

Federal Court



Cour fédérale

Date: 20230328

Docket: IMM-4082-22

Citation: 2023 FC 419

Ottawa, Ontario, March 28, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

TEDROS MEHARI ESSAK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Tedros Mehari Essak (the “Applicant”) seeks judicial review of the decision of an immigration officer (the “Officer”), refusing his application for permanent residence as a member of the Convention refugee abroad class or country of asylum class, within the scope of sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant is a citizen of Eritrea. He was recognized as a Convention refugee by the United Nations High Commissioner for Refugees (“UNHCR”) in 2018. He applied for permanent residence in Canada in December 2018.

[3] The Officer denied that application on the grounds of plausibility.

[4] The Applicant now argues that the Officer’s implausibility findings are unreasonable, that his status as a Convention refugee abroad was not considered, and that not all of the grounds of persecution were taken into account.

[5] The Minister of Citizenship and Immigration (the “Respondent”) argues that the absence of an affidavit from the Applicant dooms this application for judicial review, relying on the decision in *Okbet v. Canada (Citizenship and Immigration)*, 2021 FC 1303. Otherwise, he submits that the Officer made no reviewable error.

[6] The absence of an affidavit from the Applicant is not fatal to his application. I refer to the decision in *Emuze v. Canada (Citizenship and Immigration)*, 2021 FC 894, cited by the Applicant in reply. I agree with the submissions of the Applicant that the facts necessary to decide this application are included in the Certified Tribunal Record (“CTR”) and the affidavit of Zelalem Kibert, a legal assistant in the office of Counsel for the Applicant.

[7] The merits of the decision are reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C).

[8] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[9] Considering the contents of the CTR and the submissions, both written and oral, of the parties, I am satisfied that the decision does not meet the applicable legal test.

[10] The implausibility findings are unreasonable and in my opinion, affected the Officer's treatment of the Applicant's status as a Convention refugee abroad. That status is a critical fact and the reasons do not show why it was apparently discounted.

[11] I refer to paragraph 58 of the decision in *Ghirmatsion v. Canada (Citizenship and Immigration)*, [2013] 1 F.C.R. 261, where the Court noted that although status as a UNHCR refugee is not determinative, it is an important factor that an officer is obliged to consider. An officer is not bound by an applicant's UNHCR status but must provide an explanation for why a different conclusion was reached.

[12] In the result, the application for judicial review will be allowed, the decision set aside and the matter remitted to another officer for redetermination. There is no question for certification.

JUDGMENT in IMM-4082-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to a different officer for redetermination. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4082-22

STYLE OF CAUSE: TEDROS MEHARI ESSAK v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 15, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: March 28, 2023

APPEARANCES:

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