

Federal Court



Cour fédérale

Date: 20230927

Docket: IMM-728-22

Citation: 2023 FC 1305

Ottawa, Ontario, September 27, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**TSEGA ABRHAM GHBREMARIAM
MEHARI TEKLE
DIYANA MEHARI TEKLE
MATYAS MEHARI TEKLE
AMINEAB MEHARI TEKLE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family from Eritrea who currently reside in Ethiopia. They have been recognized as Convention refugees by the United Nations High Commissioner for Refugees [UNHCR].

[2] The Applicants seek judicial review of a decision by an immigration officer [Officer] to refuse their application for permanent residence as members of the Convention Refugees Abroad Class or the Humanitarian-Protected Persons Abroad Class. The determinative issue was credibility.

[3] The Officer failed to engage sufficiently with the UNHCR's designation of the Applicants as Convention refugees, or consider whether their claim might be sustained despite the identified credibility concerns. The Officer's decision was therefore unreasonable.

II. Background

[4] The Applicants are husband and wife and their three children. The children were raised primarily by their mother, because their father was required by law to join the national service in Eritrea.

[5] In 2018, the husband abandoned his position with the Eritrean national service in order to better provide for his family. The Applicants say the husband was arrested and imprisoned. Several months later, the mother and children fled Eritrea for Ethiopia.

[6] The husband says he was able to escape prison and join the family in Ethiopia. He nevertheless made a return trip to Eritrea in order to visit his ailing mother.

[7] On July 7, 2019, the Applicants applied for permanent resident visas as Convention refugees under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Officer refused their application on October 21, 2021. The determinative issue was credibility. The husband and wife gave inconsistent accounts of the events surrounding the husband's abandonment of his position with the Eritrean national service, and his subsequent arrest, imprisonment and escape.

[8] The Officer also doubted whether the Applicants' fear of persecution was wellfounded, given the husband's return to Eritrea to visit his mother. Ultimately, the Officer found that the Applicants' reasons for fleeing Eritrea were primarily economic.

III. Issue

[9] The Applicants challenge the Officer's decision on numerous grounds. One of these is determinative. The application for judicial review must be allowed because the Officer did not sufficiently explain the departure from the UNCHR's designation of the Applicants as Convention refugees.

IV. Analysis

[10] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[11] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] The Officer’s GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[13] This Court has repeatedly affirmed that a UNHCR designation is an important consideration. The principles applicable to a decision maker’s consideration of the designation were summarized by Justice Andrew Little in *Amanuel v Canada (Citizenship and Immigration)*, 2021 FC 662 [*Amanuel*] at paragraph 54.

The following principles emerge from these decisions:

- A. An applicant’s UNHCR status as a refugee is important but not determinative;
- B. An officer must determine the merits of the applicant’s claim under Canadian law in accordance with the evidence in the record. In doing so, the officer may assess credibility;
- C. In making this determination, the officer must have regard to the UNHCR’s determination. If the officer does not concur with it, the officer should explain why;

- D. It is a reviewable error if an officer does not mention an applicant's UNHCR status in the officer's decision and/or in the GCMS notes; and
- E. If the Court reviews the officer's decision and reasons and finds it is clear that (i) the officer was aware of the applicant's UNHCR status as a refugee; (ii) the officer conducted a thorough assessment of the applicant's application on the merits under Canadian law; and (iii) in doing so, the officer explained why the UNHCR's status was not followed, the Court may conclude that the officer's decision was reasonable. The officer's assessment of credibility may contain the required explanation for why the UNHCR's status was not followed.

[14] The Officer's GCMS notes contain few references to the Applicants' designation by the UNHCR as Convention refugees. Under the heading "Info and Eligibility", the notes record the Applicants' UNHCR file number and proof of registration. There is no subsequent discussion about the grounds upon which the UNHCR found the Applicants to be Convention refugees. It does not appear that the reasons for the UNHCR's determination were made available to the Officer.

[15] The most that can be discerned from the GCMS notes is that the Officer was aware of the Applicants' UNHCR designation. What is notably absent is a clear explanation of why the Officer did not concur with the UNHCR's determination.

[16] Where an officer is aware of an applicant's UNHCR status but nevertheless finds the claim to lack credibility, the reasons given may be sufficient to explain the officer's departure from that status (*Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at paras 28-35; *Amanuel* at para 54E). Here, the Officer found inconsistencies between the information

presented in the Applicants' narrative and what they said during the interview, specifically in relation to the circumstances surrounding the husband's arrest, imprisonment and escape, the timeline of these events, and the reasons for the family's flight from Eritrea. The Officer also noted the husband's travel to Eritrea and return to Ethiopia without incident.

[17] Nevertheless, the Officer appears to have accepted important aspects of the Applicants' narrative. In particular, the Officer appears to have accepted that the husband was forced to work in the Eritrean national service indefinitely, that this prevented him from adequately providing for his family, and that he abandoned his position without authorization.

[18] These facts alone may have been sufficient to support the UNHCR's designation of the Applicants as Convention refugees. Inconsistencies in their precise accounts of the husband's arrest, imprisonment and escape would not necessarily undermine the fundamental basis for their claim. Similarly, the wife's acknowledgment that the family fled Eritrea in part for economic reasons, and not only due to a fear of persecution by the Eritrean authorities, would not undermine their claim (*Kanchi v Canada (Citizenship and Immigration)*, 2022 FC 1258 at para 24).

[19] As Justice Eleanor Dawson observed in *Martinez Requena v Canada (Citizenship and Immigration)*, 2007 FC 968 at paragraph 7:

[...] the mere fact that a refugee claimant returns to their country of nationality is not determinative of whether they possess a subjective fear. For example, evidence of a claimant's belief that country conditions have changed or evidence of a claimant's temporary visit while he or she remained in hiding would be evidence inconsistent with a finding of a lack of subjective fear.

[20] The Respondent argues that the Applicants provided no evidence that the husband returned to Eritrea in secrecy. But nor did the Officer enquire into the circumstances of his brief visit to his ailing mother while the remainder of the family continued to reside in Ethiopia under the auspices of the UNHCR.

[21] The Officer failed to engage sufficiently with the UNHCR's designation of the Applicants as Convention refugees, or consider whether their claim might be sustained despite the identified credibility concerns. The Officer's decision was therefore unreasonable.

V. Conclusion

[22] The application for judicial review is granted, and the matter is remitted to a different immigration officer for redetermination. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, and the matter is remitted to a different immigration officer for redetermination.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-728-22

STYLE OF CAUSE: TSEGA ABRHAM GHBREMARIAM, MEHARI
TEKLE, DIYANA MEHARI TEKLE, MATYAS
MEHARI TEKLE AND AMINEAB MEHARI TEKLE v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 17, 2023

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: SEPTEMBER 27, 2023

APPEARANCES:

Teklemichael Ab Sahlemariam FOR THE APPLICANTS

Jake Boughs FOR THE RESPONDENT

SOLICITORS OF RECORD:

Teklemichael Ab Sahlemariam FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario