

Federal Court



Cour fédérale

**Date: 20220527**

**Docket: IMM-6467-20**

**Citation: 2022 FC 770**

**Ottawa, Ontario, May 27, 2022**

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

**BETWEEN:**

**NETSANET SHIMELES LEMMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] The Applicant, Netsanet Shimeles Lemma, seeks judicial review of a November 25, 2020 decision [Decision] of the Refugee Appeal Division [RAD] wherein the RAD decided that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issues for the RAD were identity and credibility.

[2] The application for judicial review is dismissed.

## II. Background

[3] The Applicant claims to be a citizen of Ethiopia. In her refugee claim, she states that her name is NETSANET SHIMELES LEMMA and that she was born on December 31, 1992. The Applicant fears persecution due to her anti-government opinion as well as her Oromo ethnicity.

[4] The Applicant worked as a nurse at a hospital in Matahara, Ethiopia. Following a protest on October 3, 2016, she treated people who were shot by police. On October 4, 2016, police detained the Applicant and accused her of passing information to government opposition parties. The police released the Applicant on October 14, 2016 and she lost her job.

[5] On September 22, 2017, the Applicant's father, an anti-government activist, disappeared. The Applicant's family believed that government security forces were responsible for his disappearance. On October 1, 2017, the police told the Applicant's family to collect the father's body and not have the cause of death determined. The family was not given any details surrounding the Applicant's father's death.

[6] On October 5, 2017, the police went to the Applicant's home and detained the Applicant and her mother. The Applicant claims that the police accused the family of blaming the police and the government for the death of the Applicant's father. The police released the Applicant and her mother on October 13, 2017.

[7] The Applicant used a smuggler to obtain a passport in the name of NETSANET SHIMELIS LEMA. The Applicant states that she used this passport to flee Ethiopia. The passport indicated that the Applicant's date of birth is September 28, 1987. The Applicant also used this passport to apply twice, unsuccessfully, for a United States [US] visa.

[8] The Applicant obtained a second passport from the same smuggler using the name ELENI NIGUSSIE TADESSE, which indicated that the Applicant's date of birth is December 9, 1987. She used this passport to obtain a temporary resident visa and to enter Canada on November 14, 2017. Prior to the RPD hearing the Canada Border Services Agency "informally" found this passport to be genuine.

[9] On December 14, 2017, the Applicant filed a refugee claim in Canada as NETSANET SHIMELES LEMMA.

[10] On June 26, 2019, the Minister of Immigration, Refugees and Citizenship [Minister] intervened before the RPD. The Minister gave evidence that the Applicant had previously used two Ethiopian passports with alternate identities for visa applications to the US and Canada. The correlation between the two passports was made using biometrics.

[11] On January 24, 2020, the RPD rejected the Applicant's refugee claim on the basis of identity and credibility.

III. The Decision

[12] The RAD upheld the RPD's decision. The RAD found that the Applicant was not credible and that the Applicant failed to prove her identity on a balance of probabilities.

[13] The RAD agreed with the RPD that there were many discrepancies between the Applicant's sworn refugee intake statements, the documents she submitted, and her testimony during the RPD hearing. Some of the discrepancies were not determinative. However, the RAD placed significant value on the fact that the Applicant could not explain the inconsistencies within her refugee claim and between her US and Canadian immigration records.

[14] For example, the RAD noted that the Applicant testified that she knew nothing about the details of the ELENI NIGUSIE TADESSE passport or how it was obtained, yet she declared that all information was fraudulent except for her photo. The RAD also noted that the Applicant's US visa applications conflict with her refugee claim. Details about her marital status, occupation, and birthdate were inconsistent and her parent's names were spelled differently. Additionally, the Applicant's refugee claim conflicted with her declaration that she had never been refused a visa from any country. Therefore, the RAD concluded that the Applicant failed to discharge her burden to prove her identity with credible and trustworthy evidence on a balance of probabilities.

[15] The RAD gave little weight to the Applicant's birth certificate and her Kebele identity card because the Applicant failed to explain certain errors within these documents and the details about their issuance. The RAD also considered her driver's licence, student transcripts, and

nursing licence. However, the RAD noted that the presumption that foreign identity documents are valid is rebutted when one or more identity documents have been fraudulently obtained (*Teweldebrhan v Canada (Citizenship and Immigration)*, 2015 FC 418 at paras 14-16).

[16] The RAD observed that her driver's licence was issued on a date when, according to the Applicant's testimony, she was detained by Ethiopian authorities. The RAD found that this discrepancy raised "*prima facie* credibility concerns." The RAD also held that the Applicant's school records and employment records were of little value because they did not provide a date of birth or security features.

[17] Overall, the RAD found that the entirety of the Applicant's remaining secondary documents were not sufficient to establish her identity on a balance of probabilities, whether considered individually or cumulatively. The RAD stated that both the RPD and the RAD drew a negative inference from the Applicant's lack of reasonable explanation for inconsistencies in the evidence and not because the Applicant used fraudulent documents to enter Canada.

#### IV. Issues and Standard of Review

[18] After considering the parties submissions, the issues for determination are:

- (1) Was there a breach of procedural fairness?
- (2) Is the Decision reasonable?

[19] Questions of procedural fairness are reviewable on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Oleynik v Canada (AG)*, 2020 FCA 5 at para 39; *Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 12). No deference is afforded to the underlying decision-maker on questions of procedural fairness (*Del Vecchio v Canada (Attorney General)*, 2018 FCA 168 at para 4).

[20] The merits of the Decision are subject to a reasonableness review. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification and whether the decision “is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86). In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). I agree with the Respondent that reasonableness is the standard of review for the RAD’s fact-driven findings relating to identity.

V. Analysis

A. *Was there a breach of procedural fairness?*

[21] The Applicant submits that the RAD breached her rights to procedural fairness. The Applicant states that the RAD erred by making credibility findings about her driver's licence without notifying the Applicant of its concerns. The Applicant states that the RPD also did not raise any issues with the issuance of the driver's licence. The Applicant submits that if the RAD had properly considered her driver's license, it would have been sufficient to establish her identity.

[22] The Respondent submits that the RAD was entitled to make new factual conclusions about the Applicant's identity documents because the credibility of those documents was clearly a ground of appeal before the RAD. As such, the Respondent submits that the RAD did not have to provide the Applicant with a further opportunity to respond.

[23] I agree with the Respondent that there is no breach of procedural fairness. The RAD does not have a duty to confront a claimant about its concerns related to documents provided by the claimant (*Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 at paras 45-47). As stated by Justice Gleeson, "[w]here issues raised and considered by the RAD are linked to the parties' submissions or the RPD's findings, the RAD is entitled to independently assess the evidence or make credibility findings" (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 870 at para 13, citing *Bebri v Canada (Citizenship and Immigration)*, 2018 FC 726 at para 16). Here, the determinative issues for the RAD (credibility and identity) were the same issues the RPD considered.

B. *Is the Decision unreasonable?*

[24] The Applicant submits that the RAD made unreasonable findings related to her identity and credibility. In particular, the Applicant submits that the RAD unreasonably assessed her driver's licence and passports.

[25] I disagree. The identity of a claimant is at the core of every refugee claim and the burden is on the claimant to establish their identity (*Ozomba v Canada (Citizenship and Immigration)*, 2016 FC 1418 at para 22). I find that the RAD reasonably considered and weighed the evidence and concluded that, based on the evidence, the Applicant failed to meet her burden with credible and trustworthy evidence on a balance of probabilities.

(1) Driver's Licence

[26] The Applicant submits that the RAD unreasonably concluded that her driver's license could not have been issued while she was detained.

[27] The Respondent submits that the RAD was entitled to give little weight to the driver's licence in light of the Minister's clear and convincing evidence that two of the Applicant's passports were unreliable. The Respondent submits that the issues with the passports created a presumption of credibility concerns, which were not remedied by the secondary identity documents.



[28] I agree with the Respondent that the RPD and the RAD are in the best position to gauge the credibility of an applicant and to draw the necessary inferences. Such findings are not open to judicial review as long as the inferences drawn are not unreasonable.

[29] I agree with the Respondent that the Applicant is asking this Court to reweigh the evidence that was before the RPD and the RAD. That is not a proper function of the Court on judicial review.

[30] The RAD could not have known that the Applicant requested her driver's license before authorities detained her. The Applicant did not share this information until it was included in her affidavit before this Court. The question before this Court is not whether the Applicant actually requested her driver's licence prior to being detained. Rather, the question is whether the RAD's conclusion falls within a range of possible outcomes (*Vavilov* at para 86). Based on the evidence before the RAD, it was reasonable for the RAD to conclude that the driver's license could not have been issued while the Applicant was detained.

[31] More importantly, the RAD did not make its credibility findings on the sole basis that there were issues with the driver's licence. In my view, the RAD found that the driver's licence was only one of the many elements regarding the Applicant's identity that impugned her credibility. The RAD found that the Applicant lacked credibility given the "low probative value" and "diminished reliability" of other primary and secondary identity documents. For instance, the Applicant's birth certificate also contained an alternate spelling of her name and it did not reference some details claimed by the Applicant in her basis of claim form. The passports are

addressed below. In their totality, the RAD found that those documents could not overcome the credibility concerns related to the Applicant's identity. This was a reasonable finding based on the evidence.

(2) Passports

[32] The Applicant submits that the RAD erred in finding that the passport she used to enter Canada was genuine. She also submits that the RAD erred in finding that credibility issues with the passports could lead to a negative presumption against other identity documents. I disagree.

[33] Identity findings are at the core of the RPD's expertise (*Salajova v Canada (Citizenship and Immigration)*, 2018 FC 823 at para 12). Unless the RPD makes a serious error, such as failing to consider material evidence, the RAD may show a certain degree of deference towards the RPD's credibility findings (*Canada (Citizenship and Immigration) v Kabunda*, 2015 FC 1213 at para 2, citing *Malambu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 763 at para 42).

[34] In the present matter, the RAD conducted its own assessment of the evidence and, after doing so, upheld the RPD's findings that the Applicant used two Ethiopian passports, each containing different personal information, which caused her identity to be an issue. As discussed above, the RAD agreed with the RPD that there were inconsistencies within the Applicant's primary identity documents, the US and Canadian immigration documents, and the Applicant's declarations and testimony. It was reasonable for the RAD to conclude that these issues could not be overcome by additional identity documents submitted by the Applicant.

(3) Credibility

[35] The RAD's assessment of the Applicant's credibility is consistent with the jurisprudence of this Court. The RPD and the RAD can reasonably draw negative conclusions on the credibility of an applicant's evidence based on "the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22).

[36] As already mentioned, a claimant's identity is always a foundational element of their refugee claim. Accordingly, the numerous inconsistencies and contradictions pointed out by the RAD were not minor. An applicant's overall credibility may affect the weight given to the documentary evidence (*Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at paras 21-22). I find that the RAD's findings accord with the law and are justified on the record (*Okbet v Canada (Citizenship and Immigration)*, 2021 FC 1303 at para 38).

[37] I agree with the Respondent that, in light of the issues related to the Applicant's passports, the RAD reasonably impugned the credibility of the Applicant's remaining identity documents. The RAD and the RPD could and did base their credibility findings on (1) the lack of credibility concerning the passports (the primary documents used to establish identity, which is a central element of a refugee claim) and (2) the fact that the Applicant was unable to explain the inconsistencies within these documents and other elements of her refugee claim.

[38] I also agree with the Respondent that there is a presumption that the decision-maker considered all of the available evidence unless shown otherwise (*Velinova v Canada (Citizenship and Immigration)*, 2008 FC 268 at para 21). While the RAD referred to letters from the City of Chiro and letters from the Kebele in relation to the Applicant and her father's death, the RAD did not analyze these letters. In these circumstances, the RAD's failure to analyze the letters is insufficient to show that the Decision is unreasonable. Given the RAD's findings on the primary and secondary identity documents and the Applicant's failure to explain various inconsistencies, the RAD had a reasonable basis for reaching its conclusions even without specifically analyzing these letters.

#### VI. Conclusion

[39] The application for judicial review is dismissed. The RAD did not breach the Applicant's rights to procedural fairness. The Decision is intelligible, transparent, and justified.

**JUDGMENT in IMM-6467-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Paul Favel"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6467-20

**STYLE OF CAUSE:** NETSANET SHIMELES LEMMA v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 12, 2022

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** MAY 27, 2022

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