Federal Court  Cour fédérale

Date: 20210625

Docket: IMM-1861-20

Citation: 2021 FC 668

Ottawa, Ontario, June 25, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

BERHE DEBESAY AFEWERKI
SIMRET HAILE WOLDEMICHAEL
ABRAHAM GEREMEDHIN GEREZGIHER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision, dated July 17, 2019, refusing the permanent residence application of a privately sponsored refugee family [the "Decision"] on the basis of subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the

"*Act*"] and subsection 153(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the "*Regulations*"].

II. Preliminary Issue

[2] There is a preliminary issue as to the proper applicant or applicants in this application for judicial review and whether to amend the style of cause.

[3] The named applicant in this judicial review, Senait Haile Teklezghi, along with four other members of the Tesfa Group [the "G5 Sponsors"], applied to sponsor a family of three refugees [the "Refugee Applicants"]. The G5 Sponsors are a "Group of Five" sponsorship group, under the Private Sponsorship of Refugees Program.

[4] The Refugee Applicants are nationals of Eritrea, living in Sudan. They include the Principal Refugee Applicant, Berhe Debesay Afewerki; his wife, Simret Haile Woldemichael; and step child, Abraham Geremedhin Gerezgiher. They applied for permanent residence in Canada, as members of the Convention Refugee Abroad or Humanitarian Protected-Persons Abroad class.

[5] During the hearing, counsel for both parties sought to amend the style of cause, removing the indicated sponsor as the named applicant for judicial review and substituting the Refugee Applicants as the named parties. The agreement was reached subsequent to jurisprudence from this Court being raised with counsel, whereby persons who sponsor refugee claims have no standing to be joined in such an application (*Jeevaratnam v Canada (Citizenship and*

Immigration), 2011 FC 1371 at paras 3-4; *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337 at paras 14-19).

[6] On the consent of the parties, the style of cause is hereby amended to remove the named sponsor and add the Refugee Applicants as parties.

III. Background

[7] The G5 Sponsors identified Ermias Haile Girma as the group's representative on their Application to Sponsor [the "G5 Representative"].

[8] On June 6, 2019, Immigration, Refugees and Citizenship Canada, sent a letter to both the G5 Representative and the Principal Refugee Applicant [the "Request Letter"]. This letter was provided via the recipients' email addresses submitted in their respective applications. The Request Letter was addressed to the Principal Refugee Applicant and advised:

> You provided a document as proof of your refugee status in Sudan with your application. IRCC is unable to verify the Refugee Status document you provided with the authority that issued it. At the time of your registration, a UNHCR ProGres Number was assigned to you. IRCC requires this number to verify your registration in Sudan…
>
> …
>
> If you cannot provide your UNHCR ProGres Number (for example, because it was lost or because you were registered using another format) you are requested to provide the following details of your registration:…

[9] Neither the G5 Representative nor the Principal Refugee Applicant responded to the Request Letter within the prescribed timeframe of 30 days. The application for permanent residence was subsequently denied by way of the Decision, dated July 17, 2019.

[10] The Refugee Applicants applied for leave and for judicial review of the Decision. They seek an Order setting aside the Decision and for redetermination of the matter by a different officer.

IV. Decision Under Review

[11] The basis of the Decision was that Immigration, Refugees and Citizenship Canada was unable to verify the Refugee Status Determination document that was included in the application for permanent residence, with the authority that had issued it:

> ...In order to verify the authenticity of the document, as well as the date and location of the applicant's refugee registration in Sudan, the UNHCR ProGres Case Number was requested.
>
> The request did not require the applicant to retrieve a new document, but simply to provide the photo slip received from UNHCR as part of the initial registration process or the specific information from that document. If the applicant did not have their UNHCR ProGres Case Number, the sponsors were requested to submit enough specific information that a verification may be possible, including the applicant's exact name at the time of registration, date of birth and the date and place of registration with the UHNCR.
>
> …
>
> I have carefully considered all of the evidence and information before me and am not satisfied that this application is accompanied by a valid document certifying the status of the foreign national as refugee…

> I am therefore refusing the permanent residence application. If the situation has changed substantively or new information has emerged to overcome the current deficiencies, a new and complete application may be submitted.

V. Issues

[12] The issue is whether there was a breach of the duty of procedural fairness owed to the Refugee Applicants.

VI. Standard of Review

[13] The standard of review for a question of procedural fairness is correctness.

VII. Relevant Provisions

[14] Subsection 16(1) of the *Act* provides:

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[15] Further, subsection 153(1)(b) of the *Regulations* provides:

Sponsorship requirements	**Exigences de parrainage**
153 (1) In order to sponsor a foreign national and their family members who are members of a class prescribed by Division 1, a sponsor	**153 (1)** Pour parrainer un étranger et les membres de sa famille qui appartiennent à une catégorie établie à la section 1, le répondant doit satisfaire aux exigences suivantes:
(b) must make a sponsorship application that includes a settlement plan, an undertaking and, if the sponsor has not entered into a sponsorship agreement with the Minister, a document issued by the United Nations High Commissioner for Refugees or a foreign state certifying the status of the foreign national as a refugee under the rules applicable to the United Nations High Commissioner for Refugees or the applicable laws of the foreign state, as the case may be; and …	**b)** faire une demande de parrainage dans laquelle il inclut un plan d'établissement, un engagement et, s'il n'a pas conclu d'accord de parrainage avec le ministre, un document émanant du Haut-Commissariat des Nations Unies pour les réfugiés ou d'un État étranger reconnaissant à l'étranger le statut de réfugié selon les règles applicables par le Haut-Commissariat des Nations Unies pour les réfugiés ou les règles de droit applicables de l'État étranger, selon le cas; …

VIII. Analysis

[16] It is the Refugee Applicants' position that the Request Letter was either never sent or never received, which breached the duty of procedural fairness owed to the Refugee Applicants. The Global Case Management System [GCMS] indicates that the Request Letter was sent to the G5 Sponsors, but lacks other allegedly relevant details. Further, there are inconsistencies in the intended recipients of the communications from Immigration, Refugees and Citizenship Canada. For example, the Request Letter was allegedly sent to the Principal Refugee Applicant and the G5 Representative, while the Decision was sent to all G5 Sponsors.

[17] The Respondent submits that there is no merit to the Refugee Applicants' position. The evidence shows that Immigration, Refugees and Citizenship Canada emailed the Request Letter to the Principal Refugee Applicant and to the G5 Representative at their correct email addresses, and that no response to that request was ever received.

[18] On the balance of probabilities, the Request Letter was sent to the Principal Refugee Applicant and to the G5 Representative, this correspondence being contained in the certified tribunal record and noted in the GCMS (although, the recipients are specified as "all sponsors") (*Khan v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1029 at para 34 [*Khan*]; *Kaur v Canada (Citizenship and Immigration)*, 2009 FC 935 at para 12 [*Kaur*]).

[19] The Request Letter was sent via email on June 6, 2019, specifically to the email addresses that the Principal Refugee Applicant and the G5 Representative had provided in their respective application materials. No response was received within the 30 day timeframe and the Decision was subsequently issued.

[20] The Refugee Applicants' arguments do not undermine the evidentiary record. I do not accept that the Respondent was required to ensure some type of confirmation of receipt was in place, whether by the way of a read receipt or some other mechanism. These circumstances are not analogous to Rule 147 of the *Federal Courts Rules*, SOR/98-106, and the requirements concerning the validation of service.

[21] The Refugee Applicants' counsel had an opportunity to cross-examine Ms. Caroline Lestage on her affidavit, affirmed on May 12, 2021. Ms. Lestage is a Supervisor with Immigration, Refugees and Citizenship Canada. Her evidence was that the emails to the Principal Refugee Applicant and the G5 Representative were, to the best of her knowledge, successfully transmitted and there is no record of any transmission or delivery problem. Despite the opportunity for cross-examination, this evidence remains unchallenged.

[22] In circumstances such as these, where the Respondent has no reason to think that the communication has failed, the risk of a failure in communication lies with the Refugee Applicants (*Khan*, above at para 34; *Kaur*, above at para 12; see also *Chandrakantbhai Patel v Canada (Citizenship and Immigration)*, 2015 FC 900 at paras 24-38 [*Chandrakantbhai Patel*]).

[23] The Federal Court in *Khan* provided at paragraph 34:

> [34] Finally, it should be noted that in order to facilitate the two-way transfer of information between the parties in these matters, which clearly is important to both sides in ensuring a fair process, case law has established that applicants have the onus to provide updated contact information, not the reverse. For correspondence sent "to an address (e-mail or otherwise) that has been provided by an applicant which has not been revoked or revised and where there has been no indication received that the communication may have failed, the risk of non-delivery rests with the applicant and not with the respondent" (*Kaur v Canada (Citizenship and Immigration)*, 2009 FC 935 at para 12). Once having proven that a letter was duly sent, an immigration officer does not have to ensure that each letter is received or opened by the Applicant (*Khan v Canada (Citizenship and Immigration)*, 2015 FC 503 at para 14; *Yang v Canada (Citizenship and Immigration)*, 2008 FC 124 at para 14).

[24] The Refugee Applicants have not rebutted the presumption of receipt in their submissions – by pointing to an alleged lack of specificity in the GCMS notes or to inconsistencies in the recipients of various communications from Immigration, Refugees and Citizenship Canada. The Refugee Applicants' mere statement of non-receipt is not sufficient in this case to undermine the presumption (*Chandrakantbhai Patel*, above at para 33). There is no evidence to suggest that the emails were not successfully transmitted.

[25] I accept the Respondent's evidence that all members of a G5 sponsorship group are only contacted at certain stages during the processing of a sponsorship application. At other stages of the permanent residence application, the G5 Sponsors may be notified through the G5 Representative. As such, there is nothing inherently problematic in the Principal Refugee Applicant and G5 Representative being the designated recipients of the Request Letter. I further note that the G5 Representative is the designated representative of all G5 Sponsors.

[26] Lastly, the appropriate recourse available to the Refugee Applicants is specified in the Decision. Notably, if new information has emerged to overcome the current deficiencies, a new and complete application may be submitted. As such, the Refugee Applicants are not left without further recourse.

A. *Proposed Question for Certification*

[27] The Refugee Applicants have proposed the following question for certification:

> Where the duty of fairness requires the Minister of Citizenship and Immigration to send a procedural fairness letter, does that duty encompass a duty to seek to confirm receipt?

[28] The threshold for certifying a question is whether there is a serious question of general importance which would be dispositive of the appeal (*Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).

[29] This threshold has not been established in this case. The jurisprudence is settled in this area and the outcome in this case turns on the application of these well-established principles to the facts. While the Refugee Applicants point to this Court's decision in *Chandrakantbhai Patel* and two lines of cases related to which party bears the risk of a failed communication, this does not change the underlying principles (*Chandrakantbhai Patel* at paras 36-38). The Respondent in this case has established that the communication was sent, shifting any onus to the Refugee Applicants to rebut the receipt of the communication.

[30] Further, the proposed question is not one of general importance, but rather specific to the circumstances of this case.

IX. Conclusion

[31] For the reasons above, this Application is dismissed.

JUDGMENT in IMM-1861-20

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to remove the name of Senait Haile Teklezghi and add the names of Berhe Debesay Afewerki, Simret Haile Woldemichael and Abraham Geremedhin Gerezgiher;

2. This Application is dismissed; and

3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1861-20
STYLE OF CAUSE:	SENAIT HAILE TEKLEZGHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 22, 2021
JUDGMENT AND REASONS:	MANSON J.
DATED:	JUNE 25, 2021

APPEARANCES:

David Matas	FOR THE APPLICANT
Brendan Friesen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas Barrister and Solicitor Winnipeg, Manitoba	FOR THE APPLICANT
Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT