Federal Court  Cour fédérale

Date: 20230412

Docket: IMM-4090-22

Citation: 2023 FC 513

Toronto, Ontario, April 12, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

EYERUSALEM LULIE ANTENEH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Ethiopia, seeks judicial review of the decision of the Immigration Division [ID] of the Immigration and Refugee Board of Canada dated April 8, 2022 that found her inadmissible to Canada under paragraph 34(1)(f) of the *Immigration Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for membership in an organization that there are reasonable grounds to believe engages, has engaged or will engage in subversion by force of any government as contemplated in paragraph 34(1)(b) of the *IRPA*.

[2] For the reasons that follow, I am not satisfied that the Applicant has established any basis upon which the Court should intervene and accordingly, the application for judicial review shall be dismissed.

I. Background

[3] The Applicant is a 44-year-old citizen of Ethiopia. She relocated from Ethiopia to the United States in June of 2005. The Applicant went through various immigration processes in the United States, which were unsuccessful. The Applicant entered Canada via Roxham Road in August 2017 and made a refugee claim.

[4] The Applicant comes from a politically active family in Ethiopia. In the early to mid 2000s, the Applicant and her brothers were involved in an opposition political party called the All Amhara People's Organization and later the Coalition for Unity and Democracy [CUD]. Both the Applicant and her brothers were arrested multiple times for their political activism in Ethiopia.

[5] After the Applicant's arrival in the United States, she continued to support Ethiopian opposition groups. From July 2008 to May 2010, the Applicant became a supporter of an opposition organization called Unity for Democracy and Justice [UDJ].

[6] In 2013, one of the Applicant's brothers was tortured and killed while in police custody in Ethiopia. After his death, the Applicant's father also became politically active.

[7] Sometime after her brother's death, the Applicant became aware of an organization called Patriotic Ginbot 7 [G7]. G7 has consistently called for regime change in Ethiopia. The Applicant learned about G7 after it was discussed on the Ethiopian radio channel – the Ethiopian Satellite Television and Radio [ESAT] - in Dallas, Texas where the Applicant resided while she lived in the United States. The Applicant states that she listened to ESAT on a regular basis. She also heard about G7 as it was generally discussed in Ethiopian churches and the Ethiopian community in Dallas. The Applicant had previously supported CUD and the well-known leaders from CUD went on to form G7.

[8] In June of 2013, prompted by her brother's death, the Applicant attended a G7 meeting [2013 G7 Meeting]. The Applicant states that her purpose in attending the 2013 G7 Meeting was to learn more about what was happening in Ethiopia as she did not want what happened to her brother to happen to others. The Applicant states that her understanding was that G7's purpose was to bring peaceful change, democracy, equality and justice in Ethiopia and that the leader of G7 was a well-respected professor who always led peaceful organizations. The 2013 G7 Meeting took place at a hotel in Dallas with approximately three to four hundred people in attendance. The Applicant states that she liked what she heard at the 2013 G7 Meeting and considered herself a supporter of G7 from that point on.

[9] The Applicant states that prior to attending the 2013 G7 Meeting, she knew that the Ethiopian government considered G7 a terrorist organization. In her view, the Ethiopian government always described opposition groups as such so she did not believe that G7 was, in fact, a terrorist organization.

[10] After her attendance at the 2013 G7 Meeting, the Applicant states in her affidavit on this application that she did not take part in any other meetings or activities related to G7 until 2017. Specifically, the Applicant states that she: (a) did not become a member; (b) did nothing on a regular basis for the organization; (c) did not fundraise; (d) did not know any G7 members; and (e) did not discuss G7 with other people. In relation to the last point, the Applicant states that she did discuss information related to the news in Ethiopia and later encouraged people to contact their congressional representatives to vote for a United States draft bill HR-128 imposing sanctions on the Ethiopian government for breaching its citizens' constitutional rights.

[11] Sometime in 2017 (before arriving in Canada), the Applicant states that she decided to attend another G7 meeting [2017 G7 Meeting]. The Applicant states that she once again wanted to learn more about the current political situation in Ethiopia, as tensions were escalating. The 2017 G7 Meeting had also been advertised on ESAT. The event took place in a hotel with approximately 1,000 people in attendance. The Applicant purchased an entrance ticket that cost $130 USD. The Applicant states that her understanding from what she was told was that the entrance ticket price covered expenses related to the meeting such as the room rental fee and refreshments. The Applicant also provided her email address at the 2017 G7 Meeting to be included on a G7 email list. The Applicant states that she receives emails from G7 periodically, but did not open most of the emails that she received.

[12] The Applicant states that she never heard that G7 was trying to overthrow the Ethiopian government by force, either at the two aforementioned G7 meetings or in the general discussions of G7 in the Dallas Ethiopian community.

[13] The Applicant left Dallas on August 12, 2017 and travelled by land to enter Canada. In her initial refugee application forms, the Applicant declared that she was a supporter of G7 since June of 2013 and had previously supported the CUD and UDJ. In her amended Basis of Claim [BOC] form, the Applicant states that her "activities with G7 included attending meetings and rallies as well as providing financial support" and that "because of [her] public involvement with G7 in the US", she is afraid that she will be targeted by the government if returned to Ethiopia. On the Applicant's Schedule A Background/Declaration, she listed that she was a supporter of G7 from June 2013 until present.

[14] On April 10, 2018, the Applicant was interviewed by a Canadian Border Services Agency Officer concerning her involvement with G7. The Applicant states that the Officer who conducted her interview was the first person who told her that G7's platform advocated for the destabilization of the Ethiopian government by any means necessary, including violence. The Applicant states that she was very disappointed by this information and chose to stop supporting G7 from this point onward.

[15] On May 4, 2018, the Officer submitted a subsection 44(1) report stating that the Applicant was inadmissible under paragraph 34(1)(f) of the *IRPA* for being a member of G7 as it has engaged and continues to engage in subversion by force of the Ethiopian government. The report was forwarded to the ID for the purposes of conducting a private admissibility hearing pursuant to subsection 44(2) of the *IRPA*. As a result, the Applicant's claim for refugee protection was suspended pursuant to subsections 103(1) and 100(2)(a) of the *IRPA*.

[16] On April 15, 2021, the Applicant's case was referred to the ID and on October 26 to 27, 2021, the Applicant's admissibility hearing took place. At the hearing, the Applicant conceded the fact that G7 is an organization that has engaged in subversion by force. However, the Applicant asserted that she was unaware that G7 was engaging in or instigating the subversion by force of the government of Ethiopia and believed that their means were only peaceful. She submitted that she was never more than a supporter of various Ethiopian opposition groups that she understood were trying to stop injustices by a repressive government against the Ethiopian people and that her level of involvement with G7 was not significant enough to deem her a member of G7 for the purposes of paragraph 34(1)(f) of the *IRPA*.

[17] The determinative issue in the ID's decision was whether the Applicant was a member of G7 for the purposes of paragraph 34(1)(f). The ID considered various factors as outlined in the jurisprudence [see *PS v Canada (Citizenship and Immigration)*, 2014 FC 168 at paras 9-10] and made the following findings:

A. In relation to the Applicant's knowledge of G7's methods and goals, the ID found that there was ample evidence to conclude that the Applicant had knowledge of G7's methods and goals and that G7 advocated for armed struggle against the Ethiopian government. In making this finding, the ID noted that: (a) the Applicant attended the G7 meetings in 2013 and 2017; (b) the Applicant demonstrated a significant interest in the leader of G7 and testified to having watched videos of his speeches on Youtube or through ESAT; (c) the Applicant's evidence was that she regularly listened to ESAT, that she suspected ESAT may be owned and operated by G7 and the documentary evidence indicates ESAT news

reported on G7's military operations. The ID concluded it was more likely than not that by listening to ESAT, the Applicant was aware of G7's military operations and that her regular listening demonstrated her support for the activities of G7; and (d) the Applicant also was aware of the contents of at least some emails she received from G7 after she registered her email at the 2017 G7 Meeting.

B. In relation to the voluntariness of the Applicant's participation, the ID found that her participation was voluntary. The Applicant decided on her own to become involved with G7 and attended meetings and registered her email address voluntarily.

C. In relation to the degree to which her participation furthered G7's objectives, the ID found that the Applicant advocated for and encouraged people to sign the resolution for Bill HR-128 (which was addressed in some of the emails from G7) and in doing so, she furthered G7's objectives. In relation to financial support provided to G7 in the form of the Applicant's payment of $130 for an entrance ticket to the 2017 G7 Meeting, the ID found that the amount of money was "significant and demonstrates her interest to be actively involved in the organization and her belief in the objectives of the organization".

D. In relation to the degree to which her participation was combative/military, the ID acknowledged that her participation was in no way combative or military.

E. In relation to the Applicant's intention (as disclosed by statements and actions), the ID noted that: (a) the Applicant described herself as a supporter of G7; (b) the Applicant

testified that prior to her coming to Canada and learning more about the organization, that G7's goals did align with her own; (c) the Applicant demonstrated a significant interest in G7's leader, supported him and shared his objectives; (d) the Applicant remained concerned about the situation in Ethiopia and this led her to pursue her support of G7; (e) the Applicant participated in at least two meetings held by G7 in 2013 and 2017; and (f) the Applicant voluntarily agreed to register her email address with G7 at the 2017 G7 Meeting, which the ID found was an active form of demonstrating her interest in the organization.

F. In relation to the duration of the Applicant's participation, the ID found that, as listed in her Schedule A/Declaration, the Applicant supported G7 for five years from 2013 to 2018.

G. In relation to the Applicant's membership in related supportive groups, the ID found that the Applicant previously supported related opposition groups in Ethiopia dating back to 2004 for a total duration of three years, in particular supporting CUD from April 2004 to June 2005 (an organization previously led by the current and founding leader of G7).

[18] The ID considered the Applicant's testimony and the documentary evidence which included her prior statements and the answers provided in her immigration and refugee documentation. The ID preferred the Applicant's "first story" or earliest recounts at the port of entry and her interview with CBSA in relation to her membership in G7. The ID stated that an Applicant's first story/statement (provided prior to knowing the repercussions that certain admissions may have) should be given more weight than a different statement which was made

later. The ID was of the view that the Applicant's testimony provided at the hearing was confusing and evasive, and appeared to be an attempt to tailor her evidence, minimize her involvement and distance herself from being a member of G7 in order to avoid a finding of inadmissibility.

[19] The ID found that the Applicant was a member of G7 and was therefore inadmissible under paragraph 34(1)(f) of the *IRPA*. The ID issued a deportation order to remove the Applicant to Ethiopia.

II. Relevant Legislation

[20] The relevant provisions of the *IRPA* state as follows:

Rules of Interpretation	**Interprétation**
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
Security	**Sécurité**
34(1) A permanent resident or a foreign national is inadmissible on security grounds for	34(1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
…	…
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
…	…
	f) être membre d'une organisation dont il y a des motifs raisonnables de croire

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

III. Issues and Standard of Review

[21] The Applicants submit that this application for judicial review raises the following issues: (a) whether the ID's assessment of the activities that constitute membership is unreasonable; (b) whether the ID erred in its credibility findings; and (c) whether the ID erred in conflating "subversion" with "subversion by force".

[22] While I will address each of these issues in turn, the central question before the Court is whether the decision of the ID was reasonable.

[23] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

IV. Analysis

A. *The ID did not err in its membership determination*

[24] The standard of proof that applies to an inadmissibility determination under section 34 is "reasonable grounds to believe", which is low [see section 33 of the *IRPA*]. "Reasonable grounds to believe" is more than mere suspicion but less than the civil standard of balance of probabilities [see *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 at paras 11-13]. Reasonable grounds will exist where there is an objective basis for the belief, based on compelling and credible information [see *Mugesera*, *supra* at para 114]. Put differently, reasonable grounds to believe are established where there is a *bona fide* belief of a serious possibility, based on credible evidence [see *Hadian v Canada (Citizenship and Immigration)*, 2016 FC 1182 at para 17, citing *Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297 (FCA) at para 60].

[25] "Member" or "membership" is not defined in the *IRPA*. However, the jurisprudence has consistently held that the term should be given an "unrestricted and broad" interpretation given that the context at play concerns national security and public safety [see *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 27-29].

[26] The Federal Court of Appeal has held that being a member simply means "belonging" to an organization [see *Chiau*, *supra* at paras 55-62]. Formal or actual membership in an organization is not required and informal participation or support for a group may suffice, depending on the nature of that participation or support [see *Kanapathy v Canada (Public Safety and Emergency*

Preparedness), 2012 FC 459 at para 34]. There is no need for a significant level of integration within the organization [see *Poshteh, supra* at paras 30-31; *Canada (Public Safety and Emergency Preparedness v Ukhueduan*, 2023 FC 189 at para 22].

[27] Nothing in paragraph 34(1)(f) requires or contemplates a complicity analysis in the context of membership, nor does the text of this provision require a member to be a "true" member who contributed significantly to the wrongful actions of the group [see *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 22].

[28] Given that section 33 of the *IRPA* states that the facts giving rise to inadmissibility include facts that "have occurred, are occurring or may occur", this Court has interpreted this to mean that "membership" is without temporal constraints. This means that a decision maker need only ask whether the applicant is or has been a member of that organization. The decision maker need not match an applicant's active membership to when the organization at issue carried out the subversive acts [see *Al Yamani v Canada (Public Safety and Emergency Preparedness*), 2006 FC 1457 at para 12].

[29] In determining the question of membership, not every act of support for an organization will constitute membership. Where there are some factors which suggest that the Applicant was in fact a member and others which suggest the contrary, those factors must be reasonably considered and weighed [see *Poshteh, supra* at para 36; *Krishnamoorthy v Canada (Citizenship and Immigration)*, 2011 FC 1342; *Thiyagarajah v Canada (Citizenship and Immigration)*, 2011 FC 339 at para 20]. Generally, the factors relevant for deciding whether an applicant is a member of

an organization for the purpose of section 34 include the nature of the applicant's involvement in the organization, the length of time involved and the degree of commitment to the organization's goals and objectives [see *B074 v Canada (Citizenship and Immigration),* 2013 FC 1146 at para 29].

[30] However, a person's admission of membership in an organization is sufficient to meet the membership requirement within the meaning of paragraph 34(1)(f) of the *IRPA*, "[r]egardless of the nature, frequency, duration or degree of involvement" [see *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at para 11; *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 at para 31; *Ukhueduan, supra* at para 23]. Once membership is admitted, it is membership for all purposes [see *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at paras 24-25; *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 at paras 50-51].

[31] The Federal Court of Appeal in *Poshteh* instructs that the assessment of membership is within the ID's expertise and therefore, deference to the ID is required on judicial review [see *Poshteh*, *supra* at para 36].

[32] The Applicant submits that her actions in support of G7 do not rise to the level of membership and that the ID failed to properly assess her activities. The Applicant states that she did not engage in any of the activities which traditionally constitute membership such as attending regular meetings, paying dues, distributing flyers/literature or promoting the organization, fundraising, recruiting members, organizing in any capacity, holding any kind of responsibility, being part of any organizational structure or reporting to a superior. The Applicant asserts that the

ID's finding that her activities, on their own or together, constitute membership is unreasonable. She asserts that her activities were minimal, and they were either passive actions or acts or beliefs that are within her rights to freedom of expression and opinion. The Applicant raised a number of specific arguments related to the ID's findings regarding the duration and consistency of her support for G7, her financial contribution to G7, her informal advocacy for Bill HR-128, her signing up for G7 emails, her following ESAT, her membership in other organizations and her respect and support for G7's leader.

[33] I am not satisfied that the Applicant has demonstrated any error on the part of the ID in determining that there were reasonable grounds to believe that she is a member of G7. The ID identified and applied the correct legal principles and conducted a thorough assessment of the evidence before it (as detailed above). Keeping in mind the low standard of proof and the deference owed to the ID in the assessment of membership, I find that it was reasonably open to the ID to conclude that the Applicant's activities were not minimal and were sufficient to constitute membership for the purposes of paragraph 34(1)(f). The various arguments advanced by the Applicant amount to a request for the Court to reweigh the evidence that was before the ID and reach a different conclusion, which is not the role of the Court on an application for judicial review.

B. ***The ID did not err in its credibility findings***

[34] The Applicant submits that the ID erred and was overzealous in its negative credibility findings. The Applicant asserts that: (a) the ID's claims that the Applicant made early statements that implicate her and later distanced herself from such statements are confused and ill-founded,

as the Applicant has been consistent in her statements and testimony; (b) though some of the Applicant's answers may have been hard to follow, she only has four years of formal education; (c) the ID disregarded the "psychological evidence" and the fact that the subject matter of the hearing involved emotionally-charged topics involving her family's history of persecution; (d) the ID's finding that the Applicant must be aware of G7's military operations from listening regularly to ESAT was an insufficiently grounded plausibility finding as the basis of this was one article; (e) the ID's finding that the Applicant must have been aware of G7's military actions through watching G7's leader's speeches through YouTube and ESAT is unfounded as there is no evidence on the record that these speeches discussed the use of force; and (f) the ID disregarded evidence confirming the Applicant's contention that though she was aware the Ethiopian government considered G7 a terrorist organization, that it is a common suppression tactic for the Ethiopian government to label any opposition group as such.

[35] I am not satisfied that there is any merit to the Applicant's assertions. The ID's role was to determine whether the Applicant was a member of G7 and it did so upon a review of the totality of the evidence, submissions and testimony of the Applicant. It was reasonable for the ID to note the changes in the Applicant's testimony and to conclude that her evidence provided at the admissibility hearing appeared to be an attempt to tailor her evidence and distance herself from being found to be a member of G7. In that regard, it must be recalled that for the purpose of her refugee claim, the Applicant stated that her involvement with G7 in the United States was so public that it would cause her to be at risk if she were returned to Ethiopia.

[36] Moreover, the ID's finding that the Applicant was evasive and offered confusing answer's during questioning at the admissibility hearing was also reasonable, notwithstanding the level of the Applicant's education or the nature of the issues being addressed. I find that the balance of the Applicant's assertions do not relate to any credibility concerns raised by the ID, but rather go to its assessment of the evidence leading to its membership determination, which I have already found to be reasonable.

C. *The ID did not conflate "subversion" with "subversion by force"*

[37] The Applicant submits that the ID erred by conflating subversion of a government by force with subversion of a government. The Applicant asserts that the ID erred by assuming that because she supports a change to the Ethiopian government that she also supports the Ethiopian government being changed by force.

[38] I reject the Applicant's assertion. The Applicant is correct that the intention to subvert by force, rather than by some other means, is critical to the applicability of paragraph 34(1)(b) as held in *Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077. However, this principle was enunciated by the Court in the context of assessing whether the organization itself – here, G7 - has engaged in subversion by force, not in the context of an assessment of membership. The Applicant conceded before the ID that G7 has engaged in subversion by force (there being clear evidence before the ID that G7 had carried out at least one deadly attack against Ethiopian government soldiers). Despite the Applicant's assertion that she was unaware of G7's position with respect to the use of force when she supported the organization, the jurisprudence (as cited

above) is clear that there is no temporal restriction to paragraph 34(1)(f) of the *IRPA*, nor any complicity requirement.

V. Conclusion

[39] In light of my findings above, the application for judicial review shall be dismissed.

[40] Neither party raised a proposed question for certification and I agree that none arises.

JUDGMENT IN IMM-4090-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question will be certified.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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