Federal Court  Cour fédérale

Date: 20180626

Docket: IMM-4857-17

Citation: 2018 FC 660

Ottawa, Ontario, June 26, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

HIRUIT MOSISA GARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision made by a Senior Immigration Officer [the Officer]. The PRRA is limited to section 97 factors due to section 113(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], as the Applicant was previously determined to be inadmissible under section 34(1)(f) of the IRPA for being a member of the Oromo Liberation Front [OLF].

[2] For the reasons that follow, I will dismiss this application for judicial review.

II. Background

[3] The Applicant is a national of Addis Ababa, Ethiopia. She joined the OLF at the age of 17. She was employed by her father (another OLF member) at his legal office where they did work for the OLF.

[4] Both the Applicant and her father were arrested, interrogated, and beaten for helping the OLF on April 3, 1998. They were released and upon her father's re-arrest two weeks later, the Applicant went into hiding and left Ethiopia on September 1, 1998. Her evidence is that her father was never heard from again.

[5] Egypt, Australia, Sweden, and now Canada, have all rejected her refugee claims. As a result of the order to deport from Sweden, she used someone else's passport to travel to Canada where she arrived on December 12, 2013. An Immigration Division hearing took place closed to the public, and in a decision dated July 17, 2015, it was determined the Applicant is inadmissible under section 34(1)(f) of the IRPA. Due to this, the Applicant was precluded from a refugee hearing before the Refugee Protection Division [RPD]. This decision was upheld on judicial review. That decision had a confidentiality order but when asked at the hearing, it was no longer necessary in this Judicial Review. She subsequently filed an application for a PRRA on November 11, 2016.

[6] In a decision dated July 31, 2017, the PRRA Officer dismissed the Applicant's PRRA application, finding that she would not be subject to risk of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Ethiopia.

III. Issue

[7] The issue is whether the Officer's decision is reasonable.

IV. Standard of Review

[8] The standard of review of a PRRA decision is reasonableness (*Cabral De Medeiros v Canada (Minister of Citizenship and Immigration)*, 2008 FC 386 at para 15).

V. Analysis

[9] Generally, a PRRA Officer will consider section 96 and section 97 factors, but inadmissibility under section 34(1)(f) of the IRPA restricts the analysis to section 97 factors. This is due to section 112(3)(a) of the IRPA, which says if a person is found inadmissible for the reasons listed, a PRRA officer cannot consider the grounds under section 96 of the IRPA. As a result, this PRRA Officer's analysis was restricted to only asking whether the Applicant was a person in need of protection under section 97 of the IRPA.

[10] The burden of proof facing an applicant under the section 97 risk assessment is the balance of probabilities (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 14). In other words, the Applicant in this case had to establish that, on a balance of

probabilities, she would personally be subject to a danger of torture, or risk to life or risk of cruel and unusual treatment or punishment upon removal to her country of nationality. This is a personalized risk and is forward looking.

[11] The Applicant's argument is that the Officer's conclusion is contrary to the evidence which is clear that members and suspected supporters of the OLF are, among other things, tortured and sometimes killed. The Respondent has argued that, although the Applicant is an OLF member who was of interest at one time, the issue before the Officer was whether there was enough evidence to establish section 97 grounds on a balance of probabilities.

[12] I agree with the Respondent that the Officer's decision is reasonable. The decision is not contrary to the evidence, but rather, the Officer's reasons explain that the evidence did not satisfy the balance of probabilities threshold required in this restricted PRRA.

[13] The documentary evidence before the Officer included a 2014 Amnesty International report of people being arrested because of family members with political opinions, and sometimes merely suspected political opinions. The Officer found, however, that there was no evidence that the Applicant's family—a mother, five sisters, and two brothers—had been of interest to the Ethiopian government since her father's disappearance in 1998.

[14] The evidence also included two black and white photographs of the Applicant protesting in Canada on August 15, 2016 and October 6, 2016. The Applicant submitted the photos to demonstrate her political activism in Canada. The Officer found the photographs were not

evidence of the Applicant's active membership in Canada. The Officer explains in the decision that the photographs are of poor quality, making it difficult to identify the subjects within the photos, and that the event causing the gathering was unknown. The role of the Court is not to re-weigh evidence on judicial review, and this treatment of the evidence is reasonable even if I may not have come to the same conclusion. These reasons are justified, transparent, and intelligible, and I cannot find that they are unreasonable.

[15] Further evidence was present in an affidavit from the Applicant's sister, as well as two letters from the OLF. Her sister's affidavit outlined why the Applicant left Ethiopia, but did not explain why she asserted the Applicant would be jailed, killed or would disappear if she returned to Ethiopia. The OLF letters were similarly given a low probative value by the Officer because they were vague. Furthermore, while these OLF letters only explained the events that occurred in 1998, and they did not provide information about any interest in the Applicant by the Ethiopian government since that time. The Officer found that this was insufficient to establish, on a balance of probabilities, that the Applicant faced a forward looking risk and was a person in need of protection. I find that the Officer's conclusion that this evidence did not meet the legal test is reasonable.

[16] While the Applicant submits the Officer failed to consider the particular situation of the Applicant, the reasons illustrate that the Applicant's profile was considered. The profile that the determined and used was that there was no evidence that there was any interest in the Applicant by the Ethiopian government since 1998, no evidence that the Applicant's seven siblings or her mother are of interest, and the two letters from the OLF were assigned only low probative value.

The Officer concluded the evidence submitted did not satisfy the legal test with reasons that are justifiable, transparent, and intelligible.

[17] This decision is reasonable and I am dismissing this application for judicial review.

[18] No questions were presented for certification and none arose.

JUDGMENT in IMM-4857-17

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4857-17
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APPEARANCES:

Paul Vandervennen	FOR THE APPLICANT
James Todd	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Paul Vandervennen Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT