

Federal Court



Cour fédérale

Date: 20170911

Docket: IMM-965-17

Citation: 2017 FC 800

Toronto, Ontario, September 11, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ZEBIDERU GENENE ASFEW

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Overview

[1] This is a judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated February 3, 2017 and conveyed by Notice of Decision dated February 9, 2017, confirming the Refugee Protection Division [RPD] decision determining that the Applicant is not a Convention refugee pursuant to s. 96 of the *Immigration*

and Refugee Protection Act, SC 2001, c 27 [IRPA], nor a person in need of protection pursuant to s. 97 of IRPA.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not demonstrate that the RAD's decision is unreasonable.

Background

[3] The Applicant, Ms. Zebideru Genene Asfew, is a citizen of Ethiopia who claims fear of persecution due to her political activities and those of her family in Ethiopia and her political activities following her arrival in Canada. She alleges that she was a supporter of the Semayawi or "Blue" party in Ethiopia and that in April 2015 she was arrested and detained for one day after participating in a rally that resulted in a confrontation with government authorities. She also alleges that she has been denied contracts for her business, because she is not a supporter of the government, and claims fear of persecution because her husband and brother are members of the Blue party, and her husband has been arrested on several occasions.

[4] Ms. Asfew also asserts a *sur place* claim. After arriving in Canada, she became a member of Unity for Democracy and Human Rights Toronto, a non-governmental organization which opposes human rights violations by the Ethiopian government. Her participation in this organization's activities was recorded on social media, and she alleges fear of her activities in Canada coming to the attention of Ethiopian authorities.

[5] Ms. Asfew's claim was initially heard by the RPD on February 18, 2016 but, because of interpretation issues, was the subject of a *de novo* hearing on August 22, 2016. The RPD rejected her claim in a decision dated September 12, 2016, finding that Ms. Asfew was not credible and did not have a well-founded fear of persecution. She appealed this decision to the RAD, arguing that the RPD erred in its assessment of her credibility and in its assessment of her *sur place* claim. The RAD admitted new evidence on appeal, largely updating the conditions in Ethiopia following the declaration of a state of emergency in 2016, but found that Ms. Asfew had not provided sufficient trustworthy, credible evidence to demonstrate that her stated fear of persecution was well-founded. The RAD therefore confirmed the decision of the RPD.

Issues and Standard of Review

[6] The Applicant articulates the issues for the Court's consideration as follows:

- A. Whether the RAD erred in assessing the Applicant's *sur place* claim;
- B. Whether the RAD erred in deciding that the Applicant lacked the targeted political profile in Ethiopia, specifically in view of the declaration of a state of emergency in 2016; and
- C. Whether the RAD credibility finding was reasonable.

[7] The parties agree, and I concur, that these issues are reviewable by the Court on a standard of reasonableness.

Analysis

Whether the RAD erred in assessing the Applicant's *sur place* claim

[8] Ms. Asfew notes that the RAD accepted that she had participated in a number of meetings and rallies in Canada where there had been a presence of opposition politicians from Ethiopia and/or placards with messages critical of the Ethiopian government. As such, the RAD stated that the question for it to consider was whether these activities had been seen by Ethiopian authorities or their agents and, if so, whether the circumstances of those activity supported a well-founded fear of prosecution.

[9] Ms. Asfew also notes that the RAD accepted from the country condition documentation that Ethiopian authorities monitor individuals in the Ethiopian diaspora and that there was currently a restrictive climate regarding any outward show of dissent following the declaration of the state of emergency in October 2016. However, she takes issue with the RAD's conclusion that Ethiopian authorities cannot possibly have the resources to monitor everyone who takes part in small demonstrations or protests, of the sort reflected in the photographs Ms. Asfew submitted, and the RAD's conclusion that, even in if any of her activities were actually monitored by agents of the government, she has such a small profile that she would not likely be on the radar of the Ethiopian government or targeted upon returning to Ethiopia. Ms. Asfew argues that these conclusions were speculative and contradicted by the country condition evidence, which she states establishes that Ethiopian authorities target all dissidents en masse.

[10] When asked to identify the documentary evidence upon which she relies to support this argument, Ms. Asfew's counsel referred the Court to particular portions of the Ethiopia 2015 Human Rights Report of the United States Department of State [the USDOS Report]. This report refers to the Ethiopian government refusing to permit international human rights organizations to have access to political or other prisoners, as well as to reports of individuals being held in unofficial detention centres throughout the country. Under the heading of Freedom of Speech and Expression, the USDOS Report notes that authorities arrested and harassed persons for criticizing the government, that NGOs have reported cases of torture of such individuals, and that the government has detained journalists and opposition activists and monitored and interfered with the activities of political opposition groups. There is also a description of the Ethiopian government's restriction of access to certain content on the Internet and use of surveillance software to monitor the online activities of Ethiopians living abroad. Ms. Asfew also emphasized that the USDOS Report was published before the declaration of the state of emergency in 2016.

[11] While there is no question that these portions of the documentary evidence establish that the Ethiopian government targets political dissidents, I find that they do not support Ms. Asfew's proposition that the government has the capability and the practice of monitoring and targeting all individuals who have any involvement in political dissent. As noted by the Respondent, one portion of the USDOS Report speaks in particular to fears of probable detention of journalists, editors and publishers. Ms. Asfew's counsel also drew the Court's attention to a Response to Information Request which identified a letter from the Ethiopian government's Director of Diaspora Ethiopian Affairs to Ethiopian embassies, referring to presenting a list of coordinators of extremist opposition groups operating in the diaspora. This evidence supports,

rather than contradicts, the RAD's conclusion that someone with the minimal political profile the RAD found Ms. Asfew to have would not be targeted by Ethiopian authorities. I therefore find this aspect of the RAD's decision to be reasonable and that Ms. Asfew has not identified a reviewable error on the part of the tribunal.

Whether the RAD erred in deciding that the Applicant lacked the targeted political profile Ethiopia, specifically in view of the declaration of emergency on October 8, 2016

[12] Ms. Asfew's argument on this issue is that the RAD focused unduly on the evidence of past persecution of her or her family and did not recognize that, as a family member of a political dissident with her own participation in political activities, she fit a profile of the sort of person that the documentary evidence established was at risk of persecution by the Ethiopian government. She notes the RAD's reference to the statement in the documentary evidence that Ethiopian authorities target families of suspects, detaining and interrogating them. She submits that the RAD accepted that she was the wife of a dissident who had been arrested in the past, that her house had been demolished because of her and her husband's political views, and that she had participated in one demonstration in Ethiopia and had been detained as a result.

[13] However, as argued by the Respondent, Ms. Asfew's submissions in this respect overstate the RAD's conclusions. The decision demonstrates that the RAD had credibility concerns surrounding the evidence of both Ms. Asfew and her husband. It cannot be read as accepting the assertions as to either the destruction of the house or the husband's political activities. Again, I find the RAD's decision reasonable and that Ms. Asfew has not demonstrated a reviewable error.

Whether the RAD credibility finding was reasonable

[14] The RAD made an adverse credibility finding, because Ms. Asfew amended her Basis of Claim [BOC] form to add that she had been assisted by her uncle in passing through security clearance at the airport in Ethiopia. The RPD had drawn a negative inference from her failure to include in her original BOC that she required assistance to pass through security clearance and exit the country. The RAD found that Ms. Asfew's exit through the airport was relevant to her claim that she is at risk in returning to Ethiopia and that the omission of this information from her first BOC was significant and relevant. The RAD rejected her explanation that she omitted the information from the original BOC because she had been stressed, given that the amendment was not made until months following her first hearing date, and it agreed with the RPD that the omission supported a negative inference with respect to her credibility.

[15] Ms. Asfew argues that the RAD erred in reaching this conclusion on the basis that she submitted contradictory evidence. She submits that the RAD rejected her evidence because it was contradicted by an expert opinion she submitted, which stated that only high-level or well-known opposition leaders are prevented from leaving the country, and that this was an error because this opinion was not itself accepted. I find no merit to this submission. The RAD noted the RPD's rejection of the expert opinion as unsupported by any identity documents and inconsistent with a Response to Information Request. However, the RAD did not rely on this analysis in reaching its own credibility determination. Nor did it reach a conclusion based on contradictions in the evidence. Rather, the RAD drew a negative inference as a result of Ms.

Asfew's omission from her original BOC of any reference to her uncle's assistance with her departure from Ethiopia and her failure to provide an acceptable explanation for the omission.

[16] Ms. Asfew also takes issue with the RAD impugning her credibility because she did not state that she made anti-government comments at the time of the protest which resulted in her detention. She notes that the RAD failed to indicate whether she was asked by the RPD whether she made anti-government comments, and she submits that her credibility cannot be impugned based on a question that was never asked. Again, I find no merit to this submission. The RAD engaged in an analysis as to whether her detention at the protest supported a conclusion that she was a serious opponent of the government, and in that context it noted that she did not state she made anti-government comments. However, the RAD made no credibility findings as a result of this point.

[17] Having found no reviewable errors in the RAD's decision, the decision is reasonable, and this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-965-17

STYLE OF CAUSE: ZEBIDERU GENENE ASFEW v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 7, 2016

JUDGMENT AND REASONS: SOUTHCOTT, J.

DATED: SEPTEMBER 11, 2016

APPEARANCES:

Daniel Tilahun Kebede FOR THE APPLICANT

Rachel Hepburn Craig FOR THE RESPONDENT

SOLICITORS OF RECORD:

Daniel Tilahun Kebede FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENT
Canada
Toronto, Ontario