

Federal Court



Cour fédérale

**Date: 20230103**

**Docket: IMM-2783-21**

**Citation: 2023 FC 15**

**Ottawa, Ontario, January 3, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MEBRAHTU SIUM TKABO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a Refugee Appeal Division (RAD) decision [Decision] confirming a decision by the Refugee Protection Division (RPD) rejecting the Applicant's claim for refugee protection.

[2] The determinative issue was identity. The Applicant alleges that he is a national of Eritrea who fears persecution based on imputed political opinion.

[3] For the reasons that follow, this application is granted.

## II. Decision

[4] On appeal, the Applicant requested the admission of the following new evidence: two declarations from individuals who attest to his identity, a letter from his church, a bank book and a picture purporting to be the Applicant with his mother and brother.

[5] The Panel declined to admit all the documents for failing to meet the criteria of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001 c 27.

[6] The Applicant seeks judicial review, in part, on the basis that the RAD erred in its treatment of the new evidence.

## III. Standard of Review

[7] The Federal Court of Appeal has established that reasonableness is the standard of review to be applied by this Court to a decision of the RAD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paragraphs 30, 35..

[8] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it. To set a decision

aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 100.

[9] Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 15 and 85.

#### IV. **Determinative Issue**

[10] The RPD found the determinative issues were identity and credibility, specifically with respect to identity.

[11] The RAD did not address the mother's identity card, the National Document Package (NDP) concerning citizenship by descent or the letter from the Applicant's mother.

[12] The RAD also failed to consider, or overlooked, the Applicant's testimony that he attended with his mother to obtain his birth certificate and that his mother had sufficient identity documents to establish her residence and citizenship as Eritrean.

[13] The RAD failed to consider the letter from Kidusan, the Applicant's maternal aunt, which corroborated the applicant's identity and the events in his claim.

[14] The RAD referred to NDP 3.1 for the process of obtaining a birth certificate. It did not refer to it for the section that states Eritrean citizenship is acquired by descent. Therefore, proof of the mother's identity and citizenship would confirm the Applicant's own citizenship. The RAD also erred by failing to review this country information as a result of which it unreasonably assessed the mother's identity card.

[15] It appears that the RAD was cherry picking the information found in the NDP.

[16] It is well known though that "the more important the evidence that is not mentioned specifically and analysed 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"" and, "the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts": *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998) 157 FTR 35 at paras 17 and 27.

[17] In this instance, the findings of the RPD and the RAD's confirmation that the Applicant's failure to prove his identity as Eritrean was central to the outcome.

[18] When a tribunal is silent on evidence clearly pointing to an opposite conclusion, the Court may intervene and infer that the tribunal overlooked the contradictory evidence. I am comfortable in finding that when the RAD erroneously found as a fact that the Applicant had failed to establish his personal identity and Eritrean citizenship or nationality it did so "without regard for the material before it."

[19] These errors by the RAD are sufficiently serious shortcomings such that the Decision does not exhibit the requisite degree of justification, intelligibility and transparency and it must be set aside.

V. **Conclusion**

[20] The RAD erred when, by overlooking evidence, it failed to review and grapple with the Applicant's identity evidence. As a result, the Decision is unreasonable.

[21] The application is granted and the Decision is set aside. This matter is to be returned to a different member of the RAD for redetermination.

[22] No question was posed for certification, nor does one arise on these facts.

**JUDGMENT IN IMM-2783-21**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted and the matter is to be returned for redetermination by a different member of the RAD.
  
2. There is no serious question of law for certification.

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2783-21

**STYLE OF CAUSE:** MEBRAHTU SIUM TKABO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 28, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JANUARY 3, 2023

**APPEARANCES:**

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