

Federal Court



Cour fédérale

**Date: 20161114**

**Docket: IMM-1151-16**

**Citation: 2016 FC 1266**

**Ottawa, Ontario, November 14, 2016**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**HABTAMU WOLDEGIORGIS DENBELA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Applicant, Habtamu Woldegiorgis Denbela [Mr. Denbela], challenges a decision of the Refugee Appeal Division [RAD] which denied him refugee protection on February 29, 2016.

[2] Mr. Denbela asks that this application be granted because he represented himself at the Refugee Protection Division [RPD] and that it was unfair for his RPD hearing to proceed in

English without an interpreter. The resulting confusion of no interpreter prevented him from addressing concerns expressed by the decision maker. The lack of counsel and translation services also caused Mr. Denbela to not present certain documents to the RPD. For all of these reasons, he says that the RAD erred and the matter should be sent back to be re-determined. I note that Mr. Denbela was represented by counsel at his RAD hearing and presented all of these same arguments to the RAD.

[3] I will dismiss this application for the reasons that follow.

## II. Background

[4] Mr. Denbela is an Ethiopian citizen from Dilla in the Gedeo zone of the Federal Democratic Republic of Ethiopia [Ethiopia]. In November of 2010, Mr. Denbela was caught discussing politics in a taxi by a government security officer. The security officer beat Mr. Denbela and recorded his name in a notebook.

[5] In 2011, Mr. Denbela encountered problems with his employer – Ethiopian Airlines – whereby his wages were cut and he was barred from advancement. No link was provided between his employment difficulties and the November 2010 incident with the government security officer. Mr. Denbela subsequently became a merchant seaman, travelling to multiple countries and voluntarily returning to Ethiopia in August of 2013.

[6] In April of 2015, government security officials visited Mr. Denbela's home looking for him. He was working outside the country at the time so his family advised him of the security

official visit to his home. National elections were swiftly approaching and the government was arresting high profile opposition party members, journalists, bloggers and people participating in political demonstrations. No further visits from government security officials were reported.

[7] Mr. Denbela arrived at Port Cartier in Quebec on April 30, 2015, as a crew member of a merchant vessel and subsequently launched a claim for refugee protection.

[8] Mr. Denbela indicated he speaks Amharic and Gede'uffa but has "trouble understanding when English speakers use big words or speak too quickly and when there are other distractions around me. I have to follow English and even then it is a challenge."

### III. Issues

[9] The issues this Court must determine are:

- A. Did the RAD correctly determine there was no breach of procedural fairness before the RPD?
- B. Was the RAD decision reasonable?

### IV. Standard of Review

[10] The standard of review is reasonableness with regards to findings of fact and of fact and law and correctness with relation to procedural fairness. This judicial review took place on the record and no new evidence was considered in determining the outcome.

[11] The Federal Court of Appeal found that the RAD is to carry out its own analysis of the record and intervene when the RPD is wrong in law, in fact, and in fact and law (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*]). This essentially requires the RAD to apply a “correctness” standard of review. However, the Federal Court of Appeal determined that this was not a true *de novo* appeal, as the RAD proceeds on the record before the RPD and may defer to the RPD on credibility findings where the RPD enjoys a meaningful advantage. Though *Huruglica*, above, was not released when the RAD reviewed the RPD decision, it nevertheless applied the correct standard of review.

V. Analysis

A. *Procedural Fairness*

[12] Mr. Denbela argues that the RPD should have had an interpreter at his hearing given his limited command of the English language. Without counsel he was unaware of the need to request an interpreter. As a result of these procedural failings he did not appreciate the questions presented and was unable to fully respond. In essence, Mr. Denbela argues the RAD should have found a breach of procedural fairness at the RPD.

[13] I find that Mr. Denbela’s lack of interpreter and counsel did not deny him procedural fairness. The arguments before this Court were the same arguments presented by his counsel at the RAD, and I find no error in their determination.

[14] RPD hearings do not require counsel to be present. The hearings are designed to take into consideration self-represented litigants from a variety of backgrounds and where necessary to provide translation services. While Mr. Denbela's lack of representation at the RPD was unfortunate, it is not fatal to the RPD's determination. The RAD listened to the RPD hearing and noted that lack of counsel and lack of translation was not raised as an issue. Mr. Denbela may not have benefited from counsel before the RPD but he did have good counsel at the RAD, and I cannot fault the RAD's conclusion on this ground. I find the RAD made no error in assessing Mr. Denbela's lack of counsel before the RPD.

[15] As for the lack of interpreter, the RAD found that Mr. Denbela's grasp of the English language was sufficient for the RPD hearing and that any problems that may have occurred were attributable to videoconferencing delays. Mr. Denbela is a well-educated soft spoken man who presented well in English before this Court. There is an onus on the applicant to say if he is unable to understand the proceedings without translation. On his Generic Application Form for Canada, Mr. Denbela indicated that he has a Bachelor's degree and when asked if he was able to communicate in French or English, and he said English. The Court noted that his Basis of Claim form was not translated as he understood it in English.

[16] Mr. Denbela's counsel provided to the RAD extracts from the transcript with examples of where it was felt his lack of translation services impacted the RPD's credibility findings. There were many instances where the question had to be repeated but none of those questions presented were the subject matter of negative credibility findings. I therefore do not find the RAD made any error with respect to Mr. Denbela's lack of translation services before the RPD.

B. *Credibility and Sufficiency of Evidence*

[17] Mr. Denbela relies on *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705, to argue that the RPD should not have disbelieved his evidence merely because there was no documentary evidence in support of his viva voce evidence.

[18] This is where Mr. Denbela gets understandably confused as the RPD said that the determinative question is one of credibility. The RPD proceeded to find Mr. Denbela credible and then denied his claim. This is because the determinative issue for the RPD was not in fact credibility but whether Mr. Denbela had sufficient evidence to prove he was a convention refugee or person in need of protection. The RPD did a poor job of describing the difference between credibility and the burden on an applicant to prove their case but ultimately came to a reasonable conclusion.

[19] According to Mr. Denbela, it was unreasonable for the RAD and RPD to find that he had no documentary evidence in support of his risks. He submitted that no supporting documents could be provided as the Ethiopian government censors journalistic reporting. His counsel at the RAD had the opportunity to present new evidence and address any documentary evidence from the Country Conditions Package that a self-represented person may have overlooked. This included the opportunity to submit evidence supporting his claim that the government does not allow objective reporting.

[20] The RPD accepted Mr. Denbela's description of an incident that occurred November 2010 when he was assaulted by a security officer as it was consistent with his Basis of Claim and plausible based on the country condition documents. The RPD also accepted that the state authorities came to his house and questioned his father about his whereabouts in April 2015. However, it also found that there was no link to the November 2010 incident as many people had been arrested before the election in May 2015. The documentary evidence indicated that the people arrested had a higher profile than Mr. Denbela. The RPD did not find these events combined with other evidence established more than the mere possibility that Mr. Denbela would be persecuted upon his return to Ethiopia or that he was a person in need of protection.

[21] The RAD assessed the evidence and listened to the RPD hearing in addition to addressing all of the new evidence submitted by Mr. Denbela's counsel. The RAD considered and rejected the majority of new evidence put forward by Mr. Denbela. The only new evidence accepted was a letter from the Regina Ethiopian Association dated after the hearing. The RAD was reasonable in their assessment of the new evidence.

[22] Unlike the rest of Mr. Denbela's testimony his new allegations were found to lack credibility. Specifically, Mr. Denbela's involvement with the Gedeo People's Democratic Organization [GPDO] was found to not be credible on the basis that several inconsistencies existed between these new allegations and specific questions directed to Mr. Denbela at the RPD hearing.

[23] The RAD dismissed the argument that the RPD should have considered persecution based on membership in a social group that is the GPDO. The RAD found that the few mentions of the “Tigre” (proper term is Tigray) people did not imply persecution of minority tribes but instead implied privilege, corruption, and nepotism. This, in conjunction with the fact that Mr. Denbela does not seem to fear for his family still in Ethiopia, led the RAD to conclude that membership in that social group was not a category which needed to be considered.

[24] The RAD came to its own determination of Mr. Denbela’s credibility. It found no error in the RPD determination on the material before them that Mr. Denbela’s claims were credible but did not agree with Mr. Denbela that those incidents would lead to the risks he alleged. In addition to what was before the RPD, the RAD assessed the claims of risk by the “Tigre”. The RAD found that even without counsel at the RPD hearing, that Mr. Denbela should have mentioned his alleged risk associated with the GPDO and a failure to do so was not credible. The RAD found no documentary evidence to support such targeting and found that it was reasonable for the RPD to not do further analysis of the risk to the GPDO in Ethiopia when it was not alleged as a risk before them. I find the RAD’s conclusions on these grounds to be reasonable and based on the evidence before them.

[25] Mr. Denbela in his written submissions indicated that the RAD was bias but this argument is unsupported and unfounded so will not be discussed in this decision. For the same reasons, I will not consider issues raised by Mr. Denbela that a hearing was not given by the RAD or that notice was not given to him of the pertinent issues.



[26] I find the RAD applied the standard of review as set out by the Federal Court of Appeal in *Huruglica*. It gave lengthy reasons that fully assessed the evidence before them as well as the RPD's decision. The RAD's reasons exhibited justification, transparency and intelligibility within the decision making process (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application is dismissed;
2. No question is certified.

"Glennys L. McVeigh"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1151-16

**STYLE OF CAUSE:** HABTAMU WOLDEGIORGIS DENBELA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** REGINA, SASKATCHEWAN

**DATE OF HEARING:** SEPTEMBER 1, 2016

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** NOVEMBER 14, 2016

**APPEARANCES:**

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