

Federal Court



Cour fédérale

Date: 20220324

Docket: IMM-93-21

Citation: 2022 FC 412

Ottawa, Ontario, March 24, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

IDRIS ISMAEL ALISERRO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Idris Ismael Aliserro, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated December 1, 2020, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant fears persecution in Ethiopia because of his political beliefs and activism in opposition to the Ethiopian government. The RAD upheld the RPD's decision and dismissed the Applicant's claim on credibility grounds.

[3] The Applicant submits that the RAD erred by confirming the RPD's negative credibility findings and by failing to consider his *sur place* activism in Canada in opposition to the Ethiopian regime as a continuation of his political activism.

[4] For the reasons that follow, I find the RAD reached an unreasonable conclusion with respect to its negative credibility findings. I therefore allow this application for judicial review.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 29-year-old citizen of Ethiopia and of Afar ethnicity.

[6] The Applicant claims to be part of the anti-government Afar youth protest movement in connection with the Duko-Hina countrywide youth protest movement. The Applicant states that he helped organize a protest held on June 28, 2018 in the city of Semera, located in the Afar region. Due to his activism, the Applicant was allegedly arrested on July 5, 2018, detained, and then released on July 11, 2018 through a bribe paid by his family, on the condition that he stop organizing protests.

[7] On October 23, 2018, the Applicant arrived in Canada on a visitor's visa to attend a conference organized by the Afar community in Ottawa. The Applicant made a claim for refugee protection after being warned by his parents and his aunt that he risked arrest if he returned to Ethiopia, and learning from his aunt that the Ethiopian police had searched for him at his aunt's home in Semera on October 28, 2018.

B. *The RPD Decision*

[8] In a decision dated November 8, 2019, the RPD found the Applicant is neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *IRPA*. The determinative issues for the RPD were the Applicant's lack of credibility and the fact that the forward-looking risk threshold was not met with regards to the Applicant's ethnicity, his association with the Afar community in Canada or his claim against the Ethiopian state. The RPD made the following findings:

- While the Applicant established that he is of Afar ethnicity and attended an Afar community conference in Ottawa, he did not establish, on a balance of probabilities, that he is involved with the Duko-Hina movement or any protests or other anti-state activity, nor was he detained, as he alleges.
- The Applicant's testimony lacked credibility with respect to his knowledge of his parents' occupations and their political affiliations.

- Weight was given to two articles referenced during the hearing that support, on a balance of probabilities, that the president of the Afar region up until 2015 (President Ismail Ali Sirro), is a person with a name materially similar to that of the Applicant's father (Ismael Aliserro). As a sophisticated and politically active person, the Applicant's assertion that he had not heard of a president with a similar name to his father's as recently as 2015 renders his allegations of involvement with the Afar youth movement and his detention not credible. On a balance of probabilities, the Applicant's father was the president of the Afar region as recently as 2015 and the claimant is generally not a credible witness.
- The credibility of the Applicant's account that he was one of five organizers of the June 28, 2018 protest is undermined by his inability to name two of the other four alleged organizers in his testimony. The Applicant also omitted in his Basis of Claim ("BOC") form that he participated in two other protests in 2018.
- The Applicant claims that the police visited his aunt's home in Semera in search of him after his arrival to Canada, yet it is implausible that the police would not have also searched his parents' home in Semera.
- The Applicant did not credibly demonstrate that he is similarly situated to persons who engaged in anti-government activity or that he would be perceived as an active opponent to the Ethiopian government.

- The Applicant did not demonstrate that his attendance at meetings held by the Afar Community of Ottawa or his association with this organization has or is likely to come to the attention of Ethiopian authorities.

C. *Decision Under Review*

[9] The Applicant appealed the RPD decision to the RAD. On December 1, 2020, the RAD dismissed the Applicant's appeal and upheld the RPD's decision. The determinative ground for the dismissal of the appeal was credibility. The RAD found that, on a balance of probabilities, the Applicant was not a credible witness due to inconsistencies and omissions in his testimony, and that the central allegations in his case are false. In particular, the RAD made the following findings:

- The RPD correctly drew a negative credibility inference based on the Applicant's evasive and inconsistent answers regarding his parents' work and political affiliations. The RPD was correct to find that, as the Applicant is a politically active person, it is implausible that he would not have more knowledge of his parents' political affiliations.
- The RPD was correct to find that the name of the Applicant's father and the name of the former president of the Afar region are similar enough to infer that they are likely the same person.

- The RPD correctly drew a negative credibility inference from the Applicant's omissions in his BOC narrative that he participated in two other protests in 2018, in addition to the June 28, 2018 protest. Even if the Applicant's participation in these protests did not precipitate his arrest, it was reasonable to expect him to mention them since his claim is based on his political participation.
- The RPD correctly drew a negative credibility finding based on the Applicant's inability to name two of his co-organizers of the June 28, 2018 protest.
- The RPD correctly found that, if the police were searching for the Applicant as he alleges, it is implausible that the police would not have searched for the Applicant at his father's house in Semera, having searched his aunt's house in Semera.

[10] The RAD considered the supporting letters from the Applicant's father and the President of the Afar Community of Ottawa and gave them positive weight, but did not find that they outweighed the overall negative credibility inferences. The RAD concluded that the Applicant is not credible and that the central allegations of his claim are false.

III. **Issues and Standard of Review**

[11] The issue in this application for judicial review is whether the RAD's decision is reasonable, and in particular:

- A. *Whether the RAD erred in its credibility assessment.*

B. *Whether the RAD erred by failing to review the Applicant's sur place activism.*

[12] Both parties submit that the applicable standard of review is reasonableness. I agree (*Adelani v Canada (Citizenship and Immigration)*, 2021 FC 23 at paras 13-15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 10, 16-17).

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

A. *Whether the RAD erred in its credibility assessment.*

[15] The Applicant submits that the RAD erred by basing its negative credibility findings on peripheral omissions in his BOC narrative and testimony, by failing to consider the context in which the omissions came to light, and by making unreasonable implausibility findings.

[16] First, the Applicant states that the central aspect of his claim was based on his association with the Afar youth movement and his detention following his participation in the June 28, 2018 protest. The Applicant argues that he clearly stated in his BOC and in his testimony to the RPD that he was involved in the Afar youth movement, he provided details of the June 28, 2018 protest that he organized, and he was consistent about the details involving his arrest and release from detention in July 2018. As such, the Applicant submits the RAD erred by basing adverse credibility findings on secondary issues and elaborative details such as his participation in other non-consequential protests or his failure to name other protest organizers in his BOC.

[17] The Applicant submits that rejecting a claim solely on the non-credibility of secondary or peripheral issues, without evaluating the credibility of the evidence that goes to the substance of the claim constitutes a reviewable error (*Simba v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14777 (FC) at paras 40-41). The Applicant asserts that his BOC narrative was not required to be “an encyclopaedic recitation of the evidence” (*Feradov v Canada (Citizenship and Immigration)* 2007 FC 101 at para 19), nor is it proper for the RAD “to

base its findings on an extensive “microscopic” examination of issues irrelevant or peripheral to the applicant’s claim” (*Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2006 FC 547 at para 37, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 (CanLII) at para 11).

[18] Secondly, the Applicant argues that the RAD should have considered the context in which the omissions were made before confirming the RPD’s negative credibility finding. The Applicant states that the omissions came about following the RPD’s prompting and were not related to any efforts on behalf of the Applicant to embellish his story. In *Naqui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282, this Court notes at paragraph 23:

Not every omission from an applicant's PIF will, however, be determinative of the individual's credibility [...] The nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission.

[Citations omitted.]

[19] Third, the Applicant maintains that the RAD erred by drawing a negative credibility inference from the Applicant’s lack of knowledge of his parents’ occupations and political affiliations, and relied on speculation in stating that the former president of the Afar region is the Applicant’s father because of the similarities in their names. The RAD’s decision states:

The RAD concurs with the RPD that it is implausible that an allegedly politically active man, like the appellant, would not have more knowledge of his parents' political affiliations. The RAD further disagrees with the appellant that his father's name and the former presidents indicates are not similar. His father's last name is

'Aliserro' and the former president's is 'Ali Sirro.' In the RAD view, those names are similar enough to provide a sufficient evidentiary basis upon which to draw a reasonable inference that they are probably the same person.

[20] The Applicant submits that his knowledge of his parents' political affiliations, or their alleged affiliations to the ruling party, is an irrelevant consideration in the assessment of his claim as an adult who is relying on his own political profile (*Arslan v Canada (Citizenship and Immigration)*, 2013 FC 252 at para 37).

[21] Finally, the Applicant submits that it was unreasonable of the RAD to make a negative credibility finding based on the implausibility that the police searched for him at his aunt's home and not his father's home in Semera. The Applicant argues that the RAD's inference is not supported by the evidence, and relies on my colleague Justice Fuhrer's decision in *YZ v Canada (Citizenship and Immigration)*, 2021 FC 232, at paragraph 12, to argue that this is not a clear case that can support an implausibility finding:

[12] Plausibility findings should be made in the clearest of cases, such as where the alleged facts are "outside the realm of what reasonably could be expected or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant": *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ No 1131 [("Valtchev")]. Implausibility determinations demand a more rigorous review than credibility findings which are accorded considerable deference: *Yu v Canada (Citizenship and Immigration)*, 2015 FC 167 at para 10. Absent a reliable and verifiable evidentiary base against which to assess alleged facts, implausibility determinations may amount to little more than impermissible unfounded speculation: *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 11, citing *Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37 at para 4, [2010] FCJ No 31.

[22] With respect to the omissions in the Applicant's BOC and testimony, the Respondent contends that the RAD's negative credibility findings were based on more than the Applicant's failure to mention minor details. Since the Applicant's claim is based on his alleged history of political activity, the Respondent submits it was reasonable to expect the Applicant to have included his participation in the other protests in his BOC, even if they did not directly lead to his arrest. The Respondent relies on *Karaoglan v Canada (Citizenship and Immigration)*, 2008 FC 749 ("*Karaoglan*"), in which this Court found that the allegations omitted by the applicant were "serious and numerous" such that the RPD was entitled to find the applicant's story as a whole to not be credible (at para 16). In *Abd v Canada (Citizenship and Immigration)*, 2017 FC 374, this Court also determined that the RPD's credibility findings were reasonable because they were based on more than a failure to include minor details in the BOC forms (at para 21).

[23] The Respondent submits that the presumption of truthfulness can be rebutted due to credibility concerns arising from contradictions, inconsistencies, omissions and implausibilities (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 ("*Lawani*") at paras 21-26; 37-38). In this case, it was reasonable of the RAD to rebut the presumption of truthfulness based on the Applicant's inconsistent evolving testimony regarding his father's political activities.

[24] Further, the Respondent asserts that it was reasonable of the RAD to find it implausible that the police would not search for the Applicant at his father's house in Semera. In particular, the Applicant testified that his father maintains a residence in Semera and that his parents were involved in his release from detention, which adds to the probability that the police were aware of the family connection and where his parents could be located. The Respondent argues that in

this context, it is not material that the Applicant was not residing with his parents at the time. To support this position, the Respondent relies on *Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at paragraph 39:

[...] *Valtchev* does not preclude consideration of plausibility or likelihood in making credibility assessments. If the evidence shows that a particular occurrence never occurs or is clearly unlikely, this may form a reasonable basis for an adverse credibility finding, particularly if there is nothing to explain or corroborate the clearly unlikely occurrence. Similarly, an assertion may be so far-fetched, so far outside the realm of what could be reasonably expected, even after taking cultural differences into account, that it is implausible, even if the objective evidence does not directly address the likelihood of its occurrence.

[25] Overall, the Respondent submits that where a credibility finding is based on a number of points, an analysis of the RAD's reasoning must be holistic in nature and "[...] does not involve determining whether each point in its reasoning meets the reasonableness test" (*Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409 at para 22; see also *Nanyongo v Canada (Citizenship and Immigration)* 2018 FC 105 at para 22).

[26] It is my view that the RAD committed several errors in their assessment of the Applicant's credibility that renders its decision unreasonable. To start, this Court's jurisprudence has established that while omissions from a BOC narrative may be grounds for drawing an adverse credibility finding, the omissions must be significant and central to the claim (*Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, at paras 15-16; see also: *Irivbogbe v Canada (Citizenship and Immigration)*, 2016 FC 710 at para 32; *Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 at para 29).

[27] I do not find that the Applicant's omissions with respect to peripheral details – such as his participation in other protests and the names of other protest organizers – were “serious and numerous” (*Karaoglan* at para 16), nor did they go to the core of his claim or even contradict his claim. The Applicant was clear about his participation in the Afar youth movement and provided details about the protest that led to his arrest, which in my view, is the moment when concerns about the risks related to his political activities began to escalate. I therefore do not find it unreasonable that the Applicant failed to mention his participation in other protests in his BOC or that he could not remember the names of two of the other organizers of the June 28, 2018 protest during his testimony. Also, unlike in *Karaoglan*, in which the RPD found that the applicant's attempts to embellish his claim undermined his credibility, I do not find that the Applicant's omissions in this case can be characterized as an attempt to embellish his refugee claim.

[28] Additionally, I agree with the Applicant that the RAD placed an undue focus on the Applicant's lack of knowledge of his parents' occupations or political affiliations. This is beside the point and does not go to the core of the Applicant's claim: The Applicant is an adult who is seeking refugee protection based on his own political activities – not those of his parents. As counsel for the Applicant brought to my attention during the hearing, the Applicant was also clear in his testimony before the RPD that he does not see eye-to-eye with his parents on political issues, which has led to family strife.

[29] During the hearing, the Applicant's counsel also argued that the RPD and RAD erroneously based their conclusions regarding the Applicant's father's name on western naming

conventions. These findings did not take into account the naming practices in Ethiopia, where it is not improbable to find several hundreds of people in one region who carry the same surname, yet are not directly related. I agree with the Applicant's argument that the similarity of names alone cannot support the RAD's finding that there is sufficient evidentiary basis upon which to infer that the Applicant's father and the former president of the Afar region are the same person. I find that this conclusion was unreasonably based on a speculative assumption.

[30] Furthermore, as noted by this Court in *Lawani*, "[...] not all inconsistencies and implausibilities will support a negative finding of credibility; such findings should not be based on "microscopic" examination of issues irrelevant to the case or peripheral to the claim" (at para 23, citations omitted). I do not find that the RAD's implausibility findings were drawn from a clear evidentiary basis. For instance, the Applicant's submissions to the RAD outlined how he was living at his aunt's house while he worked on a part-time basis in Semera. The Applicant also testified that he had not lived with his parents since completing high school. At the time of the police search, his mother did not live in Semera and his father went between his residences in Addis Ababa and Semera. As such, I do not find it implausible that the police would search for the Applicant at his current residence (his aunt's home), rather than his father's house in Semera.

[31] While the RAD is entitled to draw an adverse credibility inference from the implausibility of a claimant's narrative, it must do so with caution and not simply on the basis that it is unlikely that events happened as the Applicant said they did (*Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 ("*Zaiter*") at paras 8-9). As noted by this Court in *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155, at paragraph 10, "[...]

this Court has often cautioned that such determinations are best limited to situations where events are clearly unlikely to have occurred in the manner asserted, based on common sense or the evidentiary record” (as cited in *Zaiter* at para 8; citations removed, emphasis added).

[32] I therefore agree with the Applicant that the RAD’s negative credibility findings were unreasonably based on a ‘microscopic’ analysis of evidence that does not go to the core of the Applicant’s refugee claim. I also do not find that the events leading to the RAD’s implausibility findings were ‘clearly unlikely’ to have occurred in the way the Applicant says they did.

[33] Having determined that the RAD’s negative credibility findings were unreasonable, I find it unnecessary to address the Applicant’s arguments with respect to his *sur place* activism.

V. **Conclusion**

[34] I find that the RAD reached an unreasonable conclusion with respect to its negative credibility findings. This application for judicial review is allowed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-93-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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