

Federal Court



Cour fédérale

Date: 20220614

Docket: IMM-4503-21

Citation: 2022 FC 893

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

YONAS MULUGETA TEKA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Yonas Mulugeta Teka is an Ethiopian citizen who claims refugee protection because of fear of state persecution, following his detention for protesting his sister's arrest.

[2] The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dismissed the Applicant's appeal from the decision of the Refugee Protection Division [RPD]

rejecting his claims. Both the RPD and the RAD found that there was insufficient credible evidence to support the Applicant's claims and, therefore, concluded that he was neither a Convention refugee nor a person in need of protection.

[3] The Applicant seeks judicial review and challenges the RAD's refusal to admit "new" evidence - a support letter and an arrest warrant (or a notification of an arrest warrant) - under subsection 110(4) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. The Applicant also challenges the RAD's credibility assessment.

[4] There is no dispute that the applicable standard of review here is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 10, 25.

[5] Having considered the parties' written material, their oral submissions and the applicable law, I am not satisfied the Applicant has met his onus of demonstrating that the RAD's decision is unreasonable: *Vavilov*, at para 100. I thus dismiss this judicial review application for the reasons that follow.

II. Analysis

A. *Admissibility of New Evidence*

[6] I am not persuaded by the Applicant's argument that the RAD refused to admit the new evidence because it was inconsistent with the Applicant's testimony before the RPD that the RAD in turn found not be credible. To the contrary, I find that the RAD's credibility concerns

with the documents are based on the information provided on the face of the documents themselves, while the RAD's concerns with the Applicant's credibility are based on inconsistent testimony. In other words, the RAD's reasons permit this Court to understand the basis on which the RAD determined that these items were neither new nor credible, and dealt with the proposed new or subsequent evidence in accordance with the *IRPA* s 110(4) and the established case law: *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at para 4; *Ifogah v Canada (Citizenship and Immigration)*, 2020 FC 1139 at para 5.

[7] In my view, the RAD undertook a thorough analysis in arriving at the determination that the evidence did not meet the threshold for newness, in that the explanations found in the support letter and the arrest warrant (or notification) themselves arose before the date of the RPD hearing, and that the Applicant had not explained sufficiently why the documents could not have been provided prior to the rejection of his claim by the RPD.

[8] The Applicant also submits that the RAD used confusing terminology in its assessment of the Applicant's new evidence. I am not persuaded, however, and note that, in any event, decision makers are not held to a standard of perfection in a reasonableness review: *Vavilov*, at para 91.

[9] In the end, I find that the Applicant's arguments regarding the admissibility of the new evidence on appeal from the RPD to the RAD are tantamount to a request for this Court to reweigh or reassess the evidence. This is not the role of the Court on judicial review: *Vavilov*, at para 125.

B. *RAD's Credibility Assessment*

[10] I have considered both parties' written and oral submissions regarding the RAD's credibility assessment, notwithstanding that the Applicant did not comply strictly with Rule 70(1)(b) of the *Federal Courts Rules*, SOR/98-106. I also am not persuaded that the Applicant has met his onus of establishing that the RAD's credibility assessment is unreasonable. I deal first with a preliminary issue regarding the timeliness of the Applicant's assertion of this issue, to which the Respondent objected in oral submissions.

[11] I note that the sole issue the Applicant describes in the Applicant's Memorandum is whether the RAD misapplied the *IRPA* s 110(4) and erred in finding the Applicant's new evidence inadmissible. Rather, the Applicant raises the credibility issue for the first time in the Applicant's Reply.

[12] The Respondent, however, served and filed the Respondent's Further Memorandum of Argument less than one month before the hearing before this Court. The Respondent did not object in the Further Memorandum to the Applicant having raised the credibility issue in his Reply. In fact, the Respondent addressed the Applicant's arguments regarding this issue both in writing and orally.

[13] I therefore find the Respondent's objection in this regard untimely.

[14] That said, I disagree with the Applicant that the RAD erred by relying on the evidence it was not prepared to admit to attack the Applicant's credibility: *Munyakayanza v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16076 (FC) at para 31. As mentioned above, in my view the RAD's concerns regarding the Applicant's credibility revolve around inconsistent testimony.

[15] In addition, the RAD's errors enumerated by the Applicant amount to a "line-by-line treasure hunt for error": *Vavilov*, at para 102. I find that the errors raised are minor in nature and do not undermine the overall reasonableness of the decision: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 946 at para 26, citing *Martinez Gonzales v Canada (Citizenship and Immigration)*, 2011 FC 1504 at para 20. The Applicant also seeks, in my view, to isolate the alleged errors from their context in the RAD's reasons. For example, the Applicant argues there is "linguistic muddle" resulting from the RAD's (mis)use of the term "new evidence" (i.e. the confusing terminology mentioned above). A reading of the Decision as a whole, however, reveals that the RAD's references to the two pieces of evidence presented by the Applicant are consistent.

[16] As a further example, the Applicant took issue with the characterization of one of the pieces of evidence as an arrest warrant, when on its face it is in the nature of a notification about the existence of the arrest warrant. The Applicant conceded at the hearing of this matter before the Court that nothing really turns on the lack of exactness of the document's description.

[17] As a final example, one of the RAD's key findings regarding the credibility of the Applicant was his inconsistent testimony regarding his political activity and the resultant risk of harm in Ethiopia. Before the RPD, the Applicant denied being a member of the Blue Party, and only participated in a protest because of his sister's arrest (rather than his own arrest as misstated by the RAD, which on its face is a minor misstatement by the RAD, in my view, contrary to the Applicant's assertion).

[18] Nonetheless, the Applicant indicated in his port of entry interview, as captured in the Front End Statutory Declaration of the Canada Border Services Agency Officer who interviewed him, that he is afraid "[b]ecause I was in prison for 3 days in Ethiopia because of my political views." The RAD specifically considered this stated fear in its analysis. The RAD also noted that the Applicant stated in his Schedule A form that he is a member of the Blue Party (or Semayawi Party) and that his activities included "protest." I find the RAD's conclusion that the Applicant provided inconsistent and evolving evidence about why he was arrested, and whether it related to his attendance at a political protest, was not unreasonable.

III. Conclusion

[19] For the above reasons, I dismiss the Applicant's judicial review application.

[20] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-4503-21

THIS COURT'S JUDGMENT is that: the Applicant's judicial review application is dismissed, and there is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4503-21

STYLE OF CAUSE: YONAS MULUGETA TEKA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 17, 2022

JUDGMENT AND REASONS: FUHRER J.

DATED: JUNE 14, 2022

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