Federal Court  Cour fédérale

Date: 20230216

Docket: IMM-1769-22

Citation: 2023 FC 230

Toronto, Ontario, February 16, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

FASIL GETNET MERSHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seek judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of an Officer's decision to reject his Pre-Removal Risk Assessment [PRRA] application.

[2] At the end of the hearing of this judicial review, I granted this Application from the bench, with a promise of reasons to follow. These are my reasons.

I. Background

[3] The Applicant is a citizen of Ethiopia. He arrived in Canada in August 2019 as a crew member at the Quebec Marine port on the Cielo Di Monaco Vessel.

[4] The Applicant alleges fear from the Ethiopian government because of his political activity and his Amharic ethnicity. He further alleges that he was arrested in June 2019 and detained for one day. He claims that after his detention, he left Ethiopia in August 2019 to work for a shipping company. The Applicant has not returned to Ethiopia since.

[5] The Applicant could not make a claim for refugee protection in Canada, because a removal order had been issued against him after he failed to return to his ship. He was offered a Pre-Removal Risk Assessment [PRRA], which he filed in November 2019.

[6] The PRRA Officer refused his application in June 2020 [Decision], finding that the evidence submitted by the Applicant did not establish that he was an active member of the Wolkait (also spelled Wolkite) People Liberation Front, or that his political activity led to his arrest, or that the Ethiopian government is currently pursuing him.

II. Issues and Standard of Review

[7] The sole issue in this case is to determine whether the Officer's Decision to refuse the Applicant's PRRA application was reasonable. The standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

III. Analysis

[8] Despite the able arguments of counsel for the Respondent, I agree with the Applicant that the Officer failed to address key points in the Applicant's narrative. Rather, the Officer's reasons were by and large a review of the weaknesses of three support letters the Applicant included in his PRRA submissions, namely from (i) his brother, a doctor in Ethiopia; (ii) a former professor from his university; and (iii) a childhood friend. Each spoke about the Applicant's political activism in Ethiopia within their realm of knowledge.

[9] For the first (the Applicant's brother's letter), the Officer criticized its vagueness as to the exact political work that the Applicant did, concluding that he was not satisfied that the letter established that the Applicant was "enough of a prominent political activist, that he would raise the attention of Ethiopian authorities."

[10] Similarly, the Officer criticized the second letter as failing to address the specifics of the Applicant's work as an activist, or his prominence in the university community. The Officer noted that "the author never specifies what kind of groups threaten him. There is also no specifications of when or where these events happened, or the events leading up to the applicant leaving the university in May 2014 and January 2016."

[11] Finally, the Officer criticized the third letter for also having failed to address specific incidents. The Officer states that while the author describes the Applicant as being heavily

pursued by authorities, there was no such corroborative evidence on file, such as a most-wanted list, or any news articles that he was being pursued.

[12] As a result of these criticisms of what the three letters did not contain, the Officer gave them all limited weight. Crucially, what the Officer failed to do was address what the Applicant stated in his narrative that was contained prominently within his PRRA application – namely a four-page addendum – as to whether the three letters supported the Applicant's fear of persecution at the hands of the Ethiopian security forces should he return to Ethiopia.

[13] The Respondent argues that the Applicant simply failed to meet his burden of presenting sufficient evidence to establish his claim, relying heavily on *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067. Counsel argues that the Respondent reasonably explains why the Officer gave low weight to each of the three letters, and that this Court owes significant deference to those findings of insufficiency of evidence (*Ogbolu v Canada (Minister of Citizenship and Immigration)*, 2022 FC 129 at para 35).

[14] I cannot agree, and find it unreasonable that the Officer failed to grapple with the Applicant's central submissions contained in his narrative, instead commenting almost exclusively on what he felt was missing from the support letters (*Sellathambi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1227 at para 26, citing *Belek v Canada (Minister of Citizenship and Immigration)*, 2016 FC 205 at para 21).

[15] In so doing, the reasons were simply not responsive to the submissions in the Applicant's narrative (annexed to the PRRA application form), or his Counsel's legal submissions referencing the country condition evidence (*Vavilov* at para 133). Nor were the reasons intelligible, with passages from the Officer such as "I note that the applicant's statements previously discuss an incident in which he was arrested following his father's protest, which does not align with the reasons previously mentioned by any letter writers, or the applicant himself", or in the conclusion where the Officer stated that "I find that he has not established that his political activity has led to his arrests". After all, the Applicant stated that he had only been arrested once, after which he fled the country.

[16] Rather, in his narrative, the Applicant provided a very detailed account of what transpired to him over the years in Ethiopia. This included his experiences growing up in the Amhara culture in a small town in northern Ethiopia. It detailed how his parents were forced to leave their native area due to persecution in the region. He detailed his father's political involvement in response to those experiences, culminating with his father's and brother's arrests due to their anti-government political activism.

[17] In addition, the Applicant provided a detailed history of his experiences in university, including abuse, injury, detention and even death of students at the hands of security forces. The Applicant also discussed his post-university work, including his time spent in the shipping industry.

[18] While it is not the role of the Court to evaluate the merits of the Applicant's claim for protection or his narrative, it must assess the reasonableness of the Officer's analysis. This is particularly so given that the Officer was clearly aware that the Applicant had never undergone a risk assessment in Canada, at any level of the Immigration and Refugee Board, or by any other decision maker. When a PRRA that takes place without any prior risk assessment, the stakes are particularly high (*Abusaninah v Canada (Minister of Citizenship and Immigration)*, 2015 FC 234 at para 57). The Officer's analysis and reasons provided do not reflect the level of intelligibility and justification required in the circumstances.

[19] The Officer did not impugn the Applicant's credibility. Rather, he simply failed to engage with his narrative, or any of the country condition evidence for Ethiopia that was contained in the National Documentation Package [NDP] referenced in his submissions. For instance, there was no mention or discussion of the risk the Applicant faces in Ethiopia because of his Amharic ethnicity – regardless of his political activities – due to rising ethnic tensions in the country and targeting of Amharic people by the Ethiopian government, which are described in NDP evidence submitted by the Applicant in his PRRA application. By only addressing the corroborative evidence (the letters), the Officer failed to satisfy his obligation to address the central components of the Applicant's narrative and basis of claim for protection.

[20] As stated in *Vavilov* at paragraph 127, reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties, and must therefore be responsive to their arguments. Here, according to his narrative, not only was the Applicant

unjustly arrested as a direct result of political activity, but so were his father and brother, who have remained in detention for several years.

[21] Rather than addressing these central allegations, which have a direct nexus to the Convention ground of political opinion, the Officer simply failed to grapple with the central components of the Application, and the documentary evidence that the Applicant pointed to regarding the mistreatment of similarly situated persons in Ethiopia. Failing to grapple with the central claims and evidence, runs counter to the dictates of the jurisprudence, including the oft-cited decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17.

[22] I am not able to agree with the Respondent's position that the Officer is presumed to have reviewed all of the evidence. While that statement may certainly be applicable in appropriate circumstances – namely where an officer has referenced a modicum of the central evidence presented and relied on by an applicant – that is simply not the case in the present circumstances.

[23] Finally, the Officer stated the Applicant "was not enough of a prominent political activist, that he would raise the attention of Ethiopian authorities." This conclusion is problematic for two reasons. First, the Officer arrived at it without pointing to any of the country condition evidence – including a US Department State Report of March 13, 2019 – that discussed arbitrary detention of opposition party members and mistreatment of detainees, including indefinite detention without charge or trial. Second, once again, the conclusion appears to have been primarily drawn

from what he felt was deficient in the three support letters, rather than from any assessment of what the Applicant himself had said in his narrative.

[24] As the Supreme Court said in *Vavilov*, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up". Here, it did not.

IV. Conclusion

[25] The Officer's Decision was unreasonable. The Application for Judicial Review is therefore granted.

JUDGMENT in IMM-1769-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6734-21
STYLE OF CAUSE:	FASIL GETNET MERSHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 15, 2023
JUDGMENT AND REASONS:	DINER J.
DATED:	FEBRUARY 16, 2023

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