

Federal Court



Cour fédérale

Date: 20180727

Docket: IMM-4483-17

Citation: 2018 FC 787

Montréal, Quebec, July 27, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

TEHUT ESHETU TEGENE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is the judicial review of a decision of the Refugee Protection Division (RPD) which determined that the applicant was not a Convention Refugee and was not a person in need of protection.

[2] The applicant is an Ethiopian national. She claims to be a member of the Amhara community and to have been targeted by the government for her political activities in Ethiopia on behalf of the Unity for Democracy and Justice Party (UDJ). She claims to have been detained twice by Ethiopian authorities, once in 2010 for four days and again in 2012 for eight days. She claims that, during her second detention, she was beaten severely. She says she was released with her uncle acting as guarantor, after her parents bribed authorities.

[3] Later in 2012, the applicant left Ethiopia for Canada and claimed asylum. Since arriving, she has continued her activities regarding political activities in her home country.

[4] The applicant's refugee claim was denied on October 12, 2017, principally based on the RPD member's concerns about the lack of evidence corroborating her narrative. The RPD noted that the presumption that sworn testimony is truthful could be overcome by the applicant's failure to obtain evidence that one would normally expect. The RPD also noted various inconsistencies in the applicant's testimony.

[5] The applicant argues that many apparent inconsistencies in her testimony were simply the result of inadequate interpretation services. She asserts many examples of mistranslation of her testimony during the hearing before the RPD, and argues that the RPD's decision should be set aside for this reason alone on the basis that the applicant was denied procedural fairness. The applicant also argues that the RPD erred in relying on the absence of corroborating evidence, and failed to provide an appropriate reason not to accept her sworn testimony as truthful. Finally,

regardless of the foregoing issues, the applicant argues that the RPD's findings of inconsistencies were unreasonable.

[6] I need not address all of the issues raised by the applicant. Specifically, I need not consider (i) whether the interpretation services were adequate, or (ii) whether the RPD failed to respect the presumption that sworn testimony is truthful. I am also not required to address all of the applicant's arguments of unreasonableness of inconsistency findings.

[7] I am able to decide that the present application should be allowed, and that the RPD's decision should be set aside, on the basis of four issues discussed in the sections below which concern supposed inconsistencies in the applicant's testimony.

II. Applicant's explanation for not obtaining statements from family members

[8] One of the principal criticisms by the RPD concerning the applicant's failure to provide evidence corroborating her narrative was the absence of statements from family members about her experience, even though she has remained in contact with them since leaving Ethiopia.

[9] The principal explanation provided by the applicant for not requesting statements from family members was that to discuss political issues could expose them to risk since Ethiopian authorities are known to intercept such communications.

[10] The RPD rejected this explanation on the basis that the applicant had had regular communications with her family members since coming to Canada, and Ethiopian authorities

already knew that her parents had been politically active in the past and that her uncle and her parents had obtained her release from detention. The RPD concluded that it was reasonable to assume that the applicant had discussed her situation with family members.

[11] The RPD's reasoning suggests that it failed to grasp the distinction between the risk of discussing political issues, like her asylum claim, with family members, and risk associated with general discussions with family members. The applicant stated that it would have been risky to discuss political issues, but she never stated that it was risky to discuss other matters with family members. I have seen nothing to suggest that such general discussions would be of concern.

[12] In my view, this failure by the RPD led directly to its conclusion that the absence of corroborating evidence overrode the presumption that sworn testimony should be believed. This conclusion was unreasonable.

III. Conclusions based on applicant being in hiding

[13] The RPD found the following inconsistencies:

1. The applicant first indicated that she received no medical treatment for injuries suffered during her severe beating while in detention, and later indicated she had visited a traditional medicine practitioner; and
2. She indicated that she just stayed in hiding after her second detention, but she also stated that she reported to authorities on a weekly basis, and that she was followed.

[14] In my view, these findings of inconsistencies are unreasonable.

[15] There is no reasonable inconsistency concerning the applicant's statements about medical treatment. A fair interpretation of her testimony would have to lead to the conclusion that she did not see a visit to a traditional medicine practitioner as being medical treatment. Her statement that she had seen such a practitioner was not prompted by any need to overcome a potential contradiction in her testimony. It was simply a clarification. It was unreasonable to draw any inference from it. At a minimum, the applicant should have been given an opportunity to address what the RPD saw as an inconsistency.

[16] As regards the question of the applicant being in hiding, it is clear that the applicant never indicated that she was staying at home all the time. Rather, she indicated that she limited her movements outside the house. She clearly indicated that she had left her home regularly. She stated that she was being followed and that she reported to police on a weekly basis. I am confident that if the RPD had suggested that this was inconsistent with remaining in hiding, she would have clarified that she did not mean to say that she remained at home all the time.

IV. Applicant's exit from Ethiopia

[17] The RPD noted that country documentary evidence indicated that low level opposition members (like the applicant) are at risk of being detained, jailed or killed in Ethiopia, and that most opposition members who wish to leave Ethiopia do so by crossing into Kenya by ground first, in order to avoid being apprehended at the airport if they try flying out. The RPD also noted that the applicant had allegedly attracted the attention of Ethiopian authorities. After noting that the applicant had left Ethiopia by air and had used her own genuine passport, the RPD stated:

The Panel finds that if the claimant were a person of interest to Ethiopian authorities and being followed as she testified, she would not have been allowed to exit the country. The panel draws a negative inference in this regard.

[18] This reasoning is not justified by the evidence cited by the RPD. The RPD's conclusion amounts to a finding that it is implausible that the applicant left Ethiopia without incident using her genuine passport. However, the cited evidence goes no further than noting a "risk". It is inherent in a risk that the eventuality in question may not arise. I conclude that the RPD's conclusion of implausibility was unreasonable. Moreover, the applicant's claim that she was being followed does not rule out the possibility that she was not being followed on the day that she went to the airport.

[19] I do find the story of the applicant's exit from Ethiopia troubling. It might have been reasonable for the RPD to find that it was difficult to believe that the applicant would have knowingly exposed herself to the risk of being stopped at the airport. But that is not what the RPD found, and I am not prepared to read such a finding into its reasoning.

V. UDJ membership

[20] As evidence of her membership in the UDJ, the applicant provided a letter from the secretary of the UDJ.

[21] The RPD gave little weight to this letter in part because the applicant had not produced a membership card, even though country documentary evidence indicates that membership cards are required by law. Without clearly saying so, the RPD also seemed to find an inconsistency

between the applicant's claim to be a member of the UDJ and her statement that she "just supported the party".

[22] In my view, neither of these findings can stand. On the question of the membership card, the same evidence cited by the RPD to support the statement that membership cards are required by law, also indicates that the UDJ does not issue membership cards. The RPD did not appear to notice this aspect of the evidence. With regard to the applicant's statement that she supported the UDJ, I do not see this as inconsistent with her statement that she is a member of the UDJ. Though her statement that she supported the UDJ was in response to being asked why she did not have a membership card, she did not suggest that this was an acknowledgment that she was not in fact a member of the UDJ. There does not appear to be any support for a finding to that effect by the RPD.

VI. Conclusion

[23] In view of the accumulation of the four errors discussed above, I conclude that the present application should be granted and the impugned decision set aside.

[24] The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-4483-17

THIS COURT'S JUDGMENT is that:

1. The present application is granted.
2. The decision of the RPD dated October 12, 2017 is set aside, and this matter is remitted for consideration by a differently-constituted panel.
3. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Teklemichael Sahlemariam FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Teklemichael Sahlemariam FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario