

Federal Court



Cour fédérale

Date: 20150921

Docket: IMM-1414-14

Citation: 2015 FC 1096

Ottawa, Ontario, September 21, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

TEKIE BEYEN HAILU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2005, Mr Tekie Beyen Hailu obtained refugee protection in Canada based on his fear of political persecution in Eritrea. He applied for permanent residence in Canada but was turned down on the basis that he was inadmissible for having been a member of an organization that had engaged in terrorism (pursuant to ss 34(1)(f), 34(1)(c) of the *Immigration and Refugee Protection Act* [IRPA], SC 2001, c 27 – see Annex for enactments cited).

[2] In particular, Citizenship and Immigration Canada [CIC] concluded that there were reasonable grounds to believe that Mr Hailu had been a member of the Eritrean Liberation Front [ELF] and the ELF-Revolutionary Council [ELF-RC].

[3] Mr Hailu contends that CIC treated him unfairly by relying on two reports that were never disclosed to him. In addition, he maintains that CIC's decision was unreasonable because it applied overly broad definitions of both "membership" and "terrorism". Finally, Mr Hailu argues that the decision violated his rights under s 7 of the *Canadian Charter of Rights and Freedoms*. He asks me to overturn CIC's decision and return his application for reconsideration.

[4] I agree with Mr Hailu that he was treated unfairly. This is a sufficient basis on which to allow this application for judicial review. I need not deal with the other grounds Mr Hailu raised.

II. Factual Background

[5] Mr Hailu became a member of the ELF in 1979 when he was almost 20 years old. He attended meetings, handed out leaflets, helped raise funds, and recruited youth members. His activities resulted in his being detained by the Mengistu regime for three months in 1981. He was tortured and shackled.

[6] On his release, Mr Hailu left Eritrea to live in Addis Ababa, Ethiopia. He returned to Eritrea in the early 1990s after the ELF had been defeated by the Eritrean People's Liberation Front [EPLF]. He resumed his activities in the ELF.

[7] Mr Hailu opposed the war that broke out between Eritrea and Ethiopia in 1998. Police came looking for him in 2000, so he fled to Sudan. From there, he voiced his criticism of the EPLF and its human rights violations.

[8] Mr Hailu left Sudan in 2001 because of the poor treatment of Eritrean refugees there. An agent arranged for him to leave for the United States, travelling through China and Korea. Mr Hailu sought asylum in the US, and was detained there for 35 days. After his release, he lived with relatives, and attended anti-EPLF demonstrations.

[9] Mr Hailu's US asylum claim was turned down and he was ordered to leave the country in 2004. He travelled to Canada and claimed refugee protection here.

[10] In 2005, CIC informed Mr Hailu that he might be inadmissible under s 34(1)(f) of IRPA, but later determined that there was insufficient evidence to support that allegation. Later that year, a panel of the Immigration and Refugee Board granted Mr Hailu's application for refugee protection. Mr Hailu immediately applied for permanent residence.

[11] In 2010, after considering the results of interviews with Mr Hailu and reviewing his written submissions, CIC concluded that he was inadmissible to Canada as a member of the ELF and ELF-RC.

III. CIC's Decision

[12] CIC reviewed the history of the conflict between Eritrea and Ethiopia and described the roles of ELF and ELF-RC. In particular, it outlined the conflicts and attacks in which the ELF had been involved prior to 1972.

[13] CIC based its decision regarding Mr Hailu's inadmissibility on interviews with him and on his various written submissions. It found that, while Mr Hailu had not engaged in any armed conflicts or military service, he had attended secret meetings, distributed materials, raised funds, and recruited other members, and therefore he was a member of a terrorist organization under s 34(1) of IRPA.

[14] CIC also took note that the term "membership" has a broad and unrestricted meaning in the case law, which is reflected in CIC's Enforcement Manual. It drew the definition of "terrorism" from *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 and the *Criminal Code*, RSC 1985, c C-46.

[15] Based on these sources, CIC concluded that Mr Hailu had been a member of the ELF and the ELF-RC from 1979 to 2005.

IV. Issue One – Was Mr Hailu treated unfairly?

[16] Along with the other materials before it, CIC also received a 2007 security brief and a 2008 report from the Canadian Security Intelligence Service [CSIS]. Mr Hailu was not given an opportunity to respond to the contents of those reports.

[17] The Minister argues that Mr Hailu was not treated unfairly given that he was provided ample opportunity to respond to the allegations of inadmissibility. Further, the reports did not set out any new evidence or a definitive conclusion on Mr Hailu's potential inadmissibility.

[18] In my view, it was unfair for CIC to rely on the reports without giving Mr Hailu an opportunity to respond to them. CIC's decision on inadmissibility addressed an issue of vital concern to Mr Hailu: whether he was entitled to permanent residence in Canada. The reports were authored by agencies whose opinions about Mr Hailu's inadmissibility were likely to be highly influential. Reliance on those reports without input from Mr Hailu could result in an incorrect or inapt conclusion about his admissibility. There were no administrative or financial costs that would have been incurred by disclosing the reports to Mr Hailu and inviting his response (see factors set out in *Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 at para 22).

[19] For example, the 2007 report stated that Mr Hailu claimed "that he did not participate in the violence but he certainly must have had knowledge of it and despite that knowledge, opted to continue his membership" in the ELF. Mr Hailu was not given a chance to dispute that opinion.

In addition, he had no idea that CSIS had concerns about his admissibility and had made recommendations to CIC on that subject.

[20] In these circumstances, I find that CIC treated Mr Hailu unfairly.

V. Conclusion and Disposition

[21] CIC treated Mr Hailu unfairly by preventing him from seeing and responding to reports on which CIC relied in concluding that he was inadmissible to Canada. I must, therefore, allow this application for judicial review and order CIC to reconsider the issue of Mr Hailu's admissibility. No question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The matter is returned to CIC for reconsideration.
3. No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

*Immigration and Refugee
Protection Act, SC 2001, c 27*

Security

34.(1) A permanent resident or a foreign national is inadmissible on security grounds for.

...

(c) engaging in terrorism;

...

(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).

*Canadian Charter of Rights
and Freedoms*

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

*Loi sur l'immigration et la
protection des réfugiés, LC
2001, ch 27*

Sécurité

34.(1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

[...]

c) se livrer au terrorisme;

[...]

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

*Charte Canadienne des droits
et libertés*

Vie, liberté et sécurité

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1414-14

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APPEARANCES:

Ronald Poulton FOR THE APPLICANT

Martin Anderson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Poulton Law Office FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario