

Federal Court



Cour fédérale

Date: 20230403

Docket: IMM-3027-22

Citation: 2023 FC 472

Toronto, Ontario, April 3, 2023

PRESENT: Madam Justice Go

BETWEEN:

MOSISA GELANA MECHA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Mosisa Gelana Mecha [Applicant] is an Amhara citizen of Ethiopia currently residing in Kenya. He applied to resettle in Canada through the Convention refugee abroad class or the country of asylum class under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant claims that he fears the Ethiopian government after being arrested and detained twice due to his imputed political opinion.

[2] The Applicant alleges that he was arrested with his father and two siblings in November 2017 following a bout of anti-government protests in his region by the Amhara and Oromo ethnic communities. He claims that he was detained for a week before being released, during which he suffered cruel and inhumane treatment. The Applicant claims that he and his father were arrested again in December 2017 after security forces visited his home, where they injured his brother. The Applicant claims that he escaped from detention that night and travelled from Jimma to Addis Ababa.

[3] From Addis Ababa, the Applicant made his way to Kenya in February 2018. He was 17 at that time. The Applicant was eventually recognized and registered as a United Nations High Commissioner for Refugees [UNHCR] refugee by the Kenyan government in July 2019.

[4] In a letter dated February 8, 2022, an immigration officer [Officer] at the High Commission of Canada in Nairobi, Kenya rejected the application [Decision]. The Applicant seeks judicial review of the Decision.

[5] I grant the application because I find the Officer made unreasonable credibility findings.

II. Issues and Standard of Review

[6] The Applicant raises the following issues:

- a. Whether the Officer's credibility findings were reasonable; and
- b. Whether the Officer erred by failing to consider the Applicant's status as a UNHCR refugee?

[7] The determinative issue in this case is the reasonableness of the Officer's credibility findings.

[8] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”: *Vavilov* at para 100.

III. Analysis

[10] The Officer made a number of negative credibility findings, including a finding of implausibility, which I will address separately.

A. *Officer's Credibility findings*

[11] The Applicant was interviewed at the Canadian High Commission in Nairobi on February 2, 2022 about his application for permanent residence. The notes taken by the Officer [Interview Notes] form part of the reasons for the Decision. Based on the interview, the Officer found the Applicant to be not credible. The Decision provided the following reasons for that finding:

You stated at interview that you fled Ethiopia as a result of arrests and detentions in 2017. Your account of these arrests were vague and lacked detail, and they contradicted information contained in your application forms. Various elements of your testimony lacked credibility, including:

- Your explanation for why you failed to register during your first year in Kenya
- Your explanation for why you were the only member of your family who fled to Kenya, despite your claim that your father and your brothers experienced the same threats as you
- Your claim that you have had no contact with your family in Ethiopia, despite admitting to having regular phone and electronic communication with your sponsor, your uncle, and other friends around the world

I asked you several times to explain what specific threats you face today if you returned to Ethiopia. You provided vague, incomplete explanations for what threats you personally would face today in Ethiopia.

Overall, I did not find your testimony at interview credible. I presented all of these concerns to you and gave you an opportunity to respond. Your responses did not alleviate my concerns.

As a result, I am satisfied that the evidence that you have presented is not credible....

[12] The Applicant raises several arguments with respect to these credibility findings. Overall, the Applicant asserts that the Officer's credibility concerns were based on minute details that were not central to his claim and relied on exaggerated assertions of vagueness. The Applicant submits there were few actual contradictions and inconsistencies arising from his testimony and written application, and that the Officer did not provide an opportunity for the Applicant to respond to their concerns, contrary to what the Officer suggested in the Decision.

[13] The Respondent conceded at the hearing that not all of the Officer's credibility findings were of equal strength. However, the Respondent maintained that taken as a whole, these adverse

credibility findings reasonably support the Decision. The Respondent also maintained that two of the credibility findings, including the implausibility finding, were significant and reasonable.

[14] I will first deal with what the Respondent characterized as a significant inconsistency, namely, the Applicant's explanation for why he was the only member of his family who fled to Kenya, despite his claim that his father and brothers experienced the same threats as him. At the hearing, the Respondent relied on the following portion of the Interview Notes to support their argument:

Q: ... I struggle to understand why if your broader family was targeted in the way you claim, that you and your alone opted to flee to Kenya. A: I was the one targeted. Q: why you? A: when they asked me about my father, I refused to answer the questions.

[15] The Respondent submitted that the Applicant's response at the interview that he was the one targeted contradicted his allegations that both he and his family were targeted by the Ethiopian regime.

[16] I am not persuaded by the Respondent's additional submission at the hearing for several reasons.

[17] First, I agree with the Applicant that the supplemental submissions made by the Respondent are just that, they are supplemental, and do not reflect the reasons offered by the Officer. In finding the Applicant's testimony not credible in this regard, the Officer did not allude to the contradiction put forth by the Respondent, nor is there any indication that the Officer was aware of this contradiction.

[18] More importantly, I agree with the Applicant that the Officer's finding that it "made no sense" that the Applicant was the only one who fled was unreasonable.

[19] The Applicant's explanation for why he was targeted, and why he was the one who fled, in my view, must be considered in the context of the entire explanation he provided at the interview. Namely, the Applicant explained that he was (falsely) accused of being engaged in a protest, which was an alleged breach of the condition of his release from his first arrest.

[20] After the Applicant responded that he was the one being targeted, the following exchange ensued, according to the Interview Notes:

Q: Why were you arrested a second time? A: because I didn't fulfil conditions. Q: which condition? A: to not get involved in politics Q: how did you break that condition? A: as I told you, there was a protest. I was not to be involved. Q: and did you protest? A: no [Q:] Explained that this made no sense and I don't believe you were arrested a second time.

[21] This explanation was largely consistent with the allegation the Applicant provided in his application that he was detained along with his siblings in November 2017, where they were interrogated and denied being involved in any mobilization activities. The Applicant also described being sent home under one condition: "We were sternly warned not to involve in any demonstration or strike conducted by the public against the government." The Applicant stated that they had to report to the police station every Friday. One month later, the police came to arrest the Applicant and his family the second time, and that was when the Applicant escaped from detention.

[22] The Applicant asserts that the Officer's rejection of the Applicant's allegation that he alone fled Kenya amounts to an implausibility finding. Regardless of whether it is a finding of implausibility or credibility alone, the Officer did not provide any reason as to why the Applicant's explanation "made no sense", given the consistencies between the explanation and his narrative in writing.

[23] Further, in suggesting that the Applicant's explanation "made no sense", it is unclear what the Officer was referring to. Was the Officer referring to the Applicant's explanation of why he was targeted, why he was arrested the second time, how he fled Ethiopia alone, or all of the above? In any event, the Applicant did provide an explanation for all of these concerns, both during the interview and in his written statement. While the explanation in writing may have been more detailed, the Officer did not point to any serious inconsistencies between the two, nor do I find any. As such, I find the lack of clarification provided by the Officer unintelligible.

[24] Further, as the Applicant points out, and I agree, individuals often flee persecution while other family members remain behind.

[25] For all these reasons, I find that the Officer erred in finding the Applicant's explanation about being the only one who fled or being arrested the second time "made no sense."

[26] With respect to the rest of the credibility findings, I find that the Officer engaged in a "microscopic evaluation of issues peripheral or irrelevant to the case": *Clermont v Canada (Citizenship and Immigration)*, 2019 FC 112 at para 30.

[27] As the Applicant submits, not all inconsistencies will support a negative credibility finding, as inconsistencies relied on by a decision-maker must be real, not exaggerated, and not be a result of their zeal to find contradictions in an applicant's testimony: *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (CA) at 4; *Rajaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1271 (CA) at 10-11; *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 531 (CA) at 1.

[28] Beginning with the Applicant's claim that he was not in touch with his family, the Interview Notes stated as follow:

I do not find it credible that you are not in touch with any of your family given that you are in touch with sponsors in Canada, friends from Nairobi that helped facilitate your resettlement application and over 4000 [Facebook] friends. Your explanation for not keeping in contact with your family do not make sense given your use of phone and social media.

[29] As the Applicant submits, there was no evidence before the Officer that the Applicant's family was on Facebook, or that they have internet connectivity in their region of Ethiopia in the first place. I observe that the Officer offered no basis for finding that a 23-year-old who is active on Facebook and social media with 4000 friends must necessarily be in touch with his family.

[30] I also find unreasonable the Officer's rejection of the Applicant's explanation for why he failed to register with the UNHCR during his first year in Kenya. The Applicant explained that he went to the UNHCR several times but was not registered, and eventually found someone who spoke Kiswahili to help him facilitate his registration. The Officer offered no reasons for rejecting the Applicant's explanation.

[31] In conclusion, in finding the Applicant not credible, be it about his second arrest, being the only one from his family who fled, not maintaining contact with his family, or the delay in obtaining UNHCR status in Kenya, the Officer erred by making adverse credibility findings without justification, and exhibited a zeal to find contradictions where few exist.

B. *Officer's Implausibility finding*

[32] While the Applicant frames several of the Officer's findings of credibility as implausibility findings, I agree with the Respondent that the key implausibility finding made by the Officer was with respect to the Applicant's alleged escape from his second detention.

[33] The Applicant argues that that the Officer's implausibility findings, including his escape from detention, were not made in the "clearest of cases", contrary to the well-settled principle in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*] at para 7. Further the Applicant submits that "credibility determinations based on implausibility should not be made simply on the basis that it is unlikely that things happened as the claimant contends": *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 [*Zaiter*] at para 9. The Applicant submits that decision-makers must rely on clear evidence and a "clear rationalization process" to support any credibility inferences based on implausibility, which should be referred to in reasons when refuting such conclusions: *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 15.

[34] The Applicant asserts that his account of escaping from detention was not clearly unlikely, so the Officer's implausibility finding was based on "logical absurdities" and contrary to the Court's warning in *Zaiter*.

[35] The Applicant asserts instead that the Officer ought to have considered the National Documentation Package for Ethiopia, which states at Item 9.6 that Ethiopian detention facilities face various problems such as overcrowding and understaffing.

[36] The Respondent submits, to the contrary, that the Officer's finding that the Applicant's assertion that he simply walked away from detention was entirely reasonable.

[37] In my view, the Officer's finding with respect to the Applicant's escape stemmed in part from the Officer's rejection of the Applicant's allegation about his second arrest, which I have found to be unreasonable. This calls into question the reasonableness of the Officer's implausibility finding with respect to the Applicant's alleged escape.

[38] I agree with the Respondent that there does not appear to be any documentary evidence on the record that would suggest that escaping prison in Ethiopia is an easy undertaking. Be that as it may, I am not convinced that this case is one of those clearest of cases where the facts are "outside of the realm of what reasonably could be expected": *YZ v Canada (Citizenship and Immigration)*, 2021 FC 232 at para 12, citing *Valtchev* at para 7.

[39] Further, I recall Justice Norris' comment in *Zaiter* that “[s]omething more” than an unlikely event is required “before a claimant may be found not to be credible on the basis of implausibility alone”: at para 9. Having concluded the Officer's other credibility findings were unreasonable, I also find that the Officer's finding that the escape was “unlikely” to have taken place was insufficient to sustain the Officer's overall finding that the Applicant was not credible.

[40] Given my conclusion with respect to the Officer's credibility findings, I need not address the Applicant's argument concerning the Officer's failure to give due consideration to his status as a UNHCR refugee.

IV. Conclusion

[41] The application for judicial review is allowed and the matter is returned for redetermination by a different officer.

[42] There is no question to certify.

JUDGMENT in IMM-3027-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a different officer.
3. There are no questions to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3027-22

STYLE OF CAUSE: MOSISA GELANA MECHA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MARCH 30, 2023

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