Federal Court  Cour fédérale

Date: 20220623

Docket: IMM-3447-21

Citation: 2022 FC 946

Ottawa, Ontario, June 23, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HABATAMU BESHU TULLU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision, concluding that he would not face risk, as a result of either his ethnic background or his political activities in Canada, if returned to his home country of Ethiopia.

[2] As explained in more detail below, this application is dismissed, because the Applicant's arguments do not establish that the PRRA decision is unreasonable or procedurally unfair.

II. **Background**

[3] The Applicant is an Ethiopian citizen who first entered Canada in January 2016 and shortly thereafter made a refugee claim. At the time, he argued that he would be at risk if returned to Ethiopia based on actual or perceived political opinions and his mixed ethnicity as half-Oromo and half-Sidama. The Applicant also stated that in December 2015 he had participated in a student protest against the Ethiopian government, following which he was detained by security forces.

[4] In August 2016, the Refugee Protection Division [RPD] accepted the Applicant's refugee claim. Although the RPD found that the Applicant was not a credible witness and failed to provide credible evidence of his allegations, it nonetheless concluded that he was a Convention refugee who would face a serious possibility of persecution in Ethiopia based on his ethnicity and perceived political opinion.

[5] The Minister appealed the RPD's decision to the Refugee Appeal Division [RAD] and in February 2017, the RAD granted the appeal, finding that the Applicant was neither a person in need of protection nor a Convention refugee pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In the RAD's analysis, the determinative issue was the Applicant's credibility, and it found that the RPD had erred in concluding that the Applicant was at risk as an Oromo student involved in political opposition to the government.

The Applicant sought judicial review of the RAD's decision, but his application was denied in May 2017.

[6] In October 2019, the Applicant applied for a PRRA. Before the PRRA officer [the Officer], the Applicant argued that he feared he would be detained and tortured if returned to Ethiopia because of his real and perceived political opinion, his political activities in Canada, his profile as a failed refugee claimant, and his partial Sidama ethnicity.

[7] The Applicant submitted new evidence showing that his father and brother had been arrested following a public protest advocating for Sidama statehood. He also submitted evidence demonstrating his involvement with the organization, Unity for Human Rights and Democracy Toronto [UHRDT], which has worked to expose human rights abuses of the Ethiopian government, as well as country condition evidence [CCE].

III. **Pre-Removal Risk Assessment Decision**

[8] In the February 10, 2020 decision refusing the Applicant's PRRA application [the Decision], the Officer notes that, pursuant to s 113(a) of *IRPA*, only new evidence arising after the Applicant's RAD decision would be considered.

[9] In assessing the principal risk advanced by the Applicant surrounding his Sidama heritage, the Officer refers to the Applicant's evidence of unrest in the ethnic region and cites from an article explaining efforts by Sidama people to initiate a referendum that would transform the Sidama zone from a lower level administrative unit into a regional state in the Ethiopian

federation. The Officer states that this political development had led to clashes between the state and protestors and resulting deaths. The Officer then notes that the referendum was held on November 20, 2019, and that the result was overwhelmingly in favor of statehood.

[10] The Officer proceeds to consider the Applicant's claim that he faces a personalized risk because his family has been targeted and threatened, as evidenced by a police report outlining charges against the Applicant's brother and father related to their demand for a referendum. The Officer notes that the English translation of this document is not certified, which limits the weight afforded to it. The Officer further observes that the charges describe incidents in 2018 and 2019, during which time the Applicant was in Canada, and that the report does not suggest the Applicant's father was targeted simply for his ethnic background or that the Applicant himself would be arrested. The Officer also states that the fact that the referendum had already transpired limits the probative value of this evidence.

[11] Turning to evidence of Facebook posts (with translations) regarding his father's activism, the Officer observes that the posts do not mention the Applicant or demonstrate a personalized risk to him and further concludes that, while the posts may add to the evidence of the Applicant's father being a Sidama activist, they do not include any threats or risk. The Officer therefore gives the posts little probative value.

[12] Regarding CCE provided by the Applicant related to protests and resulting deaths, the Officer notes that the articles pertained to journalists and people who participated in the protests, neither of which applies to the Applicant. The Officer concludes that, while the country

condition situation is not to be taken lightly, none of the articles highlights a risk to the Applicant's profile. The Officer further states that none of the articles suggest one would be targeted simply for having Sidama heritage and notes that, since the referendum is now complete, the Applicant would not be campaigning for statehood.

[13] The Officer also explains that the articles do not suggest there is a risk to the family members of those implicated in the unrest. After observing that the Applicant names several other siblings living in Hawassa, none of whom the Applicant has stated faced persecution or harm in relation to the situation with his father or brothers, the Officer concludes that the evidence does not identify any forward-looking personalized risk for the Applicant. The Officer therefore does not find the Applicant would be at risk due to his Sidama heritage or his father's political activities.

[14] The Officer then analyses the Applicant's *sur place* risk due to his participation in protests and activities criticizing the Ethiopian government while in Canada. The Officer accepts that the Applicant is a member of UHRDT based on its letter and photos of him at the events. However, in relation to the letter's assertions that the Applicant is at risk, the Officer finds that the organization is simply restating what the Applicant has told them and does not provide any additional insight.

[15] Despite the statement in the UHRDT letter regarding surveillance of diaspora dissidents by the Ethiopian government, the Officer finds the conclusion that the Applicant will face risk on this basis speculative. The Officer assigns this document some weight in establishing the

Applicant's membership in UHRDT but states that it does not establish that the Applicant faces his stated risk in Ethiopia.

[16] Turning to CCE relied on by the Applicant as relevant to this aspect of his profile, the Officer states that, even though the articles predate the RAD decision, they will be accepted in light of the Applicant's new evidence regarding his political activates in Canada. However, the Officer also notes that these documents predate a change in policy after Abiy Ahmed became Prime Minister in 2018. The Officer reviews a 2019 UK Home Office Report stating that, following Prime Minister Ahmed's ascent to power, there has been a dramatic shift in the government's stance towards the political opposition, the release of thousands of political prisoners, a decrease in arrests and confrontation with party members, a generally increased tolerance for political dissidents, and an end to the state of emergency.

[17] The Officer also references a US Department of State Country Report that details positive changes in the human rights climate, including increased tolerance for peaceful protest and decreasing incidents of hash prison conditions and arbitrary arrest and detention. The Officer concludes that there have been major positive changes in conditions since the election of Prime Minister Ahmed in April 2018 and the end of the state of emergency in June 2018.

[18] The Decision then addresses the Applicant's argument that the situation has not improved, and in particular his reliance on an article about youth being detained in "rehabilitation camps" and additional documentation about continuing ethnic conflict and violent crackdowns on protestors. While acknowledging that the situation under Prime Minister Ahmed

is still far from ideal, the Officer concludes that this documentation does not speak to the alleged risk of attending political demonstrations abroad.

[19] The Officer also agrees with the RPD's reasoning for rejecting the Applicant's *sur place* claim in 2016, concluding that the situation for those who protest abroad has likely improved, and that the Applicant had not demonstrated how his presence at four more protests in 2019 would bring him to the attention of authorities.

[20] The Officer finds that the Applicant would not be at risk for his political activities in Canada. Without personalized evidence, the Officer concludes that the suggestion the Ethiopian authorities are aware of, or have an interest in, the Applicant's political activities in Canada is speculative.

[21] Finally, in relation to CCE provided by the Applicant pertaining to ethnic violence in the Oromia region, the Officer again acknowledges that these articles demonstrate conditions in Ethiopia are far from ideal but notes that the Applicant is not from Oromia. Noting that these articles do not speak to the Applicant's particular profile as a former resident of Hawassa who attended protests in Canada, the Officer concludes these articles do not demonstrate that the Applicant is known to the Ethiopian authorities or that the government is interested in his activities.

[22] Consequently, the Officer rejected the Applicant's PRRA application.

IV. **Issues and Standard of Review**

[23] The Applicant raises the following issues for the Court's consideration in this application:

A. Did the Officer err in his assessment of the persecution the Applicant faces because of his Sidama ethnicity?

B. Did the Officer err in weighing the change of circumstances in Ethiopia?

C. Was there a breach of the Applicant's right to procedural fairness?

D. Was the Decision reasonable?

[24] The parties agree (and I concur) on the standards of review applicable to the proposed issues. Other than in relation to the alleged breach of procedural fairness, the standard is reasonableness. While the standard of correctness is often described as applying to issues of procedural fairness, the Court's analysis should focus on whether the procedure followed was fair, having regard to all of the circumstances (see *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14).

V. **Analysis**

A. *Did the Officer err in his assessment of the persecution the Applicant faces because of his Sidama ethnicity?*

[25] First, the Applicant argues that the Officer erred in assessing the police report (with translation) related to charges against the Applicant's father and brother. He submits that it was

unreasonable for the Officer to afford little weight to the report based on the fact its translation was not certified and that it was procedurally unfair to do so without affording the Applicant an opportunity to address this concern.

[26] I find no reviewable error arising from these arguments. While the Decision identifies concerns about relying on the uncertified translation of the police report, the Officer nevertheless addresses the substance of the report, concluding that it does not support a conclusion that the Applicant is at risk. The Officer reasons that the Applicant was in Canada during the incidents that gave rise to the arrest of his father and brother and that the report does not suggest that they were targeted simply for their ethnic background.

[27] The Applicant also challenges this reasoning, arguing that the detention of his family members must be more than enough to demonstrate that the Applicant faces individualized risk as a member of the family and that the Officer failed to properly conduct the required individualized inquiry. I find no merit to these arguments. The Officer observed that the father and brother were arrested because of incidents in which they were involved. It is reasonable for the Officer to have concluded that the circumstances did not support a conclusion that the Applicant was also at risk.

[28] The Applicant also takes issue with the treatment of the Facebook posts, arguing that the Officer misconstrued metaphorical language employed in the posts that amounted to threats against the Applicant’s father. However, the Officer also observed that the Facebook posts did

not mention the Applicant and concluded that they did not demonstrate a personalized risk to him. Again, I find no reviewable error in this reasoning.

B. *Did the Officer err in weighing the change of circumstances in Ethiopia?*

[29] The Applicant submits that the Officer erred in selectively assessing the CCE and finding that circumstances in Ethiopia had improved. Citing portions of the CCE that was before the Officer, the Applicant argues that this finding is inconsistent with evidence demonstrating that improvements following the election of Prime Minister Ahmed were short-lived.

[30] I agree with the Respondent's position that these arguments do not demonstrate a reviewable error, as it is clear from the Decision that the Officer was aware of the mixed country conditions. The Officer noted the CCE of ethnic conflict, violent crackdowns on protests, and mass arrests in relation to an attempted coup and acknowledged that the situation under Prime Minister Ahmed was far from ideal. However, this portion of the Decision relates to the Applicant's allegations of risk associated with his participation in protests in Canada. Referencing the RPD's 2016 analysis and rejection of the Applicant's *sur place* claim, the Officer concluded that the fact the Applicant had attended four more protests in 2019 did not establish that he was likely to come to the attention of Ethiopian authorities. I find nothing unreasonable in this analysis.

C. *Was there a breach of the Applicant's right to procedural fairness?*

[31] The Applicant also asserts a procedural fairness argument related to changing country conditions. While the Decision is dated February 10, 2020, the evidence is that it was not communicated to the Applicant until May 7, 2021, when it was served upon him by the Canada Border Service Agency. He refers to CCE identifying that civil war broke out in Ethiopia in November 2020 and that the plight of ethnic Sidamas has continued unabated. The Applicant argues that failure to assess changes in country conditions that occurred in the 15 months between issuance of the Decision an its communication to him represents a denial of procedural fairness.

[32] In support of his position, the Applicant relies on *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2005 FC 6 at para 6, which recognizes that there are situations where delay between issuance and communication of a PRRA decision prejudices an applicant and appropriate remedies must be available. To similar effect, the Applicant references *Ragupathy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370 [*Ragupathy*], in which the Court referred to a risk assessment as Canada's safeguard against deportation to torture or similar treatment, giving effect to rights under s 7 of the *Charter*, and observed that such rights would be rendered illusory if the facts underlying the risk assessment did not correspond to the present reality in the country to which the individual is being removed.

[33] However, the Respondent notes that *Ragupathy* involves a situation where the applicant had brought forward evidence that the relevant country conditions had materially deteriorated subsequent to the risk assessment. In that case, the applicant sought a deferral of his removal pending assessment of the new evidence, and the Court granted judicial review of the

enforcement officer's refusal of that deferral request. The Respondent also references authority to the effect that, to show that a delay in communicating a risk assessment decision represents procedural fairness, an applicant must show prejudice resulting from the delay, which does not arise where the applicant did not attempt to update his risk assessment submissions.

[34] In *Singh v Canada (Citizenship and Immigration)*, 2014 FC 867 [*Singh*], the Court explained that PRRA applicants bear some responsibility for ensuring that their applications are based on present conditions. Similar to the case at bar, *Singh* involved a circumstance where there was a lengthy delay (21 months) between the date a PRRA decision was made and when it was communicated to the applicant. The Court concluded that the applicant had not been denied procedural fairness, as he had not provided updated country condition submissions to the PRRA officer and there was no evidence that changing conditions would result in persecution or other risk to the applicant (at paras 23-28).

[35] In the case at hand, the Applicant did not make any effort to provide updated evidence or submissions in support of his PRRA prior to receipt of the Decision. Moreover, I agree with the Respondent that the Applicant has not shown that changes in conditions in Ethiopia in the 15 months prior to communication of the Decision resulted in a personalized risk. While I accept that the CCE referenced in the Applicant's submissions to the Court can be characterized as showing deteriorating country conditions, the Applicant has not demonstrated that such deterioration represents risk in relation to his particular profile.

[36] The Applicant also advances a procedural fairness argument resulting from the Officer's decision not to hold an oral hearing. The Applicant recognizes that, when a PRRA officer makes no credibility finding but rather finds that the evidence is not sufficient to allow the application, no oral hearing will be required. However, he submits that the Officer's conclusion that the evidence was insufficient to overcome the RPD's findings represented a veiled credibility finding, such that procedural fairness required to Officer to hold an oral hearing.

[37] This argument relates to what the Applicant describes as the Officer's doubts regarding some of the Applicant's *sur place* political activities in Canada. I find no merit to this submission. It is clear that the Officer did not doubt that the activities took place but simply reasoned that the fact the Applicant had attended four more protests in 2019 did not establish that he was likely to come to the attention of the Ethiopian authorities.

D. *Was the Decision reasonable?*

[38] The Applicant articulates the last issue for the Court's consideration as whether the Decision was reasonable. Several of the arguments canvassed earlier in these Reasons also relate to the reasonableness of the Decision. However, under this last issue, the Applicant submits that the Officer misapprehended or ignored particular evidence relevant to his *sur place* claim. He relies on extracts from the CCE referring to alleged monitoring by Ethiopian authorities of political activities in the diaspora and the detention, mistreatment and torture of dissidents who are sent back to Ethiopia.

[39] The Decision does not expressly reference the particular CCE extracts upon which the Applicant relies. However, an administrative decision-maker is presumed to have reviewed the available evidence and need not refer to every piece of evidence contrary to its findings, subject to the principle that the more important the evidence that is not mentioned, the more willing a court may be to conclude that it was overlooked (see *Cepeda-Gutierrez et al. v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 157 FTR 35 (TD) at paras 16-17).

[40] As previously noted, the Officer reasoned that, against the backdrop of the RPD's *sur place* analysis, the fact the Applicant attended for more protests in Canada in 2019 did not establish he was likely to come to the attention of the Ethiopian authorities. The extracts upon which the Applicant relies are not sufficiently compelling of a contrary finding to support a conclusion that they were overlooked.

VI. **Conclusion**

[41] Having considered the Applicant's arguments, I find that the Decision is reasonable and was reached in a procedurally fair manner. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-3447-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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