

Federal Court



Cour fédérale

Date: 20230623

Docket: IMM-9389-21

Citation: 2023 FC 884

Ottawa, Ontario, June 23, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ZEWDNESH TEKTEL ENGDWORK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Zewdinesh Teketel Engdawork (“Ms. Engdawork”), applied for a permanent resident visa as a member of the Convention refugee abroad class or as a member of the humanitarian-protected persons abroad class (“Refugee Abroad Visa”) as defined in sections 144-147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. She fled her country of citizenship, Ethiopia, approximately ten years ago and has been living with insecure

temporary status in Israel since then. A Migration Officer at the Embassy of Canada to Israel (“the Officer”) interviewed Ms. Engdawork to assess her claim and then refused her Refugee Abroad Visa in December 2021. Ms. Engdawork challenges this decision on judicial review.

[2] Ms. Engdawork makes several arguments challenging the Officer’s decision. I need not address every argument. I find there are several serious deficiencies in the Officer’s analysis, leaving me with little confidence in their reasoning and determination. The Officer did not assess Ms. Engdawork’s claim with the careful attention required, particularly considering the stakes for Ms. Engdawork, who had been living with precarious status for many years while waiting for approximately three years for her Refugee Abroad Visa to be determined (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133 [*Vavilov*]).

[3] I am satisfied that the Officer misapprehended the documentary evidence on a central credibility finding. I am also satisfied that the Officer made unreasonable implausibility findings regarding Ms. Engdawork’s ability to leave Ethiopia on her own passport and her ability to renew this passport in Israel. This assessment was grounded in speculation and assumptions instead of in evidence.

[4] Based on the reasons below, I grant the application for judicial review.

II. Background

[5] Ms. Engdawork was a member of an Ethiopian opposition party, United for Democracy and Justice (“UDJ”). During her work as a kindergarten teacher in Ethiopia, Ms. Engdawork

claimed that she spoke to parents about the work of the UDJ. She claimed this activity brought her to the attention of the authorities. Later, in 2012, Ms. Engdawork claimed security forces came to her home and informed her that she was under investigation for mobilizing against the security forces. She was then detained for approximately four months. Following her release, Ms. Engdawork claimed that the security forces monitored her activities.

[6] Prior to her detention, Ms. Engdawork had obtained a group visa for travel to Israel as part of a pilgrimage. In 2013, she left Ethiopia on this visa. Ms. Engdawork made a claim for refugee protection in Israel, which is still pending. She obtained a temporary conditional visa in Israel, which as she noted in her Refugee Abroad Visa application to Canada, requires renewal and does not give her the right to work, attend school, or travel freely in the country.

[7] In December 2018, Ms. Engdawork filed her Refugee Abroad Visa. She did not have legal counsel. In December 2021, the Officer interviewed her with the assistance of an interpreter. The Officer's notes of this interview are provided in the Certified Tribunal Record and are considered part of their reasons for the decision (*Sedoh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1431 at para 36). The Officer put a number of concerns to Ms. Engdawork in this interview and advised her at the end of the interview that her answers were not satisfactory. The Officer issued the formal decision refusing her Refugee Abroad Visa two days later.

III. Issues and Standard of Review

[8] The issues I am considering on this judicial review, namely the Officer's consideration of the evidence and implausibility findings, relate to the merits of the decision. Therefore, I will review the decision on a reasonableness standard (*Vavilov* at para 10).

[9] I note that Ms. Engdawork made a procedural fairness argument regarding the translation of the date of issue of the membership card she showed to the Officer at the interview. There was no evidence before me from Ms. Engdawork as to what had occurred during the interview nor any complaints about the interpretation provided. There is also no recording of the interview. Considering this, I prefer to evaluate instead Ms. Engdawork's secondary argument about the membership card, which is that the Officer needed to consider the evidence in the record about the Ethiopian calendar when making a finding about the date of issue. The parties agree, as do I, that I should evaluate this issue on the reasonableness standard.

[10] The Supreme Court of Canada in *Vavilov* described a reasonable decision as "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 para 85). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

A. *Negative Inference Based on Membership Card Issue Date*

[11] The Officer drew a negative inference based on Ms. Engdawork's membership in the UDJ party for approximately nine years before being targeted by the authorities. The Officer's factual determination as to the length of her membership is unreasonable. Further, the Officer misapprehended Ms. Engdawork's claim; the triggering event was not her membership but her active recruitment of others to join the party.

[12] During the interview, the Officer asked Ms. Engdawork when she joined the UDJ party. Ms. Engdawork replied that she was not sure and pulled out her membership card. Beside "date of issue," the membership card stated: 18/06/2003. From this, the Officer concluded that Ms. Engdawork had joined the party in the year 2003 of the Gregorian calendar. Based on this date, the Officer drew a negative credibility inference because Ms. Engdawork "was a member for 9 years before she states that she was persecuted for her involvement." There are a number of problems with this analysis.

[13] First, the Officer does not turn their mind to the possibility that the date of issue was provided according to the Ethiopian calendar, which, as noted in the evidence before the Officer, is 7 or 8 years behind the Gregorian calendar. Also, as noted by the Applicant's counsel, the evidence in the record confirmed that the UDJ was founded sometime in 2008, making the 2003 date an impossibility. Further, as the Respondent acknowledged at the hearing, Ms. Engdawork was not claiming that her UDJ membership alone brought her to the attention of the authorities. Rather, she alleged she was targeted because of her discussions about the UDJ party with parents of the children she taught at her kindergarten.

[14] The Respondent argued that even if the Officer's inference on this point is unreasonable, it is not determinative because the claim would have failed based on the Officer's other findings. I need not decide whether this error is determinative, given my further findings with respect to the Officer's implausibility determinations. However, I do not accept that this was a minor issue or factor in the Officer's reasoning. The Officer misapprehended the length of Ms. Engdawork's membership in the opposition political party and the trigger for the authorities' interest in her activities, which were the core bases of her claim for refugee protection.

[15] In any case, as I explain below, this is not the sole basis on which I find the Officer's decision unreasonable. I also find the Officer's implausibility findings unreasonable.

B. *Ability to Leave and Renew Passport*

[16] The Officer made two central implausibility findings. First, the Officer found it implausible that Ms. Engdawork would have been able to leave Ethiopia without incident when she claimed she was being monitored by the security forces. Second, the Officer did not believe that Ms. Engdawork would have applied to the Ethiopian authorities in Israel to renew her passport if she had been truly afraid. There is no reference to evidence to support these findings. The Officer bases both implausibility findings on assumptions.

[17] With respect to being able to leave Ethiopia, Ms. Engdawork explained to the Officer that she left without a problem because she had a group visa to travel for a pilgrimage and that visa had been issued prior to her detention. The Officer makes no reference to any evidence about the strength of exit controls in Ethiopia but finds that Ms. Engdawork's ability to leave must mean

that her fear of Ethiopian authorities is not credible. This finding is based on the Officer's assumption that an individual who is monitored by security forces would not be able to leave the country. The Officer makes no reference to any documentary evidence to support this finding.

[18] The second implausibility finding relates to the Officer's view of the risk of approaching Ethiopian authorities in Israel to renew a passport. The Officer finds that Ms. Engdawork could not have been fearful of returning to Ethiopia because she approached the authorities to renew her passport. Underlying the Officer's finding is the assumption that renewing an Ethiopian passport in Israel would put an Ethiopian dissident at risk. There is no evidentiary support for this assumption. Without this assumption, the Officer's reasoning does not add up. Moreover, Ms. Engdawork explained at her interview that she was told her temporary status in Israel could not be renewed without a valid passport and that the passport could be renewed at the Ethiopian embassy in Tel Aviv. The Officer notes this explanation but does not engage with it. For example, the Officer does not consider what it would mean for Ms. Engdawork to lose her status, even temporary conditional status, in Israel.

[19] The Respondent argued that I should consider the Officer's findings as ones made by an expert who has heard many refugee claims and that I should consider these inferences as based on this experience. However, the Officer does not explain their findings in this way. The assumptions the Officer makes are unacknowledged.

[20] This Court and the Federal Court of Appeal have repeatedly held that implausibility findings in the refugee context must only be made in "the clearest of cases" where "the facts as

presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant” (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7 [*Valtchev*]; *Al Dya v Canada (Minister of Citizenship and Immigration)*, 2020 FC 901 at paras 27-29 [*Al Dya*]). None of the implausibility findings relied upon by the Officer could be described as the “clearest of cases.”

[21] The Officer’s reasoning does not support a view that the events, as described by Ms. Engdawork, are “clearly unlikely... based on common sense or the evidentiary record” or “outside the realm of what could reasonably be expected” (*Al Dya* at para 32; *Valtchev* at para 7).

V. Conclusion

[22] The Officer did not approach their assessment of Ms. Engdawork’s claim for Canada’s protection with the required care and attention. The Officer drew negative inferences without evidentiary support. The decision is unreasonable and must be sent back to be redetermined by a different officer. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-9389-21

THIS COURT'S JUDGMENT is that :

1. The application for judicial review is allowed;
2. The matter is sent back to a different officer for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9389-21

STYLE OF CAUSE: ZEWDNESH TEKTEL ENGDAWORK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 16, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

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