

Federal Court



Cour fédérale

Date: 20210218

Docket: IMM-3737-20

Citation: 2021 FC 161

Vancouver, British Columbia, February 18, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

PAULOS GESESE WELDEAB

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] On July 5, 2018, the Applicant entered Canada illegally at the Manitoba border after his application for asylum was denied in the U.S.A. He made an inland refugee claim alleging risk of return to Eritrea.

[2] The Applicant's refugee claim was referred to the Refugee Protection Division [RPD] for a hearing. The RPD denied the Applicant's claim because he failed to establish his Eritrean nationality and the evidence relating to his identity and his claim was not credible.

[3] The Applicant appealed the RPD decision to the Refugee Appeal Division [RAD]. The determinative issue before the RAD was the identity of the Applicant as an Eritrean national. By decision dated May 15, 2020, the RAD upheld the RPD's determination and dismissed the appeal.

[4] The Applicant seeks judicial review of the RAD decision on the grounds that the identity determination is based on three key errors that render the RAD's analysis unreasonable.

[5] For the following reasons, the application is dismissed.

[6] It would be useful to first explain on what basis the RDP and the RAD reached their findings before addressing each of the RAD's alleged errors in the order in which they were presented by Applicant's counsel at the hearing.

I. The RPD Decision

[7] On March 29, 2019, the RPD heard the refugee claim. By decision dated June 3, 2019, the RPD determined that the Applicant was not a Convention refugee or person in need of protection. The RPD found that the determinative issues were identity and credibility and the Applicant failed to provide sufficient credible evidence to establish his identity as a citizen of Eritrea. In particular, the RPD found:

- a. The Applicant provided one piece of primary identification being a purported Ethiopian birth certificate issued in Addis Ababa on August 28, 2017 indicating his nationality as Eritrean. He did not provide any other Eritrean documents. Based on the evidence provided, the RPD concluded that the birth certificate was improperly obtained or fabricated and gave it no weight, and drew a negative credibility inference;
- b. School documents from Ethiopia submitted by the Applicant did not establish his identity as a citizen of Eritrea. His U.S. identity documents also did not establish his identity as a citizen of Eritrea;
- c. The RPD drew a negative inference regarding the Applicant's failure to make any efforts to confirm his identity through members of the Eritrean community or to obtain evidence of his identity. He claimed the U.S. authorities seized his original Eritrean identity card, but there was no reference to such a document in a letter from the U.S. Immigration and Customs Enforcement [ICE]. The letter in fact stated that the Applicant was declined parole because he failed to establish his identity and he did not present a valid, government-issued identity document;
- d. The Applicant's testimony was vague and inconsistent. The Applicant could not recall how old he was when he was deported to Eritrea and pressed into military service. This was a pivotal event and central to his claim. His evidence that he never received any documents as an Eritrean soldier was inconsistent with the documentary evidence which stated that national service recruits are issued a military identity card or laissez-passer which is required to leave the military base, travel within Eritrea and pass through check points. There were gaps in the Applicant's knowledge, for example, he could not identify the town closest to where he was based nor describe any roads. His evidence about visiting Ms. Abeba Negash Teferi (his then girlfriend and mother of his son) in Dekemhare while he was living at a military compound away from the city was inconsistent and contradicted by information in Ms. Teferi's letter, which indicated they lived together. Furthermore, he did not have a laissez-passer or military card, which would allow him to leave the base, travel to Dekemhare and return to his post;
- e. The letters of support provided by the Applicant to corroborate his claim were given some weight but these documents were insufficient, taken together with all of the evidence, to establish his claim. They were of little probative value with respect to establishing the Applicant's identity as Eritrean, since the letters provided few relevant details. Moreover, the letter from Ms. Teferi failed to address the critical issue of the birth certificate;
- f. The Applicant's testimony was inconclusive about his military service, area where he served, conscript pay, and consequently did not weigh for or against his claim;
- g. The RPD member noted that country condition documents confirmed that Ethiopia deported tens of thousands of Ethiopians of Eritrean origins to Eritrea during the 1990

– 2000 border war and they may have been deprived of Ethiopian citizenship. There is also a process to re-acquire citizenship, which is not automatic;

- h. The Applicant also alleged persecution in Ethiopia and the residual claim was assessed against Ethiopia in the event he is a citizen of Ethiopia. There was insufficient evidence to establish that a person of mixed Eritrean/Ethiopian parentage face a well-founded fear of persecution. The UK Home Office Report stated that there was no recent evidence that Ethiopians of Eritrean origins living in Ethiopia are at risk of persecution. Secondly, country condition documents show that evangelical Christians constitute nearly 20 percent of the population, and not a serious possibility that he would be persecuted in Ethiopia;
- i. There was insufficient evidence to establish personalized risk in Ethiopia or Eritrea.

II. The RAD Decision

[8] The Applicant appealed the RPD decision to the RAD. No new evidence was submitted on appeal. The Applicant submitted that the RPD erred in assessing his identity and credibility and failed to provide sufficient reasons for the consideration of s. 97 personalized risk. The Applicant also alleged that the RPD Member was biased.

[9] By decision dated May 15, 2020, the RAD dismissed the Applicant’s appeal and upheld the RPD’s determination that he was not a Convention refugee or a person in need of protection. The RAD dismissed a number of arguments raised by the Applicant, including that the RPD had improperly taken judicial notice of select materials within the National Documentation Package [NDP], that the RPD had cited an individual in one of the documents of the NDP who was not a properly certified expert witness, that the RPD failed to “use all the means at [the RPD’s] disposal to produce the necessary evidence in support of the application”, and that the Applicant should be found to be *de facto* stateless. The RAD also dismissed the allegation of bias against the RPD Member as unfounded.

[10] The RAD made the following determination on the issues of identity and credibility:

- a. It upheld the RPD's findings with regard to the birth certificate. It found on a balance of probabilities that the birth certificate was not a genuine document and gave it no weight to establish the Applicant's Eritrean nationality.
- b. At best, the school documents corroborated his personal identity and showed he resided in Ethiopia more than 30 years ago to attend school. There is no information about his Eritrean nationality nor does it confirm his deportation to Eritrea or any of his allegations against Eritrea;
- c. The Applicant did not contest the RPD's findings about his lack of effort to obtain identity documents. With regard to the information in the U.S. asylum document, he did not provide any new evidence to dispute the RPD's finding, nor any explanation for the notation in the U.S. document that he did not establish his identity;
- d. Upon reviewing the record, the RAD found that the Applicant's testimony was evolving and inconsistent with the documentary evidence. By way of example, the Applicant initially answered "no" to the question of whether he was ever issued any documents as a soldier. When confronted with the country condition documents with regard to the issuance of a laissez-passer to transit checkpoints and move around the country, the Applicant changed his testimony to say he had this document, but his explanation for the change in his testimony was not accepted. The Applicant did not contest the RPD's finding with regard to the evidence about his ability to travel to visit his then girlfriend, Ms. Teferi, and return to his post without documents;
- e. The Applicant did not contest the RPD's finding regarding the letters of support. Based on the evidence in the record, the support letters are vague and the RAD gave the letters little weight to establish Eritrean nationality;
- f. The Applicant's ability to recount geographic facts about towns around the military base or his ability to speak Tigrinya were insufficient to establish his allegation that he served in the Eritrean military or that he was an Eritrean national;
- g. The RPD correctly noted that the Applicant's testimony about what he was paid was consistent with some of the country condition documents, but also inconsistent with other documentation. Consequently, this testimony was not sufficient to establish his Eritrean nationality;
- h. The RAD found that the RPD erred in drawing a negative inference due to the Applicant's failure to obtain corroborating evidence from the Eritrean community in Canada because there was no evidence that Eritrean community organizations in Canada are capable of confirming a person's Eritrean citizenship. The RPD also erred with regard to inconsistency in the Applicant's testimony about his age at the time of deportation, which is explained by the difference in the Ethiopian calendar and the Gregorian calendar. However, the RPD's errors in these two credibility findings were not determinative or sufficient to allow the appeal in view of the totality of the evidence.

III. Standard of Review

[11] There is no dispute regarding the applicable standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 10, the Supreme Court of Canada concluded that the presumptive standard of review is reasonableness, and a reviewing Court should only derogate from that presumption “where required by a clear indication of legislative intent or by the rule of law.” There is no such indication in this case.

[12] In the circumstances, the Applicant is required to demonstrate that the RAD’s decision is unreasonable. An unreasonable decision is unjustified, in that it is illogical, irrational or unintelligible, where there is no “line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived.” *Vavilov* at para 102, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 55; *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748 at para 56. Alternatively—or additionally, an unreasonable decision is unjustifiable, in that it is incompatible with the factual and legal constraints on the tribunal: *Vavilov* at para 105.

IV. ANALYSIS

[13] In her oral submissions before me, counsel for the Applicant focused on the RAD’s findings regarding the genuineness of the Applicant’s birth certificate, the weight given to support letters, and negative inferences taken from the Applicant’s testimony about a laissez-passer and his time in the military. The Applicant submits that the RAD ignored critical evidence,

mischaracterized some of the evidence, assigned little weight to documents that are genuine and probative, and relied on minor and/or irrelevant alleged inconsistencies in testimony.

[14] Many of the same arguments were raised by the Applicant on appeal from the RPD decision and are addressed in detail in the RAD's decision.

[15] As explained below, I am satisfied that the RAD reasonably considered all of the evidence on the record and the Applicant's submissions. Based on the RAD's own assessment of the evidence and credibility, it was reasonably open to it to determine that the appeal could not succeed. Throughout his argument, the Applicant simply disagrees with the RAD's consideration of the evidence and its conclusion that the evidence was not credible or trustworthy, without identifying any reviewable error in the RAD's analysis.

A. *Genuineness of the Birth Certificate*

[16] The Applicant provided testimony before the RPD that his son's mother, Ms. Teferi, contacted those who knew about his birth and brought them as witnesses in order to obtain the birth certificate. He further explained that as he was mourning his brother's death at the time, and was just released from detention in the United States, he did not ask further questions about how the document was obtained once he heard that she was successful in obtaining it.

[17] The Applicant takes issue with the RAD's finding that the manner in which he explained how he had obtained his birth certificate was inconsistent with the NDP. The only document the RAD relied upon in the NDP to make its findings is a report from the Australian government that

first does not identify its sources and secondly only provides “general, rather than exhaustive country overview.”

[18] According to the Applicant, it was unreasonable that there was no consideration of the ability of an individual to evaluate the reliability of the information in the Australian report. He points out that the information in the said report relates to steps an applicant would have to go through to obtain a birth certificate if they were in Ethiopia and does not address the Applicant’s situation, as someone who was out of the country.

[19] The Applicant claims that in any event there is a discrepancy between the Australian report and the Response to Information Request [RIR] on identity documents included in the NDP. The RIR states that applicants born in Addis Ababa were able to get their certificate prior to 2009 from the City Government Administration Office and that after 2009, the local kebele offices in Addis Ababa would issue the document. The RIR notes that residents of Addis Ababa (as opposed to persons born there) can have their document issued by the Addis Ababa Government Acts and Civil Status Document Registration Office. This discrepancy highlights that the information contained in these sources is not necessarily accurate.

[20] The Applicant also takes issue with the RAD relying on irregularities on the face of the birth certificate that it found undermined the credibility of the document. The fact that there are numerous irregularities is not in dispute. Specifically, the stamp of the Officer of Civil Status misspells the name of the administrative office. The stamp also misspells statistics “Statistics,” certification “Certfication,” and service “Srevice.”

[21] In assessing the birth certificate, the RAD found on a balance of probabilities that the birth certificate was not a genuine document and gave it no weight to establish the Applicant's Eritrean nationality. The RAD did not accept the Applicant's explanation that the birth certificate was obtained by Ms. Teferi, not only because the Applicant had no idea who the witnesses were that confirmed his birth, but also because he could not explain how Ms. Teferi was able to obtain the birth certificate without supporting documents, let alone an application form from the Applicant himself.

[22] In most cases, the mere fact that there may be some typographical errors in a document should not be used to undermine the credibility of a document: *Mbang v. Canada (MCI)*, 2019 FC 68 at para. 23. However, all in all, there was ample other reasons for the RAD to come to its conclusion regarding the genuineness of the birth certificate. There was simply no evidence to support the Applicant's testimony, which was speculative in that he suggested there may be different requirements for the re-issuance of a birth certificate by proxy.

[23] Establishing identity is a core preliminary and fundamental issue, and failure to establish identity is fatal to a claim for refugee protection. Section 106 of the *Immigration and Refugee Protection Act* [IRPA] and s. 11 of the *Refugee Protection Division Rules* expressly require that a refugee claimant must first establish his/her identity on a balance of probabilities. Consequently, the claimant has the burden of establishing their identity based on "acceptable documentation." The Applicant has not established any error in the RAD analysis and its conclusion that the Applicant failed to do so in this case.

B. *Weight given to Letters of Support*

[24] The Applicant provided several statements from individuals attesting to his Eritrean nationality. The RAD determined that “the support letters are vague and I give them little weight to establishing the Appellant’s Eritrean nationality”.

[25] The Applicant argues that the RAD’s analysis of at least one of these supporting statements, that of Ms. Miliete Kidane, is not accurate.

[26] Ms. Kidane states in her letter that she had a close relationship with the Applicant and his family. She explains that she knows the family from Shire, that her father and the Applicant’s father were close friends, and that she used to meet up and talk over the phone with him when the Applicant was doing his military service in Eritrea. Further, she provides her contact information and asks to be contacted if further information is needed.

[27] The Applicant submits that Ms. Kidane’s letter is a highly probative document. If it is to be believed, it is critical in establishing the Applicant’s Eritrean identity. While the RAD does not draw any negative credibility inferences against Ms. Kidane’s statement it nonetheless finds it is of little weight.

[28] According to the Applicant, this is a serious error and, on this basis alone, the matter should be sent back for redetermination. The Applicant submits that the RAD made an error of law by assigning little weight to this document that he alleges is credible and probative (*Nti v. Canada (MCI)*, 2020 FC 595 at paras. 19-23). Moreover, the Applicant maintains that because identity was a significant issue and Ms. Kidane could confirm his identity, the RAD should have contacted her

to check the information to dispel or confirm any credibility concerns. (*Downer v. Canada (MCI)*, 2018 FC 45 at para. 63). I disagree.

[29] The RAD noted that since the Applicant did not contest the RPD's finding with regard to the letters of support, there was no reason to interfere with it. The RPD gave the letters of support some weight but these documents were judged to be insufficient, taken together with all of the evidence, to establish the Applicant's claim.

[30] The RPD concluded that they were of little probative value with respect to establishing his identity as Eritrean, since the letters provided few relevant details. The RAD found that based on the evidence in the record, the support letters were vague. It also gave the letters little weight to establish Eritrean nationality.

[31] The RAD noted specifically that, with the exception of the letter from Ms. Teferi, the information contained in the letters about his deportation from Ethiopia provide no details of the event, nor do the authors indicate that they directly observed the event, how they learned of the event, how they know the applicant is an Eritrean national, but simply set out the same allegation that the Applicant claimed. Upon reviewing the letters in question, I see no fault in the reasoning of the RAD on this point. I also note that Ms. Teferi's account of living together with the Applicant while he was on military service is contradicted by the Applicant's evidence.

[32] The Applicant also complains that the RAD failed to contact Ms. Kidane to check her information. However, he had the opportunity himself to file any new evidence in his appeal, but

failed to do so. I agree with the Respondent that the Applicant simply disagrees with the RAD's consideration of the weight of the letter from Ms. Kidane.

C. *Service in the Military*

[33] The Applicant disagrees with the RAD's negative credibility findings with regard to his testimony about the laissez-passer document and his time in the military service as being vague and evolving. He argues that there was no basis to draw a negative inference because he was not "trained to answer a question completely and efficiently", and that the RAD focused on irrelevant inconsistencies. I disagree.

[34] The RAD considered the Applicant's testimony and noted several inconsistencies, contradictions, as well as vagueness and evolution in his answers to questions. A useful summary is provided at paragraph 24 of the Respondent's memorandum of argument:

Mr. Weldeab's could not recall how old he was when he was deported to Eritrea and pressed into military service. This was a pivotal event and central to his claim; his evidence that he never received any documents as an Eritrean soldier was inconsistent with the documentary evidence which stated that national service recruits are issued military identity card or laissez-passer which is required to leave the military base, travel within Eritrea and pass through check points; there were gaps in Mr. Weldeab's knowledge, for example, he could not identify the town closest to where he was based nor describe any roads. His evidence about visiting Ms. Terefi in Dekemhare while he was living at a military compound away from the city was inconsistent and contradicted by information in Ms. Terefi's letter, which indicated they lived together. Furthermore, he did not have a laissez-passer or military card, which would allow him to leave the base, travel to Dekemhare and return to his post.

[35] Decision-makers should be given a lot of latitude when making findings of fact, especially as it concerns credibility. In my view, the RAD conducted a thorough and independent review of the evidence and considered the relevant jurisprudence in assessing the issues of identity and credibility of the Applicant.

[36] The RAD did not uphold all of the RPD's credibility findings and properly looked afresh at the issues raised in the Applicant's submissions. Furthermore, the RAD considered each piece of evidence and the Applicant's testimony and considered it on a cumulative basis to see whether it supported the claim of Eritrean identity and service in the Eritrean military. The RAD also set out the weight given to the evidence and their cumulative significance.

[37] On the basis of the record before the RAD, it was reasonable for it to find that there were inconsistencies and contradictions in the Applicant's evidence and that he failed to prove his identity.

V. CONCLUSION

[38] Both parties agreed that identity was the central issue in this matter. Therefore, the only issue before the Court is whether the RAD was unreasonable when it found that the Applicant had not established his Eritrean identity. The Applicant's only official document supporting his identity is highly suspect and the RAD, in my opinion, made a reasonable finding that this document is not genuine.

[39] The Applicant fails to address the credibility findings as a whole, and focuses instead on selected aspects of the decision with which he disagrees. However, it was not minor discrepancies, but rather inconsistencies, contradictions and implausibilities that operated cumulatively to undermine the Applicant's evidence and his credibility.

[40] I agree with the Respondent that the Applicant is essentially asking the Court to reweigh the evidence. However, that is not the Court's role on judicial review. In conducting a reasonableness review, a Court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. The Applicant has not persuaded me that the RAD's determination is untenable in light of the evidence before it. There is, therefore, no basis for me to interfere with that determination.

[41] Neither party proposed a question for certification, and no question is certified.

JUDGMENT IN IMM-3737-20

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3737-20

STYLE OF CAUSE: PAULO GESESE WELDEAB v MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Lobat Sadrehashemi FOR THE APPLICANT

Helen Park FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lobat Sadrehashemi FOR THE APPLICANT
Barrister and Solicitor
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia