Federal Court  Cour fédérale

Date: 20230920

Docket: IMM-6267-22

Citation: 2023 FC 1263

Toronto, Ontario, September 20, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

LEUL EYASU TSEGAY

Applicant

and

THE MINISTER CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] By decision dated May 25, 2022, a migration officer refused the applicant's request for permanent residence in Canada due to inadmissibility under paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The officer concluded there were reasonable grounds to believe that that in the early 1990s, the applicant was a member of the Eritrean People's Liberation Front ("EPLF"). The

officer also found reasonable grounds to believe that the EPLF was an organization that engaged in or instigated the subversion by force of a government.

[3] In this application for judicial review, the applicant submitted that the officer's decision was unreasonable and should be set aside, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] For the reasons that follow, I conclude that the application must be dismissed.

I. Events Leading to this Application

[5] The applicant is a citizen of Eritrea. In 1990, when he was 18 years old, he and his friends joined the "armed struggle" led by the EPLF, in territory that is now Eritrea, against the government of Ethiopia.

[6] The applicant participated in five months of military training and was posted to an EPLF brigade. He worked as a driver. He later taught others how to drive large vehicles and tanks.

[7] In May 1993, Eritrea gained its independence from Ethiopia.

[8] The applicant continued in his role as a driver and sometime instructor until April 1994, when he was demobilized.

[9] In December 2018, the applicant applied for permanent residence in Canada under a refugee sponsorship program.

[10] In early March 2022, an officer (not the later decision maker) interviewed the applicant and inserted notes of the interview into the Global Case Management System ("GCMS").

[11] On March 22, 2022, the same officer sent a "procedural fairness" letter (the "PFL") to the applicant raising issues about his possible inadmissibility to Canada arising from his possible membership in the EPLF as an organization that engaged in or instigated the subversion by force of any government and also engaged in terrorism.

[12] The applicant responded to the PFL in two letters, one undated and the other dated April 12, 2022. I will refer to them as the applicant's first and second responses to the PFL.

[13] By decision letter dated May 25, 2022, a migration officer refused his application. On the same day, the migration officer entered notes into the GCMS.

II. Analysis

A. *Standard of Review*

[14] As submitted by both parties, the standard of review for the migration officer's substantive decision is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov,* at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which

are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[15] Not all errors or concerns about a decision will warrant the Court's intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. The problem(s) cannot be merely superficial or peripheral, but must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada Post*, at para 33; *Alexion Pharmaceuticals Inc v. Canada (Attorney General)*, 2021 FCA 157, [2022] 1 FCR 153, at para 13.

[16] Absent exceptional circumstances, this Court's role on this judicial review application is not to agree or disagree with the decision under review, to reassess the merits, or to reweigh the evidence: *Vavilov*, at paras 125-126.

[17] The applicant bears the onus to show that the decision was unreasonable: *Vavilov*, at paras 75, 100.

B. ***Legal Principles under IRPA section 33 and paragraph 34(1)(f)***

[18] Under section 33 of the *IRPA*, the legal standard for proof under section 34 is "reasonable grounds to believe". This standard requires "more than mere suspicion, but less than the standard applicable in civil matters of proof on a balance of probabilities… [i]n essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 114; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344, at para 89; *Canada (Public Safety and Emergency Preparedness) v. Gaytan*, 2021 FCA 163, at para 40.

[19] Both parties correctly acknowledged the unrestricted and broad interpretation of the term "member" in paragraph 34(1)(*f*): *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] 3 FCR 487, at paras 27-29, 31-32. Such an interpretation of membership supports the public safety and national security objectives of paragraph 34(1)(*f*): *Kanagendren v. Canada (Citizenship and Immigration)*, 2015 FCA 86, [2016] 1 FCR 428, at para 27; *Poshteh*, at para 27; *Canada (Public Safety and Emergency Preparedness) v. Ukhueduan*, 2023 FC 189, at para 21.

[20] There is no requirement for "formal" membership in an organization for the purposes of paragraph 34(1)(*f*); the question is the individual's status as a member: *Mahjoub*, at paras 92, 94. Membership may be admitted: see *Ukhueduan*, at para 23; *Al Ayoubi v. Canada (Citizenship and Immigration)*, 2022 FC 385, at para 25; *Intisar v. Canada (Citizenship and Immigration)*, 2018 FC 1128, at para 23. If it is not admitted, "[p]articipation or support for a group may

suffice, depending on the nature of that participation or support": *Aboubakar v. Canada (Citizenship and Immigration)*, 2020 FC 181, at para 16.

[21] To determine whether an individual is a member of an organization, a decision maker assesses the person's participation in that organization: *Kanagendren*, at paras 33-38; *B074 v. Canada (Citizenship and Immigration)*, 2013 FC 1146, at para 29; *Helal v. Canada (Citizenship and Immigration)*, 2019 FC 37, at para 27. There may be some factors pointing towards and others pointing away from membership, which should all be considered and weighed before reaching a conclusion: *Kanagendren*, at para 36; *B074*, at para 29; *Anteneh v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 513, at para 29. The Court's decision in *B074* identified three general criteria to consider: the nature of the person's involvement in the organization, the length of time involved, and the degree of the person's commitment to the organization's goals and objectives: *B074*, at para 29.

[22] However, membership does not require an individual's involvement or complicity in any violent activities: *Mahjoub*, at paras 96-97; *Kanagendren*, at para 22. A member of an organization under paragraph 34(1)(*f*) is not required to be a "true" member who contributed significantly to any wrongful acts of the group: *Kanagendren*, at paras 13, 22. The legal test for membership is also not an assessment of an individual's level of integration into the organization: *Poshteh*, at paras 30-32.

[23] Recognizing the "reasonable grounds to believe" standard in section 33 and the broad range of conduct that gives rise to inadmissibility as a "member" of an organization under

paragraph 34(1)(*f*), the *IRPA* grants authority to the Minister to grant relief against inadmissibility: *IRPA,* section 42.1; *Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, [2002] 1 SCR 3, at para 110; *Kanagendren,* at para 26; *Gaytan,* at para 76; *Ugbazghi v. Canada (Minister of Citizenship and Immigration),* 2008 FC 694, [2009] 1 FCR 454, at para 47. It has been suggested that an application for Ministerial relief may be supported by factors such as an individual's limited or brief involvement in an organization, or lack of awareness of its terrorist activities, and arguments that the organization's activities were a justified struggle for liberation from a brutal regime or for self-determination: *Gaytan,* at paras 80-82; *Hagos v. Canada (Citizenship and Immigration),* 2011 FC 1214, at paras 32, 62-65.

C. ***Was the Migration Officer's Decision Unreasonable?***

[24] The applicant challenged the migration officer's decision on the grounds that there was insufficient evidence to show that he was a "member" of the EPLF. The applicant did not admit, but also did not challenge, the migration officer's finding that the EPLF was an organization that engaged in or instigated the subversion by force of the government of Ethiopia and also engaged in terrorism.

[25] The applicant's submission was that he had "limited, forced involvement" in the EPLF. Specifically, he argued that he did not have any choice about his involvement in the EPLF; rather, it was mandatory and he had to join to "rescue [his] life". The applicant also submitted that his involvement was merely as a driver in the "civil" area of transportation. He was not part of the military. He had no knowledge of any atrocities and was not involved in combat. According to the applicant, while the term "member" has an unrestricted and broad interpretation

in law, the limited nature of his involvement should have led to a conclusion that he was not a "member" of the EPLF.

[26] The respondent's position was that the migration officer's decision was reasonable, owing to the broad interpretation of a "member" of an organization in *IRPA* paragraph 34(1)(*f*). The respondent argued that, given the case law on membership, the factual record (including the applicant's two written responses to the PFL) supported the migration officer's conclusions.

[27] The evidence disclosed that the applicant and his friends joined the EPLF in 1990, when he was 18, and remained involved until 1994. The applicant advised that he had no choice but to join. The applicant advised that he had 5 months of basic training. Then he was assigned to drive trucks because he had experience with driving. Later he instructed others on driving large trucks and tanks. In his interview, he described himself as a soldier. In his PFL responses, he said he was an "[e]x-fighter".

[28] The migration officer's analysis in the GCMS notes considered five points related to the applicant's position that he "joined by necessity or coercion":

a) the applicant stated in writing that he was 18 years old when he and his friends "joined the Eritrean armed struggle";
b) the applicant was asked at his interview whether he was "conscripted or a soldier?" He answered: "I was a soldier in 1990. I was 16 [applicant was actually 18]. At that time everyone became a soldier" [comment inserted by migration officer];

c) there was no indication in the applicant's written application and at his interview that he was forced to join the EPLF, and the applicant only raised it after concerns were expressed;
d) the applicant was with the EPLF for a "significant period of time (1990-94)"; and
e) the applicant had "access to resources (vehicles) that could allow him to escape if he wanted to".

[29] At the hearing in this Court, the applicant's submissions emphasized that he was a teenager when he joined in 1990 and did not have "any choice" when joining. The applicant submitted that the country condition evidence with respect to Eritrea showed that individuals would go to prison if they attempted to refuse to participate in the EPLF at the time. Unfortunately, the applicant did not place any such country condition evidence before the migration officer (or before the Court) to support this argument. It therefore cannot succeed.

[30] The applicant did assert, in response to the PFL, that he was forced to join the EPLF. However, it was open to the migration officer to conclude otherwise on the factual record. The five points listed above had a foundation in the GCMS notes of the applicant's interview and in the applicant's written responses to the PFL. Applying the deferential principles in *Vavilov*, there is no basis for the Court to intervene on the issue of whether the applicant was coerced or had not choice but to join the EPLF in 1990.

[31] The applicant also submitted that his involvement in the EPLF was limited, and insufficient to ground a finding of membership in it. The migration officer concluded that the

applicant was “in the military wing of the EPLF” and did not work merely in the “civil” transportation section as the applicant argued.

[32] The migration officer’s conclusion that the applicant was in the military wing of the EPLF was expressly based on evidence from the applicant himself, namely that:

- the applicant had 5 months of military training, was posted to a specific brigade and served under the ministry of defence until April 1994;
- at his interview, the applicant described himself as a “soldier”;
- in 1998, the applicant returned to the military to work as a tank driver, and taught others how to drive a tank; and
- the applicant’s PFL response stated that he was an “[e]x-fighter” of the EPLF, a driver of heavy trucks and a teacher of driving heavy trucks and tanks.

[33] The applicant did not contest the evidentiary basis for any of these specific findings. As the respondent argued, the migration officer’s conclusion and supporting findings were based on evidence in the record.

[34] The migration officer also analyzed the evidence under three additional headings, to assess the applicant’s other arguments that:

a) he did not personally commit crimes against humanity, was of low rank and did not commit atrocities;
b) he was only with the EPLF for 16 months before Eritrea’s independence; and
c) he was a teenager when he joined.

[35] The migration officer's GCMS entries recognized that the applicant was not involved in committing atrocities and seemed to accept that the applicant was of a low rank. The migration officer found that the length of the applicant's service (2.5 years before independence in 1993 and he left in 1994) showed a "significant commitment" to the EPLF. The officer found he was 18 and an adult when he joined the EPLF.

[36] The applicant's submissions to this Court did not demonstrate that any of the migration officer's factual findings were expressly contradicted by any evidence, that the officer fundamentally misapprehended any record in the record, or that the conclusions under each heading were not open to the officer on the evidentiary record: *Vavilov*, at para 126.

[37] It is true that the migration officer did not expressly refer to certain statements in the applicant's responses to the PFL, some of which were emphasized by the applicant at the hearing. For example, the applicant stated that he drove to settle displaced people in liberated areas and that he drove heavy and light trucks to deliver water and food to camps for people fleeing the Ethiopian government's brutality. The officer did not expressly refer to the applicant's explanation for why he called himself a "fighter" during his interview (his PFL responses advised that everyone serving in liberated areas was working hard without pay and therefore a "fighter"). The applicant argued that these factors were inconsistent with the migration officer's conclusion that the applicant was a "member" of the EPLF and showed he was not.

[38] However, the GCMS notes make it obvious that the migration officer read both of the applicant's responses to the PFL. Those notes expressly stated that the officer did so, summarized his overall position and quoted the two PFL responses three times. The applicant's PFL responses continued to refer to himself as an "[e]x-fighter" and a "soldier for a long period of time". As the migration officer found, the applicant also reiterated that he had five months of military training, was assigned to a specified brigade, was a driver of heavy trucks and was a teacher of driving heavy trucks and tanks. Further, the migration officer was not required to refer to every piece of evidence and is presumed to have considered all the evidence: see e.g., *Kot v. Canada (Attorney General)*, 2022 FCA 133, at para 14; *Caron v. Canada (Attorney General)*, 2022 FCA 196, at para 45; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. D-53, [1998] FCJ No 1425, at para 16. In these specific circumstances, I conclude that the migration officer was not required to explain any specific factual finding in light of additional facts provided in the applicant's two responses to the PFL. Applying a reasonableness standard on this judicial review application, the Court cannot reassess or reweigh the evidence before the migration officer, nor can it form and impose its own opinion on the merits of the decision: *Vavilov*, at paras 83, 125-126.

[39] Overall, the applicant has not demonstrated that the migration officer's decision was unreasonable on the basis that it was unintelligible, not transparent or was not properly justified in relation to the facts bearing on it. The applicant did not allege that the migration officer made an error of law by failing to abide by any binding court decisions or by misinterpreting the term "member" or any other aspect of *IRPA* paragraph 34(1)(*f*): see *Vavilov*, at paras 112 and 116-

124. Given the applicable legal principles and the breadth of the term “member” in that provision, I do not detect any appreciable error of law in the decision.

[40] Applying the principles in *Vavilov*, I am not persuaded that there is a sufficient basis on which this Court can intervene to set aside the migration officer’s decision as unreasonable.

III. Conclusion

[41] For these reasons, the application will be dismissed.

[42] Neither party proposed a question to certify for appeal and none arises in the circumstances of this application.

JUDGMENT in IMM-6267-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Linda Kassin	FOR THE APPLICANT
Leanne Briscoe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT