Federal Court Cour fédérale

Date: 20210624

Docket: IMM-5561-19

Citation: 2021 FC 662

Toronto, Ontario, June 24, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

ROBEL SOLOMON AMANUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Robel Solomon Amanuel, applied for judicial review of a decision of an officer at the Canadian High Commission in Nairobi, Kenya, dated July 17, 2019. The officer rejected Mr Amanuel's application for permanent residence in Canada as a member of the refugee abroad class or a member of the humanitarian-protected persons abroad designated class under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*) and the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the *"IRPR"*).

[2] To the officer, the fundamental issue was the applicant's credibility. On this application, Mr Amanuel asks the Court to set aside the decision and return the matter to another officer for a redetermination.

[3] For the reasons below, I conclude that the officer's decision was unreasonable. The officer's reasoning contained an acknowledged error of law and lacked transparency and justification. The application is therefore allowed.

I. Facts and Events Leading to this Application

[4] Mr Amanuel is a citizen of Eritrea. He was opposed to the country's indefinite and mandatory national service. On April 16, 2014, while in military service, he attempted to escape to Sudan. He was caught and imprisoned by the Eritrean authorities. In prison, he was beaten, tortured and interrogated. In June 2014, after three months of imprisonment, his family paid the authorities 200,000 Nakfa for his release. Eventually he was let go.

[5] In October 2015, the applicant successfully fled to Sudan. For a USD $13,000 fee, he obtained the assistance of a smuggler, who gave him a falsified Brazilian passport and arranged for him to fly to Brazil. From there he was smuggled to the United States, via Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and Mexico.

[6] The applicant unsuccessfully claimed asylum in the United States. On August 5, 2018, the United Stated deported him back to Eritrea. On a stop during the deportation flight, the applicant disembarked in Addis, Ethiopia, where he has lived since.

[7] In August, 2018, the United Nations High Commissioner for Refugees ("UNHCR") in Ethiopia recognized Mr Amanuel as a refugee.

[8] On September 4, 2018, the applicant submitted an application for permanent residence in Canada as a privately sponsored refugee under s. 139 of the *IRPR*. Through the efforts of a family member in British Columbia, the applicant was sponsored by a church group that holds a sponsorship agreement under the *IRPR*.

[9] On June 24, 2019, a migration officer working out of the Canadian visa office in Nairobi, Kenya, interviewed the applicant in person in Shire, Ethiopia.

[10] By letter dated July 17, 2019, the officer advised the applicant that his application for permanent residence in Canada was denied. The letter confirmed that the applicant had applied for permanent residence in Canada as a member of the Convention refugee abroad class or as a member of the humanitarian protected persons abroad designated class. The letter confirmed that the applicant was interviewed on June 24, 2019, in Shire with the assistance of a translator. After setting out the requirements for a Convention refugee under s. 96 of the *IRPA*, the letter described the contents of s. 145 and paragraph 139(1)(*c*) of the *IRPR*, which describe that a foreign national shall be given a permanent resident visa to Canada if it is established that the individual falls into the Convention refugee abroad class or the humanitarian protected persons abroad designated class.

[11] In the letter dated July 17, 2019, the officer stated that after carefully assessing all factors relevant to the application, the officer found that the applicant was not a member of any of the prescribed classes for the following reasons:

- The applicant had a record of repeatedly benefitting from criminal networks, human smugglers, and illegal travel documents; and
- The applicant made statements that the officer found “not plausible” relating to why he was afraid in Eritrea, how he got out of prison in Eritrea, the nature of his military service in Eritrea, and how he paid for himself to be smuggled to Brazil.

[12] As a result, the officer was satisfied that the evidence presented by the applicant was “not credible”. The officer therefore concluded that the applicant did not have a well-founded fear of persecution based on his race, religion, nationality, membership in a particular social group or political opinion, as required to establish Convention refugee status under *IRPA* s. 96. The officer was also not satisfied that the applicant met the requirements of the country of asylum class in the *IRPR*. Finally, the letter referred to *IRPA* subs. 11(1) and advised that the officer was not satisfied that the applicant had met the requirements of the *IRPA* for the reasons set out above.

[13] The officer’s Global Case Management System (“GCMS”) notes included additional details about the facts collected during the interview with the applicant on June 24, 2019 and the officer’s reasons for reaching the decision.

II. **Standard of Review**

[14] Both parties submitted that reasonableness is the applicable standard of review of an officer's decision on the substantive issues raised by the applicant. I agree.

[15] The Supreme Court of Canada explained the reasonableness standard in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. In conducting a reasonableness review, a court considers 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: *Vavilov*, at para 15. The focus of reasonableness review is on the decision made by the decision maker, including both the reasoning process (i.e. the rationale) that led to the decision and the outcome: *Vavilov*, at paras 83 and 86.

[16] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Vavilov*, at paras 91-96, 97 and 103; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, at para 31. The reviewing court does not conduct a "line-by-line treasure hunt" for errors: *Vavilov*, at para 102.

[17] When reviewing for reasonableness, the court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear upon the decision: *Vavilov*, at para 99. To intervene, the reviewing court must be satisfied that there are

"sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep"; the problem must be sufficiently central or significant to the outcome to render the decision unreasonable: *Vavilov*, at para 100.

[18] The reviewing court does not determine how it would have resolved an issue on the evidence, nor does it reassess or reweigh the evidence on the merits: *Vavilov*, at paras 75, 83 and 125-126; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paras 59, 61 and 64. The task of the reviewing court is to assess whether the decision maker reviewed and drew conclusions from the evidence and submissions in a manner that conforms to *Vavilov* principles.

[19] The onus to demonstrate that the decision is unreasonable is on the applicant: *Vavilov*, at paras 75 and 100.

III. Analysis

[20] In this Court, the applicant raised four issues to argue that the officer's decision was unreasonable. He submitted:

> 1. The officer erred in law and misconstrued the evidence in his assessment of human smuggling, and the applicant's use of a smuggler to reach a country of safety;
>
> 2. The officer's conclusions regarding credibility and implausibility were unreasonable;

> 3. The officer erred in failing to properly consider that the applicant had been recognized by the UNHCR to be a refugee; and
>
> 4. The officer breached procedural fairness by failing to give the applicant an adequate opportunity to respond to the officer's concerns.

[21] The first three issues are intertwined. All are subject to the same standard of review (reasonableness). Having analyzed them, I conclude that the officer's decision in this case contained an acknowledged error of law, findings that are not supported by the evidence and reasoning that lacked transparency and justification. As a result, the decision was unreasonable and must be set aside. I therefore do not need to address whether the applicant was afforded procedural fairness.

A. ***The Officer's Human Smuggling Findings***

[22] The applicant first submitted that the officer erred in law and misconstrued the evidence related to human smuggling. The applicant argued that the officer erred by concluding that he could not access refugee protection because he had allegedly used a "criminal network" or "human smugglers", or for using "illegal travel documents". According to the applicant, the officer erred in law in concluding that an asylum seeker cannot or should not use human smugglers to seek safety. The applicant relied on *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 SCR 704 and *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754. In *B010*, the Supreme Court held that, unlike a person who smuggles others in order to obtain financial or other material benefit, a migrant who aids in his own illegal entry or the illegal entry

of other refugees or asylum-seekers in their collective flight to safety is not inadmissible under *IRPA* paragraph 37(1)(*b*): *B010*, at para 76.

[23] The applicant submitted that there was no evidence on the record to support the officer's conclusion that there was a pattern or "record" of him "repeatedly" benefitting from criminal networks, or using human smugglers and illegal documents. The evidence was that he arranged for a relative in Israel to pay smugglers a USD$13,000 fee to get him from Sudan to the USA. There was no indication that the smuggler was part of a criminal network. Nor was there any evidence that the applicant had repeatedly used "criminal networks" or had repeatedly used illegal travel documents himself. In effect, there was no evidentiary basis for the officer's factual conclusions on these issues.

[24] The respondent agreed with the applicant that the applicant's use of smugglers to flee from Sudan to the USA was not a relevant consideration in the applicant's circumstances. However, the respondent maintained that the officer's decision contained other findings that were sufficient to refuse the application for permanent residence.

[25] On this issue, I agree that there was no evidence that the applicant was a smuggler himself, or that he travelled via Brazil and many other countries to the United States in order to obtain a financial or other material benefit as contemplated in *B010.* It was an error in law for the officer to conclude that the applicant's use of a smuggler was relevant to his claim. I also agree that the officer misconstrued the evidence by concluding, without a factual foundation, that the

smuggler was part of a criminal network and that the applicant “repeatedly” benefitted from criminal networks.

[26] The evidence about the applicant’s repeated use of the fake Brazilian passport is less clear. The applicant advised the officer that the smuggler took his fake Brazilian passport when they arrived in Brazil. He also advised that he travelled by foot and by bus across the remaining borders until he reached the United States. The parties on this application did not identify, and the Court has been unable to locate, additional evidence in the record about whether or not he used the fake Brazilian passport or different falsified documents to cross the numerous additional borders, or crossed without papers. Given my overall conclusion on this application, I will make no further comments on this issue.

[27] Having found an error of law and findings that ignored or misconstrued the evidence on these issues, I will now consider the officer’s conclusions on implausibility and credibility.

B. *The Officer’s Credibility and Implausibility Findings*

[28] The decision in the officer’s July 17, 2019 letter described the following aspects of the applicant’s narrative as “not plausible:” (i) why the applicant was afraid in Eritrea; (ii) how he got out of prison in Eritrea; (iii) the nature of his military service in Eritrea; and (iv) how he paid for himself to be smuggled to Brazil. The GCMS notes provide additional insight into the officer’s reasoning:

> I draw negative inferences about the applicant’s credibility from the following factors: – the applicant has a record of repeatedly using criminal networks and human smugglers to avoid legal immigration pathways – The applicant has used an illegal passport

> – The applicant stated that he was released from prison in Eritrea for a bail of 200,000 Nakfa, I do not find this to be plausible because, after having interviewed several hundred Eritrean refugees, no Eritrean refugee has ever stated that they have needed to pay more than 50,000 Nakfa – The applicant stated that he has a cousin in Israel who gave him $13,000 to pay the smugglers, and who cannot now be contacted. I do not find this to be plausible because it is not clear how an Eritrean refugee in Israel could get $13,000; because the logistics of getting $13,000 from Israel to the applicant would be very difficult, because it is more probable that the cousin in Israel would use any such money on himself, and because it is improbable that the applicant would allow himself to lose the contact information of a person who once gave him $13,000 – the applicant stated that in his two years of national military service, he never touched a real gun and spent the entire time as a cafeteria guard. I do not find this to be plausible because, after having interviewed several hundred Eritrean refugees, nearly all men who spend two years in national military service stated that they were trained on at least how to assemble and disassemble a Kalashnikov. I find that the negative inferences which are drawn from the observations above are sufficient to conclude that the applicant is not credible. Application refused for lack of credibility.
>
> [Emphasis added.]

[29] The applicant challenged the officer's implausibility findings on the basis that:

- Contrary to the officer's statement that "after having interviewed several hundred Eritrean refugees, no Eritrean refugee has ever stated that they have needed to pay more than 50,000 Nakfa", there was objective proof in the country condition documents that in some cases, more than 50,000 Nakfa has been paid to secure release from prison;

- Contrary to the officer's statement, there is no evidence that the applicant's cousin in Israel was a refugee and therefore would not be able to access USD$13,000 to send to the applicant;

- Contrary to the officer's statement, the applicant told the officer that his cousin had transferred money directly to the smugglers to pay for his passage to the United States (the money was not sent to the applicant);

- The applicant explained to the officer that he did not have his cousin's telephone number because bandits in Central America stole his mobile phone;
- The officer raised no concerns about the applicant being a cafeteria guard during his military service; and
- The officer focused on the irrelevant fact of whether the applicant had touched or used a real gun during his military service, but found that "after having interviewed several hundred Eritrean refugees, nearly all men" who spent two years in national military service, all stated that they were trained on at least how to assemble and disassemble a Kalashnikov.

[30] The respondent defended the officer's findings, arguing that the officer was permitted to use his local knowledge and specifically, his knowledge gained by interviewing hundreds of Eritrean refugees who served in the national military service concerning the nature of their training and the money used to pay for prisoners' release from an Eritrean prison. The respondent also noted that the officer's GCMS notes recognized that more than 50,000 Nakfa was sometimes paid. The officer asked the applicant for an explanation of why he was an exception to the norm. The respondent also submitted that a money transfer from Israel to a smuggler would be logistically difficult and it was improbable that the applicant would lose the contact information for a family member who had provided him with such a large sum of money to pay for his passage to the United States.

[31] With respect to the officer's overall credibility finding against the applicant, the respondent submitted that credibility and plausibility findings are at the heart of the expertise of the decision maker and are entitled to deference (citing *Soorasingam v Canada (Minister of Citizenship and Immigration)*, 2016 FC 691 (Gascon J.)).

[32] I note first that it is not the Court's role to assess the applicant's credibility or to substitute its views for those of the officer. The Court's task is to determine whether the officer's reasoning process on credibility and implausibility issues contained a reviewable error.

[33] In *Soorasingam*, Gascon J. noted that credibility findings have been characterized as the "heartland" of the Refugee Protection Division ("RPD")'s jurisdiction, owing to the RPD's ability to "see the witness at the hearing, observe the witness' demeanour and hear his or her testimony" and "the opportunity and ability to assess the witness in respect of frankness, readiness to answer, coherence and consistency of oral testimony before it" (at para 16). However, none of those advantages are salient to the impugned decision in this case because the officer's credibility determinations did not rely on them.

[34] I observe that in *Soorasingam,* Gascon J. was also "mindful that caution is required regarding implausibility findings in refugee cases" and that "[i]mplausibility findings should be made only in the clearest of cases, and the RDP must always sufficiently set out its reasons for making such findings… Otherwise, the implausibility finding can be seen as arbitrary and unreasonable …" (at para 29, citations omitted).

[35] In my view, the officer's implausibility and credibility findings in this case cannot be justified, as they are not well founded on the evidence.

[36] First, with respect to the payments to secure his travel to the United States, there was no evidence that the applicant's cousin in Israel was a refugee as the officer found. The officer also

appears to have ignored the applicant's statements during the interview on June 24, 2019, that his cousin had transferred money to the smugglers directly rather than to the applicant himself. The officer did not explain or address the applicant's explanation that he had lost contact with his cousin in Israel because his mobile phone was stolen by bandits in Central America. The officer ignored or misapprehended this evidence when he made these findings.

[37] Second, the officer made findings that certain of the applicant's answers during the interview were implausible. In making these findings, the officer did not rely upon inconsistencies between the applicant's answers to various questions posed at the interview, or inconsistencies between the interview answers and the applicant's previously submitted documents or something in extrinsic third party evidence, which are typical circumstances in which the RPD may make an adverse credibility finding against a claimant. Instead, the officer relied upon perceived inconsistencies between the applicant's interview answers and the officer's own personal experience from interviewing hundreds of other Eritrean refugee claimants. In other words, the officer based the implausibility findings on inconsistencies found by comparing the applicant's story with the officer's memory of other refugee claimants' stories, on certain specific factual matters.

[38] There were inherent hazards in the officer's methodology, which are related directly to the justification and transparency requirements in *Vavilov*. First, an officer's memories of hundreds of refugee claimant interviews may be accurate in some areas, but impressionistic, selective or unreliable in others. In addition, one officer's experiences with refugee interviews may be different from other officers' experiences. The absence of a third-party or other objective

analysis of patterns in refugee claimants' answers injects subjectivity and reliability concerns into the implausibility findings, that would otherwise be based on objectively discernable facts.

[39] Second, implausibility findings based on an officer's unrecorded personal experiences with hundreds of other refugee claimants' answers during interviews cannot be meaningfully tested by a reviewing court or readily understood by the applicant: see *Vancouver Airport Authority v PSAC*, 2010 FCA 158, [2011] 4 FCR 425, at paras 13-14 and 16, esp. para 16(d); and the discussion in *Canada (Attorney General) v Angell*, 2020 FC 1093, at paras 43-47 and 50. To elaborate briefly, there was no recorded evidence or data that many refugee claimants gave substantially the same answers during interviews to questions about the amount they or their families paid to the authorities to be released from prison, or about their use of a specific weapon during military training. There is no way for the applicant or a reviewing court to scrutinize and confirm the reasonableness of implausibility findings based a person's memory of hundreds of interviews.

[40] Unfortunately, in this case, some of the inherent hazards in the officer's approach were borne out in the officer's conclusions. The implausibility findings were a key basis on which the officer decided that the applicant was not a refugee.

[41] With respect to the amount of money paid to release the applicant from prison, the officer's GCMS notes set out the following question posed by the officer to the applicant: "Why did you pay so much more than the 50,000 that is <u>usually requested</u>?" [Emphasis added.] As the applicant submitted, the officer's decision was based on a different premise: It stated that after

having interviewed several hundred Eritrean refugees, no Eritrean refugee had ever stated that they needed to pay more than 50,000 Nakfa for release. The latter proposition was put to the applicant near the end of the interview.

[42] I agree with the applicant's submission that this was an important difference in the context of the officer's implausibility findings. The officer's GCMS notes are internally inconsistent on the factual point: on one hand, the notes acknowledge that 50,000 Nakfa is the amount "usually" paid, and on the other hand they state that the officer has "never" heard an Eritrean refugee claim to have paid more than 50,000 Nakfa. This inconsistency raises concerns about the reliability and impressionistic nature of the "facts" that the officer relied on in drawing the implausibility conclusion. In addition, there is country condition evidence in the record that appears to be inconsistent with the officer's conclusion and consistent with the applicant's interview answer that his family paid more than 50,000 Nakfa: see United Nations Human Rights Council, *Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea* (5 June 2015) (The "fine" demanded of families is 50,000 Nakfa but "[i]n some exceptional circumstances, families have been compelled to pay less or increased sums of money".)

[43] The officer similarly concluded, again referring to having interviewed several hundred Eritrean refugees, that "nearly all men" he interviewed who spent two years in national military service stated that they were trained on at least how to assemble and disassemble a Kalashnikov. The officer found his own experience with interviewees' answers to be inconsistent with the applicant's narrative that he had never touched a real gun and only served as a guard in a

cafeteria. The officer did not refer to any evidence in the country condition documents, did not explain why he concluded that the applicant was not one of the exceptions implicit in the phrase "nearly all" men, and did not ask the applicant specifically about whether he had been trained in the particular skill with a Kalashnikov.

[44] The applicant referred to *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519, [2013] 1 FCR 261. It is instructive. In that case, an officer based an adverse credibility finding in part on the applicant's evidence that he escaped from detention in Eritrea during a sandstorm. The officer in *Ghirmatsion* admitted to having no evidence about the frequency and attributes of sandstorms and did not ask the applicant for more information. At paragraph 69 of her reasons, Snider J. held that the officer:

> neglected to look at the available documentary evidence to measure the plausibility of the Applicant's story against what was known about the conditions in the country where the claim arose. In such a scenario, the Officer had an obligation to go to the documentary evidence to measure the credibility of the Applicant's story.

[45] In this case, the officer did not purport to make a credibility finding without any evidence. The officer made implausibility findings leading to an overall negative credibility conclusion based on "facts" in the form of the officer's personal experience interviewing Eritrean refugees, which the officer found were inconsistent with the applicant's answers during an interview. Nevertheless, in my view, the error was similar to *Ghirmatsion*: the officer should have determined whether the applicant's answers were consistent with objective evidence, for example in country condition documents.

[46] The respondent submitted that the officer's personal experience with Eritrean refugee interviews was a permissible use of knowledge of "local conditions" to assess an application. The respondent referred to *Al Hasan v Canada (Citizenship and Immigration)*, 2019 FC 1155 (Grammond J.), at para 10; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 (Norris J.); *Mohammed v Canada (Citizenship and Immigration),* 2017 FC 992 (Pentney J.); *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 (Mainville J.), at paras 30-31; and *Hafamo v Canada (Citizenship and Immigration)*, 2019 FC 995 (Boswell J.), at para 22.

[47] I am not persuaded that the knowledge of local conditions principle can be applied to these circumstances. The concern here – the officer's use of his or her own memory of answers in hundreds of prior interviews to assess the plausibility of a refugee abroad claim – is unlike any of the cases cited by the respondent.

- In *Mohammed*, Pentney J. stated that it "is settled law that visa officers are entitled to rely on their personal knowledge of the local conditions in assessing evidence and documents provided in support of visa applications" (at para 7). Justice Pentney concluded that the applicant could not claim to be taken by surprise if the officer considered the "economic and security context in Iraq".
- In *Al Hasan*, the officer had knowledge of a stamp that should appear in a passport.
- In *Yuzer*, the officer denied a study visa due the existence of "local programs" that taught English and for a lower price, but without further elaboration about the programs – which did not satisfy the Court as sufficient reasoning. The Court set aside the officer's decision.

- In *Saifee,* the Court was prepared to assume that the officer was either knowledgeable of the country conditions in Afghanistan or could easily access available country conditions documentation in order to carry out his duties properly. Justice Mainville also noted that if it could be shown that the officer "made a decision without knowledge of country conditions, this in itself could constitute a valid reason to overturn the decision in judicial review. It would indeed be unconscionable if Canadian visa officers were making a refugee claim determination without any reference to or knowledge of country conditions" (at para 30). Similarly in *Hafamo*, the Court found that the officer could be assumed to be knowledgeable of the country conditions or could easily access country condition documentation (at para 22, citing *Saifee* at para 30).

[48] Taken together, these cases do not suggest that "local knowledge" includes "facts" derived from an officer's memory of answers in hundreds of refugee claimant interviews, with all of the associated reliability risks. The cases are more consistent with the use of country condition evidence prepared by objective sources when available or, at minimum, general and notorious country condition information.

[49] From this analysis, I conclude that the officer's implausibility findings and overall credibility conclusion were not sufficiently grounded in the evidence and give rise to material concerns about justification and transparency under *Vavilov* principles.

[50] I turn now to the applicant's third overall submission.

C. *Did the Officer Sufficiently Consider the Applicant's UNHCR Designation?*

[51] The applicant's third submission was that the officer ignored and/or failed to consider his designation as a refugee by the UNHCR. The respondent submitted that the officer did not ignore the UNHCR's recognition of the applicant as a refugee, as the officer's interview notes specifically refer to his UNHCR proof of registration. In any event, the respondent noted that the UNHCR's determination was not binding and that the officer had a duty to conduct his or her own assessment of whether the applicant was a refugee.

[52] The officer's GCMS notes of the interview contain the only reference to the applicant's UNHCR status in the reasons under review. The officer used the applicant's UNHCR proof of registration, with other documents, to verify the applicant's identity.

[53] The parties referred to several decisions of this Court in which an officer was alleged to have ignored or failed to consider a UNHCR designation properly: *Ghirmatsion*, at paras 55-59; *Teweldbrhan v. Canada (Citizenship and Immigration)*, 2012 FC 371 (Mosley J.) at paras 21-26; *Gebrewldi v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 621 (Gagné ACJ) at paras 28-35; *Rubaye v. Canada (Citizenship and Immigration)*, 2020 FC 665 (Mosley J.) at paras 27-30; and *Abreham v. Canada (Citizenship and Immigration)*, 2020 FC 908 (Southcott J.) at paras 19-22.

[54] The following principles emerge from these decisions:

A. An applicant's UNHCR status as a refugee is important but not determinative;

B. An officer must determine the merits of the applicant’s claim under Canadian law in accordance with the evidence in the record. In doing so, the officer may assess credibility;

C. In making this determination, the officer must have regard to the UNHCR’s determination. If the officer does not concur with it, the officer should explain why;

D. It is a reviewable error if an officer does not mention an applicant’s UNHCR status in the officer’s decision and/or in the GCMS notes; and

E. If the Court reviews the officer’s decision and reasons and finds it is clear that (i) the officer was aware of the applicant’s UNHCR status as a refugee; (ii) the officer conducted a thorough assessment of the applicant’s application on the merits under Canadian law; and (iii) in doing so, the officer explained why the UNHCR’s status was not followed, the Court may conclude that the officer’s decision was reasonable. The officer’s assessment of credibility may contain the required explanation for why the UNHCR’s status was not followed.

[55] In this case, as in *Abreham* and *Gebrewldi*, the officer must be presumed to have been aware of the applicant’s UNHCR status as a refugee, given the officer’s use of the UNHCR proof of registration to verify the applicant’s identity at the June 24, 2019 interview. The question is whether the officer sufficiently considered the applicant’s application on the merits under Canadian law (including possibly by conducting a credibility analysis) and in doing so, sufficiently explained why the applicant’s UNHCR status was not being followed: *Abreham*, at para 22; *Ghirmatsion* at para 58.

[56] In my view, the record shows that the officer did not consider the application for refugee status or protection under the *IRPA* and *IRPR* on its merits under Canadian law, and the officer’s implausibility and credibility assessments, as considered above, do not serve to explain or justify a determination against the applicant.

D. *The Officer's Decision Must Be Set Aside*

[57] I have concluded that the officer erred in law by concluding that the evidence of the applicant's use of a smuggler was relevant to the application; there was no factual foundation for certain of the officer's conclusions, including that the smuggler was part of a criminal network and that the applicant "repeatedly" benefitted from criminal networks; the officer's findings of implausibility and main credibility conclusion raise material concerns about justification and transparency; and the applicant's claims for Convention refugee status and protection have not been assessed under Canadian law on their merits.

[58] The effect of these conclusions is that, in light of the factual and legal constraints on the officer's decision on Mr Amanuel's application, I have lost confidence in both the reasoning and the outcome of that decision: *Vavilov*, at paras 83-86, 105-106 and 194. The officer's decision must be set aside.

IV. Conclusion

[59] The application must therefore be allowed. The officer's decision will be set aside and the matter remitted for redetermination by another officer.

[60] Neither party raised an issue for certification and none will be certified.

[61] The applicant requested an Order for costs. The applicant relied on his submissions that the officer committed multiple, "very apparent" errors in the decision.

[62] Costs may be ordered when there are "special reasons" to make a costs order under Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

[63] In my view, there are no special reasons to warrant an order for costs in this case. Apart from the implicit argument that the respondent should have resolved this matter without contest, the applicant did not point to bad faith by the officer, or to actions by the respondent that unnecessarily prolonged this proceeding, or to actions that showed that the respondent otherwise acted oppressively, unfairly, improperly, or in bad faith: see *Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 (McHaffie J.), at para 49; *Dukuzeyezu v. Canada (Citizenship and Immigration)*, 2020 FC 1017 (Pallotta J.), at paras 37-38; and the cases cited in those decisions. I note that the respondent did not oppose leave under *IRPA* s. 72 and that on the merits of the application, the respondent's positions on the reasonableness of the officer's decision were not devoid of merit. While I found that the officer's decision was unreasonable, that alone does not warrant the granting of costs: *Dukuzeyezu*, at para 38.

[64] I therefore do not make an order for costs.

JUDGMENT in IMM-5561-19

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The officer's decision is set aside and the matter is remitted for redetermination by another officer.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.
3. There is no costs order.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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