Federal Court  Cour fédérale

Date: 20211202

Docket: IMM-3562-20

Citation: 2021 FC 1345

Ottawa, Ontario, December 2, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

YOSIEF HAILE SIMONE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Ottawa, Ontario, on November 23, 2021 and edited for syntax and grammar with added references to the relevant case law)

I. Introduction and Background

[1] On July 27, 2020, the Refugee Appeal Division ("RAD") confirmed the decision of the Refugee Protection Division ("RPD") that the Applicant was neither a convention refugee nor a person in need of protection, as contemplated by sections 96 and 97 of the *Immigration and*

Refugee Protection Act [IRPA]. In rendering its decision, the RAD confirmed the finding of the RPD that the Applicant had not established on a balance of probabilities his identity as an Eritrean citizen. It reached this conclusion based upon the following:

i. the Applicant's birth certificate's only security feature, the stamp, listed its issuing office as the department of "Public Census, Cemetry, S/Reformation", whereas the documentary evidence in the Eritrean National Documentation Package ("NDP") indicates the issuing office for birth certificates is called the office of "Public Registration, Cemetery, and Social Rehabilitation". It is obvious to the untrained eye that there is no department in which the word "cemetery" or the word "reformation" is contained. The stamp also misspells the word "cemetery";

ii. the Applicant's testimony about obtaining his birth certificate was inconsistent. When asked if he had to bring any identity documents to obtain his birth certificate, the Applicant said "no" and that he only had to fill in a form. The RPD confronted the Applicant with objective evidence from the Eritrean NDP that birth documents, a copy of a residence document, a national identity card or the national identity card of either parent is required to obtain a birth certificate. The Applicant then changed his testimony and stated that he did have to show all the above documents, and school and work documents;

iii. the Applicant provided a school diploma from the Asmara Technical School. The name of the country "Eritrea" was misspelled in the heading of the diploma;

iv. the driver's license provided was difficult to read as the writing on the cover had faded into the booklet, which did not occur on the sample in the Eritrean NDP. The driver's license also listed its issuing authority as the "Ministry of Transport and Communication Department of Land Transport", whereas the sample in the Eritrean NDP lists the issuer as "Road Transport Authority". The cover of the driver's license also contained a six-digit number, while the sample in the Eritrean NDP indicated it should be a five-digit number.

[2] Although for purposes of my findings, nothing turns on the following point, I would also note that the RPD rejected the Applicant's testimony regarding the loss of his national identification card and his travel out of Eritrea.

[3] On appeal, the Applicant provided seven pieces of new evidence, six of which were considered together and the seventh independently of the first six. The first six pieces of new evidence sought to be admitted were:

i. A copy of the Applicant's old birth certificate, issued on July 18, 1984;
ii. A school transcript from Halay Comprehensive Secondary School;
iii. A copy of a power of attorney, granting the Applicant's mother authorization to handle government affairs on his behalf;
iv. A copy of the Eritrean national identity card belonging to the Applicant's mother;

v. An affidavit from Aklilu Fkadu Gebrehiwet, who claims to have been the Applicant's neighbour in Eritrea, along with a copy of the affiant's Canadian permanent resident card and Ontario driver's licence; and

vi. An affidavit from Mussie Okbazghi Amanuel, who also claims to have known the Applicant in Eritrea, along with his Ontario driver's licence.

[4] Considering the legal test set out in s. 110(4) of the IRPA, the RAD concluded that items one through four of the proposed new evidence were inadmissible. The RAD found that the Applicant had not shown that these items were not reasonably available, or that he could not reasonably have been expected in the circumstances to have presented them, at the time of the rejection of his claim by the RPD. The RAD noted that the Applicant placed much emphasis on his mother's advanced age to explain the delay in obtaining that evidence. However, according to his testimony, his mother lives with his half-sister, who is a 39-year old woman. The RAD noted that the Applicant did not explain why his half-sister could not have located and sent these documents in a timely manner.

[5] The RAD also noted that the Applicant initiated his claim in 2017. The hearing took place a year and half later. The RAD was satisfied the Applicant had more than enough time to gather evidence in support of his claim. It concluded that the Applicant's introduction of items one to four as new evidence constituted an effort to complete a deficient record. This Court has found that an appeal to the RAD is not an opportunity for a refugee claimant to fill in the gaps in the record before the RPD (*Dor v. Canada (Citizenship and Immigration*), 2021 FC 892 at para 78). The RAD also explained why the birth certificate, labeled as item number one, would not

have passed the credibility criteria set out in *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96, [2016] 4 FCR 230 [*Singh*]:

> "The document was supposedly issued on July 18, 1984 in Asmara. The existence of this document was discussed during the RPD hearing, at approximately 38:00 of the audio recording.11 The Appellant testified that when he applied for his current birth certificate in November 2009, he first had to return his old birth certificate, which had been issued under the Ethiopian government prior to Eritrean independence. It is not credible that after surrendering his old birth certificate to the authorities in 2009, the Appellant was suddenly somehow able to retrieve this document ten years later to disclose for his appeal."

[6] With respect to items five and six, the RAD noted that the Applicant stated that on December 1, 2018, just two weeks after the RPD rejected his claim "by pure coincidence he happened to meet two different friends whom he knew in Eritrea at an Eritrean church celebration in Toronto". Those two friends provided affidavits swearing to the Applicant's identity. One of them even wrote that he had never been to that church before. Although recognizing that it was a remarkable coincidence that these three individuals happened to be re-united in the one-month period while the Applicant was preparing his appeal, the RAD nevertheless admitted those two affidavits as new evidence.

[7] The seventh piece of new evidence, to which I referred earlier, constitutes a copy of the Applicant's daughter's refugee ID card, a food card and proof of registration with the United Nations High Commission for Refugees, all of which were attached to a letter dated December 23, 2019. On July 13, 2020, the RAD received a letter from the Ethiopian Agency for Refugee/Returnee Affairs, indicating that Danait Yosef Haile is registered at Hitsats refugee

camp. The letter explains that her permit allows her to live in Addis Ababa to stay with family members. The Applicant's daughter's new evidence was also admitted by the RAD.

[8] The Applicant sought an oral hearing. His request was rejected by the RAD. It concluded:

> "The Appellant also requests an oral hearing. However, the only new evidence that has been admitted is the daughter's refugee documents and the two affidavits from the Appellant's friends.
>
> Subsection 110(6) of the IRPA provides that the RAD may hold a hearing if, in its opinion, there is new evidence that raises a serious issue with respect to the Appellant's credibility, that is central to the decision with respect to the refugee protection claim, and that if accepted, would justify allowing or rejecting the refugee protection claim. In other words, the subsection 110(6) criteria require the new evidence to be determinative, not only of the appeal, but of the entire claim. I am not satisfied that this is the case in the present appeal. For the reasons set out further below, I agree with the RPD's findings that the Appellant's identity documents are fraudulent.
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> If the Appellant is the individual he claims to be, it would be reasonable to expect that he would be capable of providing genuine documents, such as his birth certificate, school records, and driver's licence, even if one believes his story about how his national identity card was confiscated. These sorts of documents should generally be obtainable in Eritrea. Even if each of the affiants were to appear as witnesses, and even if they were to give perfectly consistent testimony about the Appellant's identity, I would not be willing to accept the Appellant's identity on the basis of their testimony and the daughter's refugee documents. In regard to the daughter's refugee documents in Ethiopia, there is nothing to establish that the UNHCR has recognized the Appellant's daughter as a Convention refugee or accepted her asserted identity. The fact of the daughter's registration as a refugee, claiming to be an Eritrean citizen after the rejection of the Appellant's claim, is not sufficient to establish the Appellant's identity. To illustrate the point, it would be similarly unhelpful for the Appellant's daughter to rely on the fact of the Appellant's registration as an Eritrean refugee claimant in Canada as evidence of her own personal and national identity.
>
> In this context, when weighed against the Appellant's pattern of fraud, the admitted new evidence is insufficient to establish the

> Appellant's identity on a balance of probabilities. The new evidence could not be determinative of the entire claim. As the new evidence does not meet the criteria under subsection 110(6) of the IRPA, the request for an oral hearing is denied."

[9] The Applicant contends that the decision is unreasonable within the parameters of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*]. The Applicant submits that the RAD erred in not admitting items one through four of his proposed new evidence and by denying his request for an oral hearing. He contends that the RAD unreasonably gave little to no probative value to the new evidence admitted. He also submits that the RAD erred in its identity assessment.

[10] With respect to the admission of the new evidence, the basic rule is that on appeal, the RAD proceeds on the basis of the record of the proceedings before the RPD. For the RAD to depart from that basic rule, the explicit conditions set out in s. 110(4) of the *IRPA* must be met; namely, an applicant may present only new evidence that arose after the RPD's rejection, was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection (*Singh* at para 35; *Singh v. Canada (Citizenship and Immigration*), 2021 FC 336 at para 14). I find that the RAD, at paragraphs 10 and 11 of its decision, reasonably explains why it was not satisfied with the Applicant's explanation for not producing the proposed new evidence prior to the rejection of his claim by the RPD.

[11] I now turn to the RAD's decision to deny the request for an oral hearing. The RAD can only accept to hold an oral hearing when the tripartite test set out s. 110(6) of the *IRPA* is met;

namely, when new evidence admitted (a) raises a serious issue with respect to the credibility of the person who is the subject of the appeal; (b) is central to the decision with respect to the refugee protection claim; and (c) would justify allowing or rejecting the refugee protection claim. Even if the requirements of s. 110(6) are met, the RAD still has the discretion to decline an oral hearing (*Siddiqui v. Canada (Citizenship and Immigration*), 2015 FC 1028 [“Siddiqui”] at para 104). The RAD found that the new evidence would not be determinative of the claim as it would be insufficient to establish, one a balance of probabilities, the Applicant’s identity. I need not repeat that quoted earlier with respect to the effort to use proof of the daughter’s identity to prove the identity of the Applicant.

[12] I acknowledge that the analysis offered for not holding an oral hearing as it relates to the affidavits from the Applicant’s two friends is scant. However, that affidavit evidence itself is scant. The affidavits offered by the two friends offer insufficient detail to overcome the weight of the fraudulent evidence with respect to the Applicant’s identity.

[13] I find upon an assessment of the record as a whole, including the brevity of the affidavit evidence from the Applicant’s two friends, that the decision by the RAD not to hold an oral hearing is reasonable, in the circumstances.

[14] I therefore conclude that considering the material before the RAD, the RAD’s decision is reasonable within the parameters of *Vavilov*. The decision is internally coherent, is based on a rational chain of analysis, and is justified in relation to the facts and law that that are relevant to the decision (*Vavilov* at para 85). I would therefore dismiss this application for judicial review.

[15] No party proposed a question for certification, and none arises from the facts and law.

JUDGMENT IN IMM-3562-20

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

No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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