Federal Court  Cour fédérale

Date: 20210324

Docket: IMM-4998-19

Citation: 2021 FC 255

Ottawa, Ontario, March 24, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

TEMESGEN ANDEMARIAM GEBREZGI
ADANECH DIBABA KINATO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Temesgen Andemariam Gebrezgi, the Principal Applicant, is a citizen of Eritrea. He is married to Adanech Dibaba Kinato, the Co-applicant, who is a citizen of Ethiopia where they live. The Government of Ethiopia and the United Nations High Commissioner for Refugees

recognize Mr. Gebrezgi as a refugee. He alleges fear of persecution in Eritrea because he fled national and military service, and because of his faith which is banned.

[2] Following an interview of the couple in Addis Ababa, Ethiopia, an Immigration Officer of the High Commission of Canada refused Mr. Gebrezgi's sponsored application for a permanent resident visa in Canada. The Officer found that the Principal Applicant's testimony was vague and his knowledge of the religion to which he belongs is limited. The Officer also found that the Applicants have access to a durable solution - they did not demonstrate they tried to obtain Ethiopian citizenship and failed. The Applicants now seek judicial review of the Officer's decision.

[3] The main issues for determination are breach of procedural fairness and reasonableness of the Officer's decision. Having considered the more specific issues raised by the Applicants, I reframe them as follows:

(a) whether the Officer's failure to prepare or enter notes contemporaneously with the interview notes in the Global Case Management System [GCMS] was procedurally unfair;

(b) whether inadequate interpretation or translation services breached procedural fairness resulting in an unreasonable credibility finding;

(c) whether the Officer's reliance on specialized knowledge without providing the Applicants an opportunity to respond also was procedurally unfair and resulted in an unreasonable finding of a durable solution in Ethiopia;

(d) whether the Officer unreasonably failed to have due regard to the Principal Applicant's recognized refugee status; and

(e) whether the Officer also unreasonably failed to assess all grounds of persecution.

[4] I find the Applicants have not demonstrated procedural unfairness regarding the timing of the preparation or entry of the Officer's notes in the GCMS, nor regarding the adequacy of interpretation or translation services they were provided at the interview. I find the Applicants have met their onus, however, in respect of all other issues. For the more detailed reasons below, I therefore grant the Applicants' judicial review application.

II. Standard of Review

[5] The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. It is not a "rubber-stamping" exercise, but rather a robust form of review: *Vavilov*, above at para 13. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 85. Courts should intervene only where necessary.

[6] To avoid judicial intervention, the decision also must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. The Court must avoid reassessing and reweighing the evidence before the decision maker; a decision may be unreasonable, however, if the decision maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, above at paras 125-126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[7] Breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise … 'best reflected in the

correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific"; it must be determined with reference to all the circumstances, including the *Baker* factors: *Vavilov*, above at para 77. In sum, the focus of the reviewing court is whether the process was fair.

III. Analysis

(a) *Failure to Prepare or Enter Notes Contemporaneously*

[8] Contrary to the Applicants' submissions, I find that the non-contemporaneous entry of the Officer's interview notes in the GCMS in itself does not represent procedural unfairness in the circumstances of the case before me. The notes were entered about 1½ months after the interview. I am not persuaded that this length of time speaks in any way to the freshness of the Officer's memory at the time the notes were prepared. Further, the Applicants cite no authority in support of their argument that a delay of less than two months represents a breach of procedural fairness. On the contrary, a delay of two months in entering the notes in the GCMS was no cause for concern in *Alkhairat v Canada (Citizenship and Immigration)*, 2017 FC 285 [*Alkhairat*] at para 17.

(b) *Inadequate Interpretation or Translation and Credibility*

[9] I disagree with the Applicants that the interpretation provided during the interview was faulty to the point of being procedurally unfair. That said, I am of the view that the Officer's credibility finding regarding the Principal Applicant's alleged religious beliefs was unreasonable.

[10] Principles applicable to the quality of translation include the right to adequate translation, not perfect translation; linguistic understanding is key: *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161 at para 3, citing *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191 [*Mohammadian*]. Further, an objection to the quality of the translation must be raised at the first opportunity in cases where it is reasonable to expect that a complaint would be made.

[11] Each Applicant submitted an affidavit in connection with the judicial review application. The complaint regarding interpretation or translation relates to the following questions and answers:

> *Officer: Which is the last book of the Bible?*
>
> *Principal Applicant: I don't know. I am not good at these things.*
>
> *Officer: Which book of the New Testament do you know?*
>
> *Principal Applicant: The gospel of John. I get a little bit nervous.*

[12] Mr. Gebrezgi asserts that he understood "last word/verse" instead of "last book" of the Bible regarding the first question, and that the interpreter incorrectly translated "Revelation to John" as the "gospel of John." Looking holistically at the line of questioning regarding religious beliefs, I am not persuaded that the Officer's credibility finding is based solely or even primarily on Mr. Gebrezgi's answers to these questions or that different or more precise answers would have lead to a different result.

[13] Further, Mr. Gebrezgi confirmed he understood the interpreter and the purpose of the interview. Neither Applicant raised any interpretation issues during the interview which involved

a wide range of questions concerning the Applicants' marital status, education and work histories, as well as national and military service, in addition to religious beliefs. I recognize that the alleged errors are in the language of the hearing, English versus the Applicants' language of Amharic. As such, a prior complaint may not have been possible in the circumstances of the case before me: *Mohammadian*, above at para 13. The Applicants' affidavits, however, do not raise any generalized complaints about the overall quality of interpretation. I find the Applicants have dissected the notes microscopically to buttress their assertion of breach of procedural fairness: *Alkhairat*, above at para 20.

[14] I find, however, that the Officer's credibility finding regarding the Principal Applicant's asserted religious beliefs unreasonable. I note the Officer did not make a generalized credibility finding regarding the Applicants. For example, the Officer questioned the Applicants extensively about their relationship history, and accepted the relationship. I further note that their answers to the questions the Officer put to them about their relationship were quite consistent. The Officer also questioned the Principal Applicant, but did not make any credibility finding, about the Principal Applicant's national and military service, as well as education and employment history.

[15] Regarding the questioning about the Applicant's religious beliefs, however, I find the Officer impermissibly focused on the Principal Applicant's knowledge of his Mulu Wengel (Protestant) faith, and held him to an unreasonably high standard. He answered a significant number of the Officer's questions, including whether he was baptized, how church members are baptized and what it means to speak in tongues. Even the second of the above questions was answered, if somewhat imprecisely. The questions he was unable to answer, such as the first one

of those above and what is the day of the Pentecost, represent in my view an undue focus by the Officer on theological minutiae to the point of unreasonableness, rather than a probe of the genuineness of the Principal Applicant's beliefs. This Court previously has cautioned against the former: *Wang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 346 at para 9; *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at 26; and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at paras 18-20.

(c) *Reliance on Specialized Knowledge and Durable Solution*

[16] Contrary to the Respondent's submissions, I find that the Officer unfairly relied on specialized knowledge that the Officer did not put to the Applicants at any time prior to the rendering of the decision, such as in a procedural fairness letter. This is especially concerning because the Officer did not make a generalized credibility finding; rather, as discussed above, the credibility finding relates solely to the issue of religious beliefs.

[17] During the interview, the following questions were asked and answered:

> *Officer: You are married to an Ethiopian citizen who can sponsor you?*
>
> *Principal Applicant: I am registered as a refugee and I am not allowed to move everywhere.*
>
> *Officer: Have you tried to sponsor her [sic] as an Ethiopian?*
>
> *Co-applicant: He can not [sic] be allowed because he is registered as a refugee.*
>
> *Officer: Have you tried?*
>
> *Answer: No.*

[18] The Officer's notes later state:

> In addition, since PA is married to an Ethiopian nation [*sic*], then he can obtain Ethiopian nationality as per *Proclamation No. 378/2003; A Proclamation of Ethiopian Nationality* Article 6. PA has not demonstrated that they tried to apply for the nationality as per Ethiopian law.

[19] The Applicants' affidavits state that the Officer did not mention this *Proclamation* during the interview. The Applicant's record contains a copy of the *Proclamation*. The Respondent argues that the Officer was familiar with the *Proclamation* at the time of the interview, and that the Principal Applicant, a "foreigner" who is married to an Ethiopian national, appears to meet three conditions for acquiring citizenship. I have a couple of concerns. First, there is no evidence in the record regarding the Officer's knowledge of the *Proclamation* at the time of the interview. Second, on a plain reading of the English version of the *Proclamation* in the record, Article 6 appears to stipulate four conjunctive conditions that must be met, not three.

[20] In support of their submission regarding this instance of procedural unfairness in their case, the Applicants point to case law concerning specialized knowledge in the context of Refugee Protection Division hearings and the applicable Rule (now Rule 22) of the *Refugee Protection Division Rules,* SOR/2012-256 [*RPD Rules*] requiring notification before such knowledge is used: *Gramshi v Canada (Minister of Citizenship and Immigration),* 2004 FC 878 at paras 25-27; *Nadarajah v Canada (Citizenship and Immigration),* 2012 FC 670 at para 39. Although the context of the matter before me differs, I see no reason to depart from the underlying concept of fairness captured in Rule 22 of the *RPD Rules.*

[21] In my view, the Officer's unfair reliance on the *Proclamation* casts a shadow on the finding of a durable solution. The shadow is lengthened by the Officer's failure to analyze the Principal Applicant's refugee status in this context.

(d) *Principal Applicant's Recognized Refugee Status*

[22] I disagree with the Respondent that the Principal Applicant's recognized refugee status in Ethiopia is a peripheral issue. As I alluded above, it has a bearing on the issue of a durable solution. Further, the Principal Applicant was deported once before, with his family, from Ethiopia to Eritrea, and his potential risk of return to such country is an important element of his claim. Apart from acknowledging the Principal Applicant's refugee status in Ethiopia, there was no analysis of his potential risk of return to Eritrea: *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519 paras 58-59; and *Teweldbrhan v Canada (Citizenship and Immigration)*, 2012 FC 371 para 20-23. I thus find this omission in the Officer's decision, including the GCMS notes, unreasonable.

(e) *Failure to Assess all Grounds of Persecution*

[23] In my view, the Principal Applicant's fear of persecution for having fled national and military service also is not a peripheral issue. The Principal Applicant's narrative attached to his Generic Application Form for Canada discusses lengthy forced labour in the guise of national and military service in Eritrea as a reason for leaving the country. Although the Principal Applicant stated during the interview that his religion was the major reason for leaving, on the face of the record it was not the only reason. I thus find the Officer's failure to assess the

Principal Applicant's fear of persecution in this regard unreasonable: *Okubu v Canada (Citizenship and Immigration)*, 2019 FC 980 para 16.

IV. Conclusion

[24] For the foregoing reasons, I grant the Applicants' judicial review application. The Officer's decision is set aside and the matter will be remitted for redetermination by a different Immigration Officer. Before a new decision is rendered, however, the Applicants must be given an opportunity to make submissions regarding *Proclamation No. 378/2003; A Proclamation of Ethiopian Nationality*.

[25] Neither party raised a serious question of general importance for certification and I find that none arises in the circumstances of this matter.

JUDGMENT in IMM-4998-19

THIS COURT'S JUDGMENT is that:

1. This judicial review application is granted.
2. The Officer's decision is set aide and the matter will be redetermined by a different Immigration Officer.
3. The Applicants will be provided with an opportunity to make submissions regarding *Proclamation No. 378/2003; A Proclamation of Ethiopian Nationality*.
4. There is no serious question of general importance for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4998-19
STYLE OF CAUSE:	TEMESGEN ANDEMARIAM GEBREZGI, ADANECH DIBABA KINATO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO (VIA VIDEOCONFERENCE)
DATE OF HEARING:	SEPTEMBER 2, 2020
JUDGMENT AND REASONS:	FUHRER J.
DATED:	MARCH 24, 2021

APPEARANCES:

Teklemichael Sahlemariam	FOR THE APPLICANTS
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Teklemichael Sahlemariam TAS Law Office Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT