

Federal Court



Cour fédérale

Date: 20220623

Docket: IMM-5376-20

Citation: 2022 FC 952

Ottawa, Ontario, June 23, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

TIGIST ASSEFA GEDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns an application for judicial review of a decision (the Decision) of the Refugee Appeal Division (the RAD), dated September 30, 2020, dismissing the Applicant's appeal of a decision of the Refugee Protection Division (the RPD). For the reasons that follow, I will dismiss this application.

II. Background

[2] The Applicant is a 52-year-old citizen of Ethiopia. She arrived in Canada in October 2017 and claimed refugee status that December, citing a fear of persecution in Ethiopia based on her real or imputed political opinion.

[3] The Applicant claimed that she and her family were residing in Dubai in 2017 and that in October of that year, she and her husband travelled to Ethiopia to visit family, but were arrested by authorities at the airport and detained. While in detention, the Applicant admitted to being a member of the Blue Party and her husband admitted to being a member of the Ginbot 7 party, both of which were opposition parties in Ethiopia at the time. The Applicant was released after three days. She travelled to Canada on October 18 and learned on October 20 that her husband had also been released and returned to Dubai.

[4] On May 22, 2019, the RPD rejected the Applicant's asylum claim, citing credibility as the determinative issue.

III. Decision under review

[5] On September 30, 2020, the RAD dismissed the Applicant's appeal.

[6] The RAD began by declining to admit a series of documents tendered by the Applicant as new evidence, considering each individually before concluding that none met the requirements of s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. Given that

no evidence was accepted, the RAD further found that the requirements to hold an oral hearing had also not been met. These findings are not contested.

[7] The RAD then turned to the issues raised by the Applicant on appeal, and listed the issues it found to be determinative, only two of which remain contested, namely, credibility and the Applicant's political profile given the changes in circumstances since she left Ethiopia.

[8] The RAD conducted an independent assessment of the evidence, including by listening to the RPD hearing in addition to reviewing the RPD decision, the Applicant's written submissions, her basis of claim form and the other documents making up the file.

[9] The RAD found that the RPD had erred in making an adverse credibility finding against the Applicant for waiting seven weeks before making her refugee claim. The RAD also found the RPD had erred by impugning the Applicant's credibility with regard to communications with her family in Dubai, which the RAD found to be too peripheral, and ultimately irrelevant to her political opinion. Once again, the Applicant does not contest these findings.

[10] By contrast, the RAD agreed with the adverse credibility inference drawn by the RPD in relation to the lack of evidence of the Applicant's detention in Ethiopia. The RAD acknowledged the RPD's finding that the Applicant had made inconsistent statements on whether or not she had signed a document relating to the conditions of her release from detention. The RAD did not pronounce itself on this finding but concluded that the Applicant's explanation for why she was not provided with a copy of the document, namely that it would have caused problems for the

police because of how long she was held, was not plausible. The RAD observed that police in Ethiopia detain and torture people with impunity and were unlikely to face issues with the courts.

[11] The RAD further agreed with the RPD that the Applicant's explanation for not providing a letter from her husband in relation to his detention, namely that she did not think it was necessary, was unreasonable. The RAD disagreed with the Applicant that this issue was minor.

[12] The RAD also agreed with the adverse credibility inference drawn by the RPD in relation to the documentation the Applicant had provided in support of a Temporary Residence Visa (TRV) application, specifically a letter of support from her daughter dated September 29, 2017. The RAD noted that the Applicant had testified that she told her daughter on September 26, 2017 that she was no longer interested in visiting her in Canada, but that she changed her mind after her detention in Ethiopia from October 1 to 3, 2017. The RAD found that no explanation had been provided for the discrepancy between the timing of the support documents and her testimony that she informed her daughter that she no longer planned to visit. The RAD concluded that the RPD was correct to draw an adverse credibility finding on this basis.

[13] Finally, turning to the latest National Documentation Package (NDP) for Ethiopia, the RAD noted that since the Applicant's departure, a new Prime Minister had been selected and that the opposition parties adhered to by the Applicant and her husband were dissolved and had merged with five others to form a new party. The RAD noted that it had provided the Applicant with an opportunity to comment and provide additional submissions, to which she had responded, mostly with country conditions documentation showing that problems persisted for

opposition parties in Ethiopia. The Applicant also provided evidence that she had attended an opposition rally in Toronto in November 2019.

[14] The RAD observed that there was no evidence that the Applicant is a member of Ethiopia Citizens for Social Justice (E-ZEMA), the party that replaced her former party. The RAD further found that the attendance of one opposition rally in Canada did not raise the Applicant's profile significantly enough to bring her to the adverse attention of Ethiopian authorities.

[15] The RAD concluded on the basis of the low political profile of the Applicant, combined with her credibility issues, that on a balance of probabilities, her risk of persecution fell below the serious possibility threshold and that as such, she was neither a refugee nor a person in need of protection. The Applicant seeks judicial review of the Decision pursuant to s 72 of the *Act*.

IV. Issues and Analysis

[16] The only issue in this judicial review is whether the Decision was reasonable. A court performing a reasonableness review scrutinizes the decision maker's decision in search of the hallmarks of reasonableness – justification, transparency and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Any flaws or shortcomings must be more than superficial or peripheral to the merits of the decision and the court must be satisfied that they are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[17] The Applicant argues that the Decision was unreasonable for three reasons. First, because the RAD materially misapprehended the evidence in upholding the RPD's credibility findings. Second, because the lack of corroborative evidence from her husband regarding her detention in Ethiopia should not have been held against her. And third, because the RAD overestimated changed circumstances in Ethiopia, which have actually proven to be short-lived and superficial. I will address each of these arguments in turn.

[18] The Applicant makes a fourth argument, namely that the RAD failed to consider the totality of the evidence and that such consideration would have led to recognition of a well-founded fear of persecution. I do not find any basis to conclude the RAD failed to review the totality of the evidence, and I am not inclined to accept the Applicant's invitation to reweigh the merits of her entire appeal on judicial review. I will not further elaborate on this point.

A. *Credibility findings*

[19] The Applicant cites excerpts of the transcripts of her testimony (AR, p.39 and 43-44/331) in support of her position that she did not make inconsistent statements regarding the documents she signed on the conditions of her release and that the RAD misapprehended evidence by concluding otherwise. According to the Applicant, the partial transcripts clearly indicate that she consistently reported that she had signed a document agreeing to the conditions of her release, but that she had not been provided with a written copy of the document.

[20] As I noted above, the RAD, unlike the RPD, did not base its credibility finding on whether or not the Applicant had made inconsistent statements. Rather, the RAD, in a section of

the Decision concerned with the absence of evidence of the Applicant's detention, commented on the implausibility of her explanation as to why she was not provided with a copy of the document she signed regarding the conditions of her release.

[21] Furthermore, the Applicant pointed to evidence in the Applicant's Record, based on a February 3, 2017 Response to Information Request [RIR] of the Immigration and Refugee Board, suggesting that police reports are not provided. However, that country condition evidence addresses police reports surrounding the commission and prosecution of crimes. The situation at hand was based on the RAD's plausibility concerns with respect to the Applicant's explanation that she was not provided with a document by the police, setting out the terms of her release from detention. That is a different issue, and the RIR is not on point in this regard.

[22] Ultimately, the Applicant did not satisfy me that the RAD's plausibility finding surrounding why she was unable to provide a document detailing the conditions of her release, was unreasonable. Consequently, and considering that the plausibility finding is justified, transparent and open to the RAD to make (*Jean v. Canada (Citizenship and Immigration)*, 2020 FC 838 at para 17), I see no reason to disturb it.

[23] As for the timing of the invitation letter prepared by the Applicant's daughter, dated September 29, 2017, the Applicant again cites her testimony (AR, p.42/331) and notes that while she did testify to deciding against coming to Canada around September 26, she was not asked when she communicated this decision to her daughter. Therefore, she argues the RAD's

credibility finding on this point was made without regard to the evidence and should be overturned. I disagree.

[24] The partial excerpt of the transcript clearly indicates the following question and answer during the Applicant's testimony before the RPD:

- Member - Because your daughter sent an affidavit on September 29, 2017, asking for you to come to come to [*sic*] Canada
- Claimant - Yes, she did that, but I had told her that I was not coming, I had work, I had some works [*sic*] to do in Ethiopia

(Partial Transcript, Applicant's Record, at p. 41)

[25] It was logical and reasonable for the RPD and the RAD to conclude that the Applicant had communicated her decision not to come to Canada to her daughter prior to her detention, precisely because she also testified that it was during her detention that she again changed her mind and decided that she would flee to Canada. Consequently, it was also reasonable for the RAD to concern itself with the timing of the daughter's affidavit, which was prepared and sent a few days after her mother would have told her that she would not be coming. This concern was justifiable in the absence of any reasonable explanation.

[26] I agree with the RAD's finding that this was not a minor issue given that the premise of the Applicant's refugee claim was that she used her visitor visa to escape Ethiopia.

[27] In light of the above, I find both of the RAD's credibility findings to be reasonable.

B. *Corroboration of evidence*

[28] The Applicant also challenges the RAD's finding regarding the absence of corroborative evidence of her or her husband's detention in Ethiopia. The RAD held that it was reasonable to expect that the Applicant's husband would provide a letter in support of her application and that, considering that she was represented by counsel, her explanation that she did not think it was necessary was simply not reasonable.

[29] Relying on the presumption of truthfulness that attaches to sworn evidence, in addition to the principle that there is no general requirement for corroborative evidence (*Chen v. Canada (Citizenship and Immigration)*, 2019 FC 162 at para 28), the Applicant argues the RAD erred by requiring her to provide it in the absence of valid reasons to question her credibility.

[30] I disagree, in that I have found the RAD's negative credibility findings above to be reasonable, namely (i) the Applicant's failure to explain the timing of the support letter from her daughter and (ii) the plausibility finding surrounding the release document she signed. In light of those negative credibility findings, the RAD therefore did not make an adverse credibility finding on the basis of the absence of corroborative evidence alone. Had it done so, it would have erred (*Chen* at para 28), because then the lack of corroboration would have become the "seed of incredibility" as noted by Justice Grammond in *Senadheerage v. Canada (Citizenship and Immigration)*, 2020 FC 986 [*Senadheerage*] at para 26), citing *Ortega Ayala v Canada (Citizenship and Immigration)*, 2011 FC 611 at para 20.

[31] Here, however, it was reasonable for the panel to draw an adverse inference from the lack of corroborative evidence from the husband, who was allegedly imprisoned and whose political membership was also a basis of the Applicant's claim. This because the RAD (i) clearly set out an two independent reasons for considering the claimant's credibility to be in doubt (as enumerated in the paragraph above), and (ii) found that corroboration could reasonably have been expected and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it (*Senadheerage* at para 36).

[32] The RAD's decision on the sufficiency of evidence to buttress the Applicant's claim is a practical case-by-case judgment that is entitled to significant deference on judicial review (*Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14, at paras 33-35). For the reasons I have explained above, it was open to the RAD to require corroborative evidence of the Applicant's detention in Ethiopia, or at least a reasonable explanation for why none was provided. Having failed to provide either, it was open to the RAD to conclude as it did. This is particularly so in light of the fact that at the time of the proceedings, the evidence suggests that the husband had returned to Dubai, and thus would not have faced a risk by supporting his wife's application.

C. *Country conditions in Ethiopia*

[33] Finally, the Applicant challenges the RAD's assessment of the country conditions, and argues that whatever changes may have taken place in Ethiopia, they do not meet the threshold that could negate a previously established claim. In support she relies on this Court's guidance regarding the appropriate test to be applied where changing country conditions are concerned,

namely: (i) that the change must be of substantial political significance (ii) that there must be reason to believe that the substantial change is truly effective; and, (iii) that the change of circumstances must be shown to be durable (*Winifred v. Canada (Citizenship and Immigration)*, 2011 FC 827 at paras 31-32).

[34] The Applicant submits that having provided voluminous evidence to demonstrate that this test cannot be satisfied as far as Ethiopia is concerned, and having shown that the government is aware of her dissenting political opinion and the violation of the terms of her release by coming to Canada, the RAD erred by failing to consider the risk that she would be exposed to being detained anew upon her return.

[35] I do not agree with the Applicant on these submissions on country conditions, and make two observations with respect to them. First, as the Respondent points out, no previously established claim was ever made out. Both the RPD and the RAD found that the Applicant lacked credibility and had failed to establish her claim.

[36] Second, the RAD explicitly noted the evidence presented by the Applicant demonstrating that problems persist in Ethiopia and that opposition parties are not able to operate freely. It is clear from this observation that the RAD was well aware that despite some changes in the political circumstances in Ethiopia, its conclusion as to the Applicant's risk of persecution was not based on a finding that substantial, effective and durable change had been achieved in Ethiopia such that political persecution of dissidents was no longer ongoing.

[37] However, the RAD did explicitly consider the risk that the Applicant would attract the interest of authorities. In so doing, the RAD considered the Applicant's very low profile in a party that no longer exists, combined with the absence of any evidence of membership or involvement with any existing opposition parties, her participation in a single rally in Canada, and the previously discussed credibility issues. In light of all of this, the RAD concluded on a balance of probabilities that the Applicant's risk of persecution did not meet the threshold of a serious possibility.

[38] While I agree that the Applicant's previous detention and breach of her conditions of release in Ethiopia would have been relevant considerations to such a conclusion, these facts were central to the RAD's consideration of the Applicant's credibility. As such, and considering that the RAD explicitly referred to the credibility issue in reaching its conclusion on the Applicant's low risk profile, I am unable to agree that these risks were not taken into consideration, as the Applicant suggests.

[39] Consequently, I find the RAD's decision to be justified, transparent and intelligible in light of the record that was before it.

V. Conclusion

[40] For the reasons outlined above, I find the Decision to be reasonable. Accordingly, the application for judicial review will be dismissed.

JUDGMENT in file IMM-5376-20

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. No question for certification was submitted and I agree that none arises.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5376-20

STYLE OF CAUSE: TIGIST ASSEFA GEDA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 21, 2022

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

DATED: JUNE 23, 2022

APPEARANCES:

Daniel Tilahun Kebede FOR THE APPLICANT

Alex C. Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

The Law Office of Daniel Tilahun
Kebede FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario