Federal Court  Cour fédérale

Date: 20210708

Docket: IMM-964-20

Citation: 2021 FC 720

Ottawa, Ontario, July 8, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

FANA GEBREKIDAN HAGOS
CHRISTIAN ABRAHAM WOLDEYOHANES
DELINA ABRAHAM WOLDEYOHANES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Fana Gebrekidan Hagos and her minor children, Delina and Christian, ask the Court to set aside the decision of the Immigration and Refugee Board, Refugee Appeal Division [RAD], dated January 22, 2020, dismissing their appeal of a decision of the Immigration and Refugee Board, Refugee Protection Division [RPD], dated October 9, 2019.

[2] The RAD affirmed the decision of the RPD, finding that the Applicants are not Convention refugees nor persons in need of protection within the meaning of section 96 or subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] For the reasons that follow, the Applicants' judicial review application is dismissed.

[4] Ms. Hagos and her daughter, Delina, are Ethiopian citizens while her son, Christian, is a citizen of the United States of America.

[5] Ms. Hagos met her husband when she was working in Nairobi, Kenya, and they married in 2013. The couple have two children (the two minor Applicants).

[6] In September 2017, Ms. Hagos traveled to Ethiopia to visit her husband's family in order to introduce them to their children. While there, she was accused of disseminating anti-government information and was detained. While in custody, she testified that she was kept in a small room, in isolation, and subjected to interrogation by male police officers, who at times sexually assaulted her and threatened her with rape. She alleges the police wanted her to admit that her husband had an anti-government mission and that she was sent to Ethiopia to execute his mission.

[7] Ms. Hagos' mother posted bail for her so she could go to the hospital. Instead of returning to detention, as had been promised, she flew with her children back to Nairobi, Kenya,

on October 9, 2017. Fearing further attacks she and her children left Kenya for the United States of America, after which, they crossed to Canada where they made their refugee claims.

[8] The RPD relied on recent country condition documents, which suggested that under the new Prime Minister, much of the human rights issues she had faced had diminished, and that the political climate has changed. As such, the RPD found that there was no serious possibility Ms. Hagos or her daughter would face either a risk to their lives, a risk of cruel and usual treatment or punishment, or a danger of torture, if they return to Ethiopia. The RPD found the son faced less than mere risk if he returned to the United States.

[9] The RAD admitted 16 journalistic articles of country conditions regarding Ethiopia as new evidence. The sole issue on appeal was whether the Applicants' fears were no longer well founded because of the change of circumstances in Ethiopia. The RAD, undertaking its own analysis, agreed with the RPD, that the change in circumstances since the election of the new Prime Minister was such that these Applicants were no longer at risk in Ethiopia.

[10] The decision is reviewable on the standard of reasonableness.

[11] Three issues are raised in this application:

1. Did the RAD err in determining there was a change of circumstances in Ethiopia, such that the Applicants' fears are no longer well founded?

2. Did the RAD err in failing to find that the Applicants fall under the "compelling reasons" exception in subsection 108(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27?

3. Did the RAD err in failing to consider a *sur place* claim?

[12] The second and third issues can be quickly disposed of.

[13] The compelling reasons exception in subsection 108(4) of the Act was not raised by the Applicants or their counsel before the RPD. Nevertheless, the RPD did consider it and found that the provision did not apply in the circumstances:

> Now, compelling reasons sometimes is raised when there is a change of circumstances. I note that compelling reasons was not raised by you or by your Counsel, perhaps because you don't feel that there has been a change of circumstances.
>
> But, I will address it very briefly to simply say that, even though what you experienced in Ethiopia was not pleasant at all, the panel does not find what you experienced to be shocking to the conscience. It's a very high threshold with compelling reasons and for this reason, the panel must find that compelling reasons don't apply in this case.

[14] The compelling reasons exception and the finding of the RPD was not raised by the Applicants in their appeal to the RAD.

[15] The Applicants did not raise either before the RPD or the RAD any suggestion that they have a *sur place* claim based on their activities in Canada.

[16] With respect to both of these issues, the Respondent submits, and I agree, that a failure of an applicant to raise an issue before the RAD is fatal to the ability to argue that issue on judicial review: *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 321 at paragraphs 18-22; *Abdulmaula v Canada (Minister of Citizenship and Immigration)*, 2017 FC 14, at paragraphs 13-16; *Dovha v Canada (Minister of Citizenship and Immigration)*, 2016 FC 864, at paragraph 6; *Zakka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1434 at paragraph 13.

[17] For this reason, the second and third issues raised cannot succeed. The real issue here is whether the RAD's decision that the refugee claim could not succeed because of the changed circumstances in Ethiopia was reasonable based on the record before it.

[18] The Applicants submit that the RAD's decision is not reasonable because it selectively read the country condition documents that it mentioned, it ignored documents contrary to its decision, and it mischaracterized and misapprehended some of the evidence on the record.

[19] Like the RPD, the RAD relied primarily on the 2018 USDOS Report on Ethiopia. Among other things, it found that the report indicated that there were sweeping changes in Ethiopia with the change in leadership in April 2018. Specifically, the RAD noted that the Prime Minister had apologized for the previous decades of abuse, decriminalized political movements that had been condemned as treason, invited exiled opposition leaders to return and resume political activities, which many did, allowed peaceful protests, rallies, and demonstrations, released thousands of political protesters, and undertaken to revise repressive laws.

[20] In my assessment, the most significant submission made by the Applicants regarding the USDOS Report is the RAD's alleged failure to address the impact on the Applicants' return to Ethiopia; having left the country in violation of her bail conditions.

[21] The Applicants submit that the RAD failed to note that investigations commenced against political dissidents were not withdrawn automatically; rather the exiled dissident would have to apply for amnesty under the general law, which was in force for 6 months and ended on January 2019. They say that there was no evidence that Ms. Hagos had made any application, and thus she remains at risk in Ethiopia.

[22] The Applicants point to the following passage of the USDOS Report which summarizes this amnesty law:

> On July 20, the HPR, in an emergency session passed a bill providing amnesty for individuals and groups under investigation, on trial, or convicted of various crimes. The law applies to persons and organizations convicted of crimes committed before June 7. The federal attorney general announced that those seeking amnesty must register within six months from July 23. On August 23, the federal attorney general announced 650 prisoners in four federal prisons benefitted from releases via either a pardon or the granting of amnesty. The government granted amnesty to more than 200 of these prisoners in accordance with the amnesty proclamation. [emphasis added]

[23] Admittedly, there is no explicit reference to this paragraph in the decision under review. However, the panel is presumed to have considered all of the evidence before it. As the Applicants note, in *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 at paragraph 17, Justice Evans held:

> the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains* v. *Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. [emphasis added]

[24] Given that the RAD accepted that Ms. Hagos was credible, it also accepted that she had been detained and interrogated for one week. Her husband was accused of having an anti-government mission, and she was accused of being sent to Ethiopia to carry out his objectives. She was released on bail on condition that she return after her hospital visit. She did not do so, but fled back to Kenya.

[25] I am unable to find that the USDOS passage the Applicants rely on requires that Ms. Hagos apply for amnesty. The paragraph she references explicitly states that the amnesty law is applicable to those convicted of a crime and it appears that they must make an application. She was never convicted of any crime in Ethiopia.

[26] The passage also states that the law provides amnesty for individuals and groups under investigation, but makes no explicit statement that they must make an application for amnesty. Indeed, the remainder of the paragraph speaks to "prisoners" who have been granted amnesty under this new law. It is reasonable to conclude that there was no requirement that Ms. Hagos apply for amnesty as a person merely under investigation. In any event, it does not squarely contradict the RAD's finding and is not clear that the RAD had to consider the argument now

being made that she had to apply for amnesty. I note that there is no evidence before this Court that the Applicants ever specifically advanced this argument before the RAD.

[27] I find myself generally in agreement with the submission of the Respondent that the submissions of the Applicants regarding the reasonableness of the decision under review amount to a disagreement with the weighing of the country condition evidence by the RAD. While others may have reached a different conclusion than the RAD on the record before it, I am unable to conclude that its decision is unreasonable.

[28] In my respectful view, the Applicants have failed to meet their burden of establishing that the decision was unreasonable. Therefore, this application must be dismissed.

[29] Neither party proposed a question to be certified. I find none on these facts.

JUDGMENT IN IMM-964-20

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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