

Date: 20081117

Docket: IMM-1877-08

Citation: 2008 FC 1223

Ottawa, Ontario, November 17, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

DEREGE LEMMA WOLDEGABRIEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2002, c. 27 (the Act), of a decision of a PRRA officer (the officer), dated March 6, 2008, rejecting the application of a pre-removal risk assessment (PRRA) by Derege Lemma Woldegabriel (the Applicant).

I. Issues

[2] This application raises the following issues:

- a. Did the PRRA officer err in attaching minimal weight to the declaration of the Applicant's father because the father had a vested interest in support of a positive outcome for his son?
- b. Did the PRRA officer err in failing to consider evidence which suggested that the Applicant was at risk in Ethiopia as a suspected supporter of an opposition party?
- c. Did the PRRA officer err in failing to consider evidence which suggested that the Applicant was at risk in Ethiopia as a young male?

[3] For the following reasons, the application for judicial review shall be dismissed.

II. Factual Background

[4] The Applicant, a 30 year old citizen of Ethiopia and permanent resident of Canada who was granted landing on May 7, 1993, was ordered deported for criminality. The Immigration Appeal Division (IAD) granted the Applicant a stay of his deportation order on terms and conditions, but the Applicant re-offended, resulting in the cancellation of his stay by a decision of the IAD on May 23, 2007. As a person under an effective removal order, the Applicant was offered the possibility of applying for a PRRA.

[5] The Applicant's father, Lemma Woldegabriel, is a former citizen of Ethiopia who was at one time a member of the Ethiopian Democratic Union (EDU) which stood in opposition to the ruling party. The Applicant's father attended numerous rallies in opposition to the government and was arrested on three separate occasions by government officials. The father's three eldest brothers

were also EDU members who were arrested and one of the father's brothers was tortured by government officials.

[6] The Applicant's father left his wife and children behind and bribed his way out of Ethiopia in 1981. He made his way to Kenya, where he applied for asylum and was accepted as a Convention refugee. The Applicant's mother was harassed on countless occasions in relation to her husband's whereabouts.

[7] The Applicant and his siblings were smuggled out of Ethiopia as their father reasoned that they would never have been issued a passport because of his activities. The Applicant made his way to Canada in 1993.

[8] In Ethiopia, the authorities took the Applicant's mother into custody after the departure of her children. The mother became sick while in custody and later died.

[9] The Applicant's brother, Alemayehu Woldegabriel, was deported from Canada to Ethiopia in 1998. After landing at the airport, he was kept in custody for a week, where he was beaten.

[10] During student protests in Ethiopia in 2001, the Applicant's uncle and cousin were arrested in relation to allegedly letting students photocopy anti-government pamphlets at the uncle's work premises. The Applicant's brother Alemayehu and his cousin were tortured. Following this incident, Alemayehu was required to report to the police on a weekly basis but he fled to Kenya and

forwarded a claim for asylum, which was awaiting adjudication at the time of the Applicant's PRRA hearing.

[11] The Applicant submitted a PRRA application on April 9, 2007, where he set out the following four fears:

- a) He would be targeted by Ethiopian authorities in relation to his father's membership in the EDU party. He would be kept in custody on the suspicion that he is or was a sympathizer or a member of two branches of the EDU, the Coalition for Unity and Democracy (CUD) (also known as Kinijit) or the United Ethiopian Democratic Forces (UEDF) and would be tortured and/or killed.
- b) He would be targeted because he is a young Ethiopian male. All young males are at significant risk of arrest and torture by the government on the suspicion that they are subversive.
- c) The Applicant would be tortured and/or killed by the Ethiopian authorities for having previously bribed his way out of Ethiopia.
- d) He would be targeted by the authorities because of his brother Alemayehu's history with the authorities and his brother's failure to report as required. The authorities would either impute an anti-government agenda to the Applicant, believe him to be complicit in his brother's crimes and punish him for this or they would simply punish him for his brother's failure to report.

III. Decision Under Review

[12] The officer rejected the application and determined that the Applicant would not be subject to a risk of persecution, a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment if removed to his country of nationality.

[13] The officer attached minimal weight to the declaration by the Applicant's father for the following reasons:

- a) The father had a vested interest in support of the positive outcome of his son.
- b) The declaration did not substantiate the allegations set out in the Applicant's application for protection, which were speculative and unsupported by objective evidence.
- c) The declaration indicated that he was an EDU party member who held up posters and attended rallies that opposed the government. The evidence was insufficient to demonstrate that the Applicant's father was such a prominent activist or high profile member within the EDU movement that the authorities would detain or harm the Applicant based on his ties with his father. The officer relied on a UK Home Office Operational Guidance note which mentioned that the calming of the political situation in 2006 meant that claimants who were mid or low profile activists or associates within the CUD alliance of parties were unlikely to be at risk of ill treatment amounting to persecution.

[14] The evidence did not satisfy the officer that the Applicant would be a person of interest to the authorities in Ethiopia based on his father's membership in the EDU party. The officer also noted that the Applicant's father has been absent from Ethiopia for 20 years.

[15] The officer then rejected the Applicant's argument that he is at risk as a young Ethiopian male as this risk was unsupported by objective documentary evidence. Citing *Kaba v. Canada*, 2007 FC 647, 160 A.C.W.S. (3d) 524, the officer stated that the Applicant did not provide sufficient evidence of a personalized risk that is distinguishable from that of the general population in Ethiopia.

[16] The officer concluded that the Applicant would not be targeted because of his illegal exit of Ethiopia for the following reasons:

- a) The Applicant had left Ethiopia over 10 years beforehand and the evidence was insufficient to satisfy the officer that the Applicant would be a person of interest to the authorities should he return.
- b) There was no evidence to indicate that authorities were aware of the Applicant's departure from Ethiopia, nor was there any documentary evidence introduced regarding the persecution of persons who had left Ethiopia illegally.

[17] The officer also rejected the Applicant's argument that he is at risk because of his brother's history at the hands of the authorities because this risk was unsupported by documentary evidence.

The letter submitted by the Applicant's brother did not identify the personal circumstances of the Applicant, nor did it corroborate the risks identified in the PRRA application.

[18] The Applicant's declaration was accorded minimal weight, as it did not substantiate any of the risks identified in the PRRA application, because the declaration simply stated that the Applicant's fears are set out in the declaration of his father. Moreover, the Applicant's declaration did not contain any additional information relating to his personal circumstances nor did it contain any objective evidence to support the alleged risks outlined in the PRRA application.

[19] The officer commented the country conditions in Ethiopia and acknowledged that opposition leaders and party members were harassed, intimidated and in some cases detained prior to and during the 2005 elections. However, the PRRA process is an assessment of risk on a forward-looking basis. As such, based on the totality of evidence, the officer found on a forward-looking basis, there is no more than a mere possibility that the Applicant would be persecuted in Ethiopia nor is he more likely than not to face a risk of torture, or risk to life, or a risk of cruel and unusual treatment or punishment should he return to Ethiopia.

IV. Analysis

A. Standard of Review

[20] Prior to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, a PRRA decision was assessed on a standard of reasonableness *simpliciter* (*Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] 4 F.C.R. 387 and

Demirovic v. Canada (Minister of Citizenship and Immigration), 2005 FC 1284, 142 A.C.W.S. (3d) 831). It was also held that questions of fact were to be reviewed on a standard of patent unreasonableness, questions of mixed fact and law on a standard of reasonableness, and questions of law on a standard of correctness (*Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, 272 F.T.R. 62 at paragraph 19).

[21] Following *Dunsmuir*, the review of PRRA decisions should continue to be subject to deference by the Court and are reviewable on the newly articulated standard of reasonableness. As a result, this Court will only intervene to review a PRRA officer's decision if it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at paragraph 47). For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process.

1. *Did the PRRA officer err in attaching minimal weight to the declaration of the Applicant's father because he had a vested interest in support of a positive outcome for his son?*

[22] The officer attached little weight to the declaration of the Applicant's father on the basis that it was self-serving. The Applicant submits that in doing so, the officer erred in law. The declaration prepared by the Applicant's father confirmed he was a member of the EDU, which ultimately devolved into two different parties. The Applicant asserted that because of the current government's documented treatment of members and sympathizers of the two new opposition parties (the UEDF and the CDU), there were substantial grounds to believe that the Applicant would be detained and tortured because of his father's previous links to the EDU, which would cause the current government to believe that he was sympathetic to the political agenda of the opposition parties.

[23] According to the Applicant, the officer ignored the part of the father's declaration mentioning the Applicant's brother, who was in a similar situation to that of the Applicant and who was taken into detention for a week by the Ethiopian authorities upon his return to that country and beaten, because of a lack of objective evidence. The Applicant submits it is reasonable to believe that the Applicant would suffer the same type of treatment his brother endured if he was returned to Ethiopia.

[24] The Respondent asserts that the officer's reasons for attaching minimal weight to the declaration were several and well-reasoned. He provided clear reasons for attaching minimal weight to the declaration of the Applicant's father which went well beyond the statement that he had a vested interest in a positive outcome for his son (*Kimbudi v. Canada (Minister of Employment and Immigration)*, 40 N.R. 566 (F.C.A.)).

[25] I find that the officer's decision to attach minimal weight to the declaration of the Applicant's father was reasonable in the circumstances. His analysis probed beyond the vested interest of the father and considered other elements such as the father's role and position within the opposition party and the fact that the Applicant's father left Ethiopia over 20 years ago.

2. *Did the PRRA officer err in failing to consider evidence which suggested that the Applicant was at risk in Ethiopia as a suspected supporter of an opposition party?*

[26] According to the Applicant, the Ethiopian authorities had been brutal in their treatment of political dissent. He noted the government's propensity to engage in arbitrary arrest and detention,

particularly of those suspected of sympathizing with or being members of the opposition and he pointed out reports that detainees were often beaten or mistreated by security officials (Applicant's Record, pages 40, 42 and 69). The Applicant states that he would be at risk of persecution, torture or being subjected to cruel and unusual treatment or punishment if he were returned to Ethiopia in relation to the crimes of his brother in the belief that he was complicit.

[27] The Applicant contends that the officer ignored the fact that the Applicant's brother was tortured and beaten in relation to alleged anti-government activities and fled Ethiopia in contravention of the requirement to sign in every week with the police. Given that his mother was repeatedly harassed and jailed following her husband's flight from Ethiopia, the Applicant alleges that there are substantial grounds to believe that the Ethiopian authorities would arrest and target a family member in relation to the crimes of his brother or to the political beliefs of his father.

[28] The Applicant believes he is at risk upon return to Ethiopia because of his father's previous membership in the EDU and that he would be stigmatized by his father's membership in an opposition party and targeted as a suspected member or sympathizer of an opposition party.

[29] The officer found the fear of the Applicant to be speculative and unsupported by the documentary evidence. He found that the Applicant's father's profile was not sufficiently high that the Applicant would be detained and harmed upon return to Ethiopia. He relied on a UK Home Office report, which indicated that only higher level activists were at risk of ill treatment amounting to persecution.

[30] The Applicant does not dispute that the officer was entitled to prefer the findings of the UK report over those he cited in the U.S. Department of State report. However, the Applicant cites *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35 (F.C.T.D.) and submits that the officer erred because he overlooked or misconstrued the evidence that suggests that it was not just high profile activists, but even those suspected of sympathizing with political opposition parties, who were at risk of persecution.

[31] The Respondent argues the PRRA officer provided a very detailed analysis of the documentary evidence and assessed the Applicant's claimed risks according to that evidence. The officer concluded that the Applicant lacked the profile or personal circumstances of an individual who, on a forward-looking basis, would face more than a mere possibility of risk of harm. That conclusion was reasonably open to the officer.

[32] According to the Respondent, the Court has consistently held that it will not reweigh the evidence that was before the decision-maker because this task belongs to the officer conducting the assessment and this does not give rise to judicial review. There is also a presumption that the PRRA officer has considered all of the evidence before him. The Respondent cites many cases to illustrate that a decision-maker must not refer to every piece of evidence before him and the failure to mention a piece of evidence does not mean that it was not considered.

[33] As noted by the Respondent, there is a presumption that the officer has considered all the evidence before him. The Applicant cites *Cepeda-Gutierrez* and submits that the officer failed to consider or omitted to discuss contradictory evidence in his reasons because this would contradict his findings of fact. However, on page 4 of his reasons, the officer enumerates various submissions provided by the Applicant and states: “I have conscientiously reviewed and considered all of the evidence for the purposes of this assessment.”

[34] This Court concludes that the decision-maker has considered the facts of this case and the relevant evidence before him. He has provided a reasonable conclusion which does not warrant the Court’s intervention.

3. *Did the PRRA officer err in failing to consider evidence which suggested that the Applicant was at risk in Ethiopia as a young male?*

[35] The Applicant fears he would be subject to arbitrary arrest and torture as a young Ethiopian male because the Ethiopian government has a history of targeting such individuals. The Applicant’s position is supported by Donald N. Levine, a professor of sociology with the University of Chicago and a monitor of Ethiopia’s 2005 election, who chronicled the arrest of thousands of young males and transport to distant hardship prisons. The Applicant submits that by ignoring and failing to comment on this information which suggested that he was at risk as a young male, it is submitted that the officer breached the principles set out in *Cepeda-Gutierrez* and erred in law.

[36] The Respondent says that after reviewing the documentary evidence, the officer concluded that the evidence did not support the Applicant’s claim that all young Ethiopian males are at

significant risk of arrest and torture by the government on suspicion that they are subversive. The fact that the officer did not mention a portion of a sentence from a journal article does not mean that the officer erred. As the Court stated in *Cupid v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 176, 155 A.C.W.S. (3d) 396, at paragraph 17: “the PRRA Officer did not err by failing to make explicit reference to every negative comment in the country condition documentation”.

[37] The officer correctly determined that the Applicant’s specific allegation was unsupported by the objective documentary evidence. As previously mentioned, he has considered the evidence before him and his conclusion was reasonable. The Court finds no reviewable error in the officer's analysis of the objective evidence.

[38] The parties did not propose any serious question of general importance and in my view, none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1877-08

STYLE OF CAUSE: **DEREGE LEMMA WOLDEGABRIEL
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

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