Federal Court  Cour fédérale

**Date: 20201202**

**Docket: IMM-5371-18**

**Citation: 2020 FC 1109**

[ENGLISH TRANSLATION]

**Montréal, Quebec, December 2, 2020**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**GENET PAULOS TEDDLA**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

## JUDGMENT AND REASONS

[1] This application for judicial review was filed more than two years ago, on November 1, 2018. On February 15, 2019, the applicant filed a motion for a stay of proceedings, which this Court granted on March 19, 2019. The stay ended on October 23, 2019. The oral hearing was scheduled to take place on April 16, 2020; however, with the arrival of the first wave of

COVID-19, it was adjourned *sine die* pursuant to Chief Justice Crampton's Practice Direction and Order of March 17, 2020.

[2] A passport, issued by the State of Eritrea on November 21, 2014, filed in the Court record and bearing the name of Genet Pawlos Teddla [real name], indicates that the applicant was born on January 1, 1989, in Addis Ababa, Ethiopia. She is a citizen of Eritrea. On September 28, 2018, she claimed refugee protection in Canada. This Court must now determine the legality of an immigration officer's decision of October 17, 2018, that the refugee protection claim is ineligible to be referred to the Refugee Protection Division under paragraph 101(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because the applicant has already been recognized as a Convention refugee by Norway, a country to which she may be returned [impugned decision].

[3] The main thrust of the applicant's challenge of the impugned decision before this Court relates to whether the determination by the immigration officer [decision maker] is reasonable. The applicant submits that the decision maker could not conclude that the applicant could be returned to Norway on the basis of the evidence in the record. The respondent submits that the impugned decision is reasonable given the applicant's statements, the email messages sent and all the evidence in the record, which corroborate the fact that the applicant is a Convention refugee and that she can be returned to Norway.

[4] In accordance with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], it should be presumed that the decision as a

whole must be reviewed on a reasonableness standard (*Vavilov* at paras 16–17). Although there are exceptions to this established presumption, none of them apply in this case.

[5] This Court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention and seeking to understand the reasoning process followed by the decision maker to arrive at a conclusion. What the decision maker must do to justify the decision depends on the context in which the decision was made. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. In short, it is the decision maker's responsibility to assess and evaluate the evidence before it. Absent exceptional circumstances, this Court must not interfere with the decision maker's factual findings (*Vavilov* at para 125). That being said, "[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[6] Paragraph 101(1)(d) of the IRPA states that a claim is ineligible to be referred to the Refugee Protection Division if "the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country". On the basis of the evidence in the record, this Court finds that the impugned decision is reasonable.

[7] To begin with, this Court notes that, on its face, the impugned decision is clear and transparent. The decision maker concluded that the claim for refugee protection in Canada was ineligible to be referred to the Refugee Protection Division under paragraph 101(1)(d) of the

IRPA because the applicant had been recognized as a Convention refugee by Norway and could be returned to Norway. Since the applicant's Convention refugee status is not disputed, the only issue is whether she can be returned to Norway. Accordingly, the reasonableness of this conclusion is assessed below in light of the facts and evidence in the Court's record.

[8] The applicant allegedly left Eritrea for Sudan in December 2010. In September 2011, she travelled to Norway, where she claimed refugee protection under her real name [initial refugee protection claim]. In 2012, she was recognized as a Convention refugee under the United Nations *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Convention]. She was then issued a temporary residence permit by the Norwegian immigration authorities. After three years of residence, she received a permanent residence permit. There is no evidence in the record that the applicant lost her status as a Convention refugee or that her permanent resident status was revoked by Norway, as will be discussed below.

[9] In September 2016, the applicant left Norway with Norwegian travel documents. On September 12, 2016, the applicant entered the United States illegally via Germany and Mexico. She claimed refugee protection under the name Koste Saron Bechane [assumed name]. She was immediately arrested and detained by the American immigration authorities. This second refugee protection claim was apparently rejected. In any event, a final order of removal to Eritrea was issued on January 3, 2017, by an immigration court in the state of California. In the meantime, in 2016, the applicant had married an American citizen. The applicant was detained until July 2017. Under a supervisory order issued on July 6, 2017, she was required to report to and assist American immigration authorities in obtaining all necessary travel documents for her removal.

She lived in Pennsylvania from July 2017 to September 2018. The state of Pennsylvania issued her an official identity card under her assumed name.

[10] On September 27, 2018, apparently three months after she and her American husband separated, the applicant crossed the Canada–United States border (under her assumed name) via Roxham Road, without a valid visa or authorization to enter Canada. She was stopped by the RCMP. She sought to claim refugee protection in Canada. The following day, the applicant was brought before an enforcement officer of the Canada Border Services Agency [CBSA].

[11] Through an instrument of designation and delegation from the Minister of Citizenship and Immigration, designated CBSA officers have the authority to make certain decisions under the IRPA and its regulations, including receiving refugee protection claims from foreign nationals in Canada, determining their eligibility and, if eligible, referring them to the Refugee Protection Division.

[12] On September 28, 2018, the enforcement officer prepared a report setting out the relevant facts under subsection 44(1) of the IRPA stating that the applicant was inadmissible for non-compliance with the Act under section 41 of the IRPA. The officer also seized the identity documents (a forged Eritrean passport and the state of Pennsylvania identity card under her assumed name) in the applicant's possession. When confronted with the questionable or forged nature of the identity documents, the applicant stated that her name was "Paulos [*sic*] Teddla Genet". The officer ordered that she be arrested without a warrant and placed in administrative detention for the purpose of verifying her identity under section 55 of the IRPA.

[13] On September 28, 2018, the officer also conducted an initial interview regarding the eligibility of the applicant's claim for refugee protection in Canada. The applicant stated that she feared for her life in Eritrea, the country from which she was specifically claiming refugee protection. She also stated that she thought she was a permanent resident of Norway and that she had been recognized as a Convention refugee there. However, the officer had doubts as to the applicant's identity because she could not provide an identity document under her real name. The applicant therefore had to remain in custody until her identity and statements could be verified. On October 1, 2018, the Immigration Division extended the applicant's detention.

[14] On October 3, 2018, a second interview was conducted by another enforcement officer to obtain the applicant's statutory declaration. The applicant again stated that she had lived in Norway from 2011 to 2016 and that she had been granted refugee status and had become a permanent resident. She did not want to reveal her real name to her husband or to the American authorities because she was afraid of being deported to Norway. The officer told the applicant that, since she was already a Convention refugee, her claim for refugee protection in Canada was ineligible to be referred to the Refugee Protection Division. However, no official notice was issued under paragraph 101(1)(d) of the IRPA because the Minister was still unable at that point to confirm the applicant's true identity, which would of course be necessary to return her to Norway, if she was in fact a Convention refugee. On October 5, 2018, given that the Minister was continuing to make reasonable efforts to establish the applicant's identity, the Immigration Division extended the applicant's detention.

[15] On October 11, 2018, a representative for Canada in Europe requested the assistance of Norwegian authorities on behalf of the CBSA. On October 11, 2018, the enforcement officer who interviewed the applicant on October 3, 2018, received official confirmation of the applicant's true identity and status in Norway. The applicant was in fact registered under the name Genet Pawlos Teddla in that country and, as a citizen of Eritrea, she still held a valid Eritrean passport under her real name with an expiry date of November 20, 2019. She also held a valid permanent residence permit as a refugee, and she had been issued a Norwegian identity card under her real name on May 25, 2015, which had apparently expired.

[16] On October 12, 2018, the enforcement officer asked the embassy of Norway in Ottawa [consular authorities] whether a specific travel document was required to return the applicant to Norway. On October 15, 2018, the consular authorities replied that an entry visa was required unless the applicant had a permanent residence card issued by the Norwegian Directorate of Immigration. The entry visa would have to be attached to the travel document (at this point the applicant's Eritrean passport was still valid). The required documentation could be issued on behalf of Norway by the embassy of Denmark in Ottawa, following the procedure set out in the email message. The applicant would have to complete and sign the application form, provide a passport photo, pay the applicable fee and, if the travel document had been lost, describe the circumstances in which it had been lost. In addition, the consular authorities stated that they would carry out further checks. In the meantime, the Canadian authorities would have to provide the itinerary and dates of the applicant's return trip to Norway and her airline tickets or, in the alternative, the removal order.

[17] On October 17, 2018, the consular authorities informed the enforcement officer that the applicant, if she were to be returned to Norway, could indeed apply for any necessary emergency travel documents (such as an entry visa). On the same day, a designated officer of the CBSA rendered the impugned decision that the applicant is now seeking to have set aside.

[18] The applicant argues forcefully before this Court that the immigration officer should not have relied solely on what the consular authorities stated in the email messages of October 11 and 15, 2018. Although the applicant did not lose her refugee status in Norway, before issuing a notice under paragraph 101(1)(d) of the IRPA, the immigration officer should also have obtained written confirmation from the Directorate of Immigration that her permanent residence permit would not be revoked and, if applicable, that an emergency travel document (entry visa) would indeed be issued to her by the consular authorities. In the alternative, although Norwegian law has not been proven before this Court, the applicant submits that a residence permit may be revoked if the person has been outside Norway for more than two years, and it is uncertain whether the consular authorities will issue an entry visa to the applicant.

[19] The respondent counters that, under the Act, the burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests solely with the refugee protection claimant, and it is not for the immigration officer to show that the claim is ineligible (*Hermes Ablahad v Canada (Citizenship and Immigration)*, 2019 FC 1315 at paras 25–26 [*Hermes Ablahad*]). The applicant simply failed to discharge her burden of proof (*Guleed v Canada (Citizenship and Immigration)*, 2012 FC 22 at para 20). In this case, the applicant herself admitted in the interviews of September 28 and October 3, 2018, that she was a refugee and had

been granted permanent residence status in Norway. The steps taken with the Norwegian consular authorities to obtain an emergency travel document (entry visa) are not relevant at this stage. Indeed, the applicant is not ready to be removed, and all CBSA action in this regard is currently suspended, since the applicant has also applied for a pre-removal risk assessment, which has yet to be decided.

[20] I agree with the respondent. The expeditious and relatively straightforward process set out in sections 100 to 102 of the IRPA is intended to screen certain claims out of the Refugee Protection Division's jurisdiction on the basis of a summary review by an immigration officer (*Jekula v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 266 at para 44 [*Jekula*]; *Wangden v Canada (Citizenship and Immigration)*, 2008 FC 1230 at para 76). It bears repeating that, under subsection 100(1.1) of the IRPA, the burden of proving that a claim is eligible to be referred to the Refugee Protection Division in Canada rests solely on the claimant, who must also answer truthfully all questions put to them (see also *Hermes Ablahad* at paras 25–26; *Gaspard v Canada (Citizenship and Immigration)*, 2010 FC 29 at para 16 [*Gaspard*]).

[21] Generally, the phrase "can be returned" in paragraph 101(1)(d) of the IRPA should be read to relate to the claimant's status in the country where "the claimant has been recognized as a Convention refugee", in the sense that the country of asylum is obligated to permit the claimant's return (*Kaberuka v Canada (Minister of Employment and Immigration)*, [1995] 3 FC 252 at p 7 [*Kaberuka*]). Thus, where a refugee moves onward from a state which has granted international protection, that state bears ongoing obligations towards the individual, unless their status has ceased, which, on the basis of the evidence, is not the case here (UNHCR, *Guidance on*

*Responding to Irregular Onward Movement of Refugees and Asylum-seekers* (2019) at para 33). An applicant's asylum status is not affected because their permanent residence status was lost or because their application for permanent residence in the country of asylum was refused (*Gaspard* at paras 15–16).

[22] The applicant cannot be returned to Eritrea (section 115 of the IRPA) unless one of the exceptions applies (she is a person who is inadmissible on grounds of serious criminality and who constitutes a danger to the public, or who is inadmissible on grounds of security or violating human or international rights). In fact, both Canada and Norway, being signatories to the Convention, are subject to the prohibition of expulsion or return ("refoulement") set out in article 33 of the Convention. It is therefore sufficient for an immigration officer determining the eligibility of a claim for refugee protection in Canada to ensure that a person already recognized as a Convention refugee by another country will, if required, be able to obtain the necessary travel documents in order to be returned to the country of asylum (unless the person, when ready to be returned, tells the CBSA enforcement officer that they prefer to be returned to their country of nationality rather than the country of asylum).

[23] There is no reason to intervene in this case. In addition to the applicant's admissions of Convention refugee status and permanent resident status in Norway (in the interviews of September 28 and October 3, 2018), the immigration officer could also rely on the email message of October 11, 2018, from the consular authorities, confirming that the applicant was indeed who she claimed to be, that Norway had recognized her as a Convention refugee, and that she still had a valid permanent residence permit on October 11, 2018. Furthermore, if her

Norwegian permanent resident identity card did expire, an application for an emergency travel document could still be made, as suggested in the email messages of October 15 and 17, 2018. Therefore, the impugned decision is reasonable.

[24] The above findings by this Court would suffice to dispose of the matter and dismiss this application for judicial review. However, I will make the following additional remarks regarding the new argument raised at the hearing before this Court by the applicant's counsel, namely that the claim for refugee protection in Canada should not have been declared ineligible because the applicant fears persecution or alleges a fear for her life if she were returned to Norway, the very country that granted her refugee protection. This alternative argument must also be rejected.

[25] First, in determining whether a refugee protection claim is eligible to be referred to the Refugee Protection Division, an immigration officer is not required to examine any risk that the claimant may face in the country that has already granted asylum (*Jekula* at para 44). Incidentally, in the interviews of September 28 and October 3, 2018, the applicant never expressed a fear of persecution in Norway. In any event, however, the case has not reached the removal stage, but only the stage regarding the eligibility of the refugee protection claim of September 28, 2018, to be referred to the Refugee Protection Division. Moreover, since the impugned decision was rendered, the applicant has already availed herself of the opportunity to apply for a pre-removal risk assessment, and no decision has yet been rendered by the officer dealing with that application.

[26] Second, it should be noted that the applicant has made no less than three separate claims for refugee protection in no less than three countries that are signatories to the Convention, namely Norway, the United States and Canada. However, in principle, international refugee law does not confer upon refugees the right to choose their country of asylum (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 726 [*Ward*]; *Mohamed v Canada (Citizenship and Immigration)*, 127 FTR 241 at 4 [*Mohamed*]; UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-seekers* (2019) at paras 5, 14). It also does not authorize their irregular movement between successive countries solely in order to benefit from more favourable conditions. In addition, refugees and asylum-seekers have duties and obligations to respect national laws and measures to maintain public order, including obligations to cooperate with the asylum process, which may include presenting themselves to authorities and submitting asylum claims promptly, or complying with procedures to regularize their stay. The evidence in the record shows that the applicant still has Convention refugee status in Norway, where her first refugee protection claim was accepted.

[27] Lastly, it is the applicant's responsibility to follow the procedure given by the immigration authorities to regularize her stay in Norway once the removal order has been carried out. In this case, it would seem improper to force the immigration officer to refer the refugee protection claim of September 28, 2018, to the Refugee Protection Division. This conclusion is consistent with sections 100 and 101 of the IRPA, as well as Canadian case law and international law (UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-seekers* (2019) at paras 5, 6, 13–14, 33; Executive Committee of the High Commissioner's Programme, *Problem of Refugees and Asylum-Seekers Who Move in an*

*Irregular Manner from a Country in Which They Had Already Found Protection*, UNHCR, 40th Sess UN Doc 12A (A/44/12/Add.1) at para e); *Mohamed* at 4; *Ward* at 726).

[28] Consequently, any alternative challenge by the applicant as to the legality of the impugned decision must fail.

[29] In closing, the applicant submits that this application for judicial review also raises a question of law of general importance, which should be certified by this Court under paragraph 74(d) of the IRPA. The question is as follows [TRANSLATION]: "Is written confirmation required from the authorities of the country to which the person having been granted Convention refugee status will be returned within the meaning of paragraph 101(1)(d) of the IRPA?"

[30] In *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 46, the Federal Court of Appeal reiterated the criteria for certification:

> The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[31] There is no need to certify the proposed question, as it is not determinative in this case. Paragraph 101(1)(d) of the IRPA merely states “can be returned”. The answer to this question depends essentially on the facts, which are unique to this case and may vary from case to case. The Court cannot determine in advance the cases where a claimant “can be returned”. This is a determination that is the sole responsibility of the immigration officer. Whether there is written confirmation and whether a particular travel document is accepted are part of the usual discussions between the authorities involved once the Minister is ready to proceed with the removal and once the removal date is known. Therefore, I am of the opinion that the question proposed by the applicant does not meet the certification criteria set out above.

[32] For these reasons, this application for judicial review is dismissed. No serious question of general importance will be certified.

**JUDGMENT in IMM-5371-18**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-5371-18 |
| **STYLE OF CAUSE:** | GENET PAULOS TEDDLA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | MATTER HEARD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | NOVEMBER 18, 2020 |
| **JUDGMENT AND REASONS:** | MARTINEAU J. |
| **DATED:** | DECEMBER 2, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Gjergji Hasa | FOR THE APPLICANT |
| Sherry Rafai Far | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Ferdoussi Hasa Attorneys<br>Montréal, Quebec | FOR THE APPLICANT |
| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |