion

[54] In my respectful view, the Applicant has not shown that the Decision of the RAD was unreasonable. The RAD reviewed the evidence on the record, and reasonably assessed and impugned the Applicant's credibility as had the RPD. The RAD found the Applicant failed to establish he was a stateless person and agreed with the RPD's decision that he failed in his obligation to establish his identity. In the absence of identity, the RAD reasonably and consistent with constraining law of this Court, found the Applicant could not be considered a Convention refugee or a person in need of protection. In my view, the Decision is transparent, intelligible and

justified based on the facts and law constraining the decision maker. The conclusion follows the facts and the RAD's independent review. There are no fatal errors and the Decision demonstrates a rational chain of analysis. Thus judicial review must be dismissed.

VIII. Certified Question

[55] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-7312-19

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

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7312-19
STYLE OF CAUSE:	BARNABAS AYELE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON DECEMBER 15, 2020 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	BROWN J.
DATED:	JANUARY 5, 2021

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