

Federal Court



Cour fédérale

Date: 20220503

Docket: IMM-527-21

Citation: 2022 FC 637

Ottawa, Ontario, May 3, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**AMINA ADAM MOHAMED
MERYM MOHAMMEDSANI
SARA MOHAMMEDSANI
ALARETH MOHAMMEDSANI
ALHUSSIEN MOHAMMEDSANI
ALI MOHAMMEDSANI
AMAL MOHAMMEDSANI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a January 8, 2021, decision of an Immigration officer refusing the Applicants' request to apply for permanent residence from within Canada on

humanitarian and compassionate grounds. The application will be granted because the officer erred in the interpretation of dates on a key document, thus rendering the decision unreasonable.

Background

[2] The Applicants are Amina Mohamed [the Principal Applicant] and her six children [the Minor Applicants].

[3] The Principal Applicant's name was misspelled in the Notice of Application. It is Amina Adam Mohamed, not Amina Adam Mohammed, as originally written. An Order will issue amending that name with immediate effect.

[4] All of the Applicants were born in Saudi Arabia but hold only Ethiopian citizenship. The Applicants came to Canada on January 20, 2017, and made a refugee claim. This claim was rejected by the Refugee Protection Division [RPD] and the Refugee Appeal Division. On March 14, 2019, the Applicants applied for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[5] In her affidavit, the Principal Applicant explains that her husband and her father were not supportive of her decision to make a refugee claim in Canada. She says that, after her refugee claim failed, she spoke to her husband about going back to Ethiopia. The Principal Applicant says that her husband and her father informed her that she could not go back to Ethiopia as both were active in politically opposing the Ethiopian regime. The Principal Applicant claims that her

father has been exiled from Ethiopia since 1974. She says she was not aware of this at the time of her refugee claim because she comes from a conservative family where women are kept out of politics.

[6] The Applicants claim that the Principal Applicant's brother was recently deported from Saudi Arabia to Ethiopia. In Ethiopia, he was detained and questioned about his father's political activities. The Applicants submitted with their H&C application a police report from the Addis Ababa police [the Police Report] confirming that the Principal Applicant's brother was detained in relation to suspected crimes of the Principal Applicant's father and husband. The Principal Applicant's father is wanted "for his involvement for the unrest that occurred within the Oromia community", while her husband is wanted "for his involvement and support of the Oromo movement, and a Muslim movement called, let our voices be heard." The Principal Applicant's brother was released upon paying a bail bond.

[7] On January 8, 2021, the Applicants' H&C application was rejected. The officer recognized that the Principal Applicant had demonstrated social establishment and gave this modest weight. However, the officer found that there was a lack of evidence with respect to financial establishment and this diminished the overall weight of the Applicants' establishment in Canada "to a minimal amount."

[8] The officer considered the Applicants' submissions on the best interests of the Minor Applicants and, overall, the best interests of the children were granted a modest amount of weight.

[9] The officer considered the evidence that the Applicants would face danger in Ethiopia because of their family's political activity. The officer noted that the decision of the RPD states that the Applicants were not closely related to persons involved in political or protest activity regarding Ethiopia, but that the Applicants claimed to have not been aware of their family's activity at the time of the refugee claim.

[10] The officer considered letters submitted by the Applicants regarding the Principal Applicant's husband. The officer noted that while these letters did indicate that he is active in the Ethiopian and Oromo communities, they did not establish that he had undertaken activities that would be deemed to be in opposition to the Ethiopian regime. With respect to the Principal Applicant's father, the officer indicated that the Applicants had not submitted evidence establishing that he was politically active in Ethiopia nor that he had been exiled.

[11] The officer considered the Police Report and the Applicants' claim that the Principal Applicant's brother had been detained in relation to the Applicants' family's political activities. The officer noted that "while the original document is presumed to be in Amharic, all numerical values are expressed using Arabic numerals, as is also done in English." The officer noted that the date at the top of the original document reads "24/11/2010" and the date of arrest in the body reads as "09/08/2009". However, in the translated version, these dates read as "31/07/2018" and "17/04/2017", respectively. The officer also noted that the amount of the bail paid in the original reads as "100,000" while in the translation it reads as "1000,000". The officer found that, in light of these discrepancies, the Police Report lacked probative value. The officer therefore awarded no weight to the risk of detention, torture, or mistreatment due to political activity.

[12] Overall, while the Applicants had established some limited positive weight with respect to their establishment, the officer ultimately was not satisfied that H&C relief was justified.

Issues and Analysis

Standard of Review

[13] The first issue to be addressed is the standard of review. While both parties agree that the decision is to be reviewed on the standard of reasonableness, the Respondent puts a unique spin on that standard.

[14] The Respondent submits that in conducting a reasonableness review, this Court should only interfere with findings of fact or factual inferences leading to those findings where there is a palpable and overriding error, citing *Aldarwish v Canada (Minister of Citizenship and Immigration)* 2019 FC 1265 [*Aldarwish*].

[15] The Respondent also submits, relying on *Xiao v Canada (Minister of Citizenship and Immigration)*, 2021 FC 386 at paragraph 8, that the palpable and overriding error standard for factual findings is “subsumed” in reasonableness review. The Respondent therefore submits that requiring a palpable and overriding error to overturn a tribunal’s factual findings does not violate *stare decisis* and is consistent with the test described by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. I disagree.

[16] In my opinion, the Respondent's submissions run contrary to *Vavilov* and would serve to needlessly complicate reasonableness review.

[17] Justice Pallotta recently dealt with the Respondent's argument in *Gurung v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1472 [*Gurung*]. In *Gurung*, Justice Pallotta first noted that *Aldarwish* is a pre-*Vavilov* decision and then at paragraphs 8 and 9 rejected the Respondent's argument:

[8] To the extent that the respondent urges an approach that would apply a different standard of review to aspects of the RAD's decision, I find this approach to be inconsistent with the guidance in *Vavilov*. The presumed standard of review is the reasonableness standard, absent an exception. One exception, which does not apply to this case, is where there is a statutory appeal mechanism for an administrative decision and the reviewing court should apply appellate standards of review following the *Housen* framework: *Vavilov* at para 37. Where the reasonableness standard applies, it is a single standard of review that accounts for context, and elements of a decision's context do not modulate the standard or the degree of scrutiny by the reviewing court: *Vavilov* at paras 88-90.

[9] To the extent that the principles in *Aldarwish* and *Housen* are subsumed in the guidance for conducting a reasonableness review as set out in *Vavilov*, then the applicable principles can be drawn from the *Vavilov* decision itself.

[emphasis added]

[18] I agree completely with Justice Pallotta. *Vavilov* is clear that there are two standards of review for administrative decisions, reasonableness and correctness, and that reasonableness is a single standard.

The Reasonableness Analysis

[19] The Applicants raised several attacks relating to the reasonableness of the decision. In my assessment, the following is sufficient to dispose of this application.

[20] As noted above, the Applicants submitted the Police Report, but it was given no weight by the officer. This document was central to the Applicants' claim that they had a risk of detention, torture, or mistreatment due to political activity of the father and husband of the Principal Applicant. The Police Report details the arrest of the Principal Applicant's brother "on suspicion [of] his involvement in a crime, of which his father is suspected." It then details what the father and brother-in-law are suspected of:

1. His father is suspected and wanted for his involvement for the unrest that occurred within Oromia community.
2. He is also suspected of involving in the so called Ethiopian Muslim protest. We confirm that he was released after upon furnishing surety and a bail bond in the amount of 1000,000 Birr was posted, for him to appear when he is needed for further questioning.
3. He was also needed for questioning in relation to his brother-in-law named; Mohammedsani Alay; resident of Qatar; who is wanted by the government, for his involvement and support of the Oromo movement, and a Muslim movement called called, let our voices be heard.

[sic]

[21] These are clearly serious matters and, if given weight, appear to support the Applicants' claims of risk.

[22] The officer's analysis of this document is as follows:

I acknowledge that linguistic nuances may impede a translator's ability to offer a faithful translation of a document into English. I therefore do not necessarily draw a negative inference from the imperfect phrasing of the English translation of the document. However, while the original document is presumed to be written in Amharic, all numerical values are expressed using Arabic numerals, as is also done in English. I note that the date in the upper right-hand corner of each document differs from one another, written as "24/11/2010" on the original, and "31/07/2018" on the English translation. Further, the date of arrest on the translated document in the first line of the body of the English text is expressed as "17/04/2017", while the date in the according location in the original document is expressed as "09/08/2009". Finally, [while] the translated document indicates that Mr. Mohamed furnished "a bail bond in the amount of 1000,000 [sic] (Ethiopian) Birr", the according numerical value in the original document is expressed as "100,000". In light of these substantial discrepancies, which cannot be reasonably explained by mistranslation, I find that this document [is] unpersuasive in demonstrating that her husband endured mistreatment from Ethiopian officials, nor does it establish pattern of the client's family enduring mistreatment on the basis of their relationship to the client's father and husband.

The client does not submit persuasive evidence from which I can conclude that her father and husband have been deemed to have acted in opposition to Ethiopia's ruling party, nor that she or her children would face mistreatment by Ethiopian officials on this basis. The evidence pertaining to the client's brother's detention and interrogation on the basis of his, and his father's, involvement in protests and unrest lacks probative value on the basis that [the] dates on the original documentation differ from those on the English translation. I therefore have no basis to conclude that the client or her children face detention, torture, or mistreatment in Ethiopia on the basis of her father's and husband's activity, and award this factor no weight.

[emphasis added]

[23] It is observed that the principal basis on which the officer assigned no weight to this document is the apparent differences in the dates in the original document and the translation.

The reason why he expects them to be identical appears to be because they are both written “using Arabic numerals.” In challenging the translation as he does, the officer ignores the solemn declaration of the translator that “I have accurately and faithfully translated **Letter from Addis Abada Police in the matter of Adem Mohamed.**” [emphasis in original]

[24] The Applicants explain that the difference between the original document and the translation is because the original uses the Ethiopian calendar, whereas the translator translated those dates into the Gregorian calendar used in Canada. In this proceeding, they filed an affidavit of the translator explaining this.

[25] The Applicants submit that there is a substantial difference between the Ethiopian calendar and the Gregorian calendar used in Canada. It is noted that Item 1.9 of the National Documentation Package on Ethiopia, entitled *Ethiopia: Resources for converting dates from the Ethiopian to Gregorian calendar; formula or method for converting dates between the two calendars*, sets out the following information about the Ethiopian calendar. The calendar is seven to eight years behind the Gregorian calendar. The New Year falls on September 11. The calendar has thirteen months, which are not the same length as those in the Gregorian calendar. The NDP refers readers to conversion formulae from the Ethiopian embassy.

[26] Had the officer asked why the dates differed, that is the response the officer would have received. I accept the observation of the Respondent that it would have been helpful if the Applicants had explained this in their application; however, I also accept that they would have

had no reason to expect the officer to reject the translator's declaration of accuracy, and most certainly not without first asking why the dates differed.

[27] The Respondent submits that the Applicants' explanation for the inconsistency of the dates is "highly problematic" for five reasons.

[28] First, the Respondent submits that there is no evidence that the Police Report uses the Ethiopian calendar and the notion that it does is "tenuous."

[29] In my view, this submission is completely without merit. Why would the Police Report not use the calendar of the country where the police service is located? Just as one would assume that a letter from the Canadian police uses the Gregorian calendar, one would assume that a letter from the Ethiopian police uses the Ethiopian calendar.

[30] Second, the Respondent notes that no evidence has been adduced from the translator that he attempted to change the dates to the Gregorian calendar.

[31] That submission was addressed by the filing of an affidavit from the translator that he did just that.

[32] Third, the Respondent submits that the fact that Ethiopia uses a different calendar is not obvious and the officer was not expected to be "knowledgeable about the updated contents of all NDPs", as they are not acknowledged experts on individual countries unlike members of the

Refugee Protection Division. The Respondent notes that nothing in the H&C application suggested that the dates used the Ethiopian calendar.

[33] The dates in the documents were irrelevant until the officer chose to question the accuracy of the translation. Had the officer made the necessary inquiry before rejecting the accuracy of the translation, the officer would have been told that Ethiopia uses a different calendar from that used in Canada.

[34] Fourth, the Respondent submits that H&C officers do not have a duty to consult open sources and the onus is on applicants to explain inconsistencies. The Respondent notes that the Applicants do not actually use the NDP document to convert the dates and that if one does so, the dates are still inconsistent with the translator's dates. The Respondent converts the date 24/11/2010 to 24/11/2017 and the date 09/08/2009 to 09/08/2017. Therefore, according to the Respondent, conversion from the Ethiopian calendar does not explain the discrepancy.

[35] First, why would counsel for the Applicants think that this was an issue worth raising? As stated above, this was not an issue until the officer compared the dates based on the assumption that they should be the same.

[36] Second, the Respondent's submissions incorrectly convert the dates. The Respondent has simply added 7 or 8 to the year, depending on whether the date is before and after September. This does not account for the fact that the first month of the year is in September, and therefore

September 11 would correspond to the first day of the year in the Ethiopian Calendar (e.g. 11/09/2017 Gregorian is 01/01/2010 Ethiopian).

[37] The translator's conversion of the dates between the two calendars is correct. The translator's affidavit confirms this by showing the dates being converted using an online tool.

[38] Fifth, the Respondent notes that NDP document regarding date conversion was not put before the officer. The Respondent submits that while sometimes new evidence is admitted on judicial review to support fairness arguments, this new evidence should not be submitted here as it is being used to explain discrepancies after the fact.

[39] The officer failed to give the Applicants an opportunity to respond to a concern regarding the accuracy of the translations. The evidence is properly being tendered to demonstrate that, had the Applicants been given an opportunity to respond, they would have been able to explain the discrepancy to the officer.

[40] The Respondent notes that the Applicants are not attempting to defend the inconsistency of the bail amount between the original and translated documents.

[41] In the original document the number says "100,000", while in the translated document is says "1000,000". Given that there is no comma between the "1" and the "0", but there is a comma later in the number, it seems likely that this was a typo and the translator simply added

an extra zero. It would be unreasonable to question the accuracy of the entire translation due to this single discrepancy.

[42] As a result of assigning no probative value to the Police Report, the officer found that there was “no basis to conclude that the client or her children face detention, torture, or mistreatment in Ethiopia on the basis of her father’s and husband’s activity” and gave this factor “no weight.” Had the officer accepted the translation, there may have been a basis to give weight to this factor, which in combination with the positive weight given to the Applicants’ establishment may have affected the outcome of their application.

[43] The officer engaging in his or her own analysis of the certified accurate translation, without making any inquiry concerning the apparent discrepancy in dates, renders this decision unreasonable.

Conclusion

[44] The decision under review will be set aside and the H&C application referred to a different officer for consideration. No question was posed for certification.

JUDGMENT IN IMM-527-21

THIS COURT'S JUDGMENT is that the Style of Cause is amended with immediate effect to substitute as Applicant AMINA ADAM MOHAMED, whose name was misspelled in the Notice of Application, the application is granted, the decision is set aside, the Applicants' humanitarian and compassionate application is to be determined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-527-21

STYLE OF CAUSE: MOHAMED ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 7, 2022

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DATED: MAY 3, 2022

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