

Federal Court



Cour fédérale

Date: 20160614

Docket: IMM-5543-15

Citation: 2016 FC 667

Ottawa, Ontario, June 14, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

YOSEPH FITWI GEBRU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for leave and for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of the decision of Senior Immigration Officer [the Officer], dated September 29, 2015, dismissing the Applicant's Pre-Removal Risk Assessment [PRRA] application.

[2] Before the Refugee Protection Division [RPD] in 2012, the Applicant alleged that he was arrested in Ethiopia because he participated in a demonstration in June 2005 as a supporter for the Coalition for Unity and Democracy [CUD] party. He claimed to have been taken to a detention centre where he was kept for over five months and was questioned, beaten and tortured. He claimed that he was released with a warning. He remained in Ethiopia for two years until he left without difficulty traveling to the United States [U.S.] in February 2007 and then leaving for Canada in January 2010 after falsely claiming he was divorced and married to a U.S. citizen.

[3] Upon his arrival in Canada, he made his first claim for refugee protection. He alleges fear in returning to Ethiopia arising from his attendance at the June 2005 demonstration. The claim was rejected by the RPD in 2012 with strong adverse negative credibility findings regarding the most pertinent aspects of his narrative. His first PRRA was also dismissed in July 2014, but overturned on judicial review in June 2015. He updated his file for the purpose of his second PRRA application, which was rejected in September 2015. In January 2016, his removal was stayed leading to this judicial review application.

[4] In this application, the Applicant's principal argument is that the Officer erred in rejecting police letters indicating he was wanted for questioning. The Officer concluded that the letters predated the RPD decision based upon the 2006 Ethiopian calendar date on the face of the document, rather than the correct Western calendar date of 2014 as contained in the translation. The Applicant argues that the PRRA assessment cannot be done without assessing this crucial evidence.

[5] Although it appears that the Officer erred in finding that the police documents predated the RPD hearing, I conclude that in the context of the RPD decision, there is no reasonable basis to consider that the documents would have affected the outcome of the decision had it been before them. A negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD: *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at para 13.

[6] There is no reasonable basis to conclude that the rejected 2014 police letters would have affected the outcome of the RPD hearing when the RPD decision was based upon numerous serious negative credibility failures of the Applicant, most importantly including rejecting previous police reports as being “nonsensical.”

[7] The demonstrated lack of credibility of the Applicant before the RPD includes:

- Falsely indicating that the Applicant applied for a U.S. visa based on risk fears, when entry was with one of his children for the purpose of obtaining medical treatment;
- Falsely stating that it was his intention to claim asylum in the U.S. but failing to do so because his brother was supposed to assist him and did nothing;
- Falsely misrepresenting himself to U.S. authorities by participating in a fraudulent marriage to a U.S. citizen; when found out, claiming his brother made him do everything although actively participating in the false scheme, including relying upon false documentation for that purpose;

- Submitting two police letters allegedly left with his wife containing directives to a police special surveillance team which the RPD found to be nonsensical in a letter to the Applicant;
- Failing to explain how he remained in Ethiopia for two years before leaving without any difficulty, only to have authorities become interested in him seven years later in 2012, only after he came to Canada; and
- Failing to provide medical documentation corroborating injuries alleged to have sustained while in prison, stating he did not want to disclose his situation out of fear, so he tolerated his wounds; this, added to the other evidence regarding his remaining in Ethiopia, led the RPD to conclude that his account of detention and torture was not credible.

[8] The mere fact that the evidence postdates a negative RPD decision does not automatically qualify it for the purposes of a PRRA, when similar documents were before the RPD. In these circumstances, I find that the police reports are not significantly different from the information previously provided and found nonsensical by the RPD. There is also objective evidence from the RPD decision establishing the Applicant's willingness to say anything and to produce false documents in aid of attaining immigration status.

[9] In the first letter, the author indicates the Applicant is residing with his family in Addis Ababa, which is incorrect. The Applicant had not been in Addis Ababa since he left over 10 years ago. The author also directs the Applicant to "appear for questioning" on January 15, 2014. The letter does not indicate what the questioning relates to, whether or why the Applicant is a

person of interest to the police, whether there is any threat to his safety by the police or others, or what will happen if he does not appear for questioning.

[10] In the second letter, the author notes the Applicant did not appear for questioning the day prior and requests again that he appear for questioning or contact the “commission’s information desk at any time.” Further, the author notes that if the Applicant does not “comply with this order, you will be responsible and accountable for any harm that could happen to you or to your family,” again without explaining why the Applicant has become a person of interest. The Applicant provided no evidence that the Addis Ababa City Police Commission took any action subsequent to the issuance of the second letter.

[11] With respect to other points raised by the Applicant, I find no reviewable error in the Officer’s assessment and conclusion of the insufficiency of evidence that the Applicant was a person of interest to Ethiopian authorities. This conclusion pertains not only to the police documents, but also to the Officer’s conclusion to give no weight to a letter from the President of the Unity for Human Rights and Democracy organization or to statements from family members, when there is an absence of evidence about the various capacities or activities the Applicant was said to have been involved in, or other objective evidence in support.

[12] Similarly, there is no basis for the Court to intervene to reject the Officer’s evidence that there has been a significant change in country conditions concerning risk to the Applicant since the RPD’s decision or that the Applicant would have come to the attention of Ethiopian authorities for his attending demonstrations in Canada. The Officer’s decision is reasonable in

concluding that the Applicant did not have the profile of a person of interest to authorities, when the focus in the documentation was on opposition leaders and journalists.

[13] In conclusion, the Officer's decision meets the reasonableness requirements of justification, transparency and intelligibility within the decision making process and as a decision falling within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-50.

[14] Accordingly, the application is dismissed. There are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5543-15

STYLE OF CAUSE: YOSEPH FITWI GEBRU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO

DATE OF HEARING: MAY 25, 2016

JUDGMENT AND REASONS: ANNIS J.

DATED: JUNE 14, 2016

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