

Federal Court



Cour fédérale

Date: 20240711

Docket: IMM-2149-23

Citation: 2024 FC 1094

Ottawa, Ontario, July 11, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

**HADAS BOKRE (A.K.A. NIGHISTI TEFAMARIAM GAIM)
HEISM ZAHIR KHALIL AHMED (A.K.A. ARON BERHANE TEKLAJ)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant, Hadas Bokre also known as Nighisti Tesfamariam Gaim, and her son, Heism Zahir Khalil Ahmed also known as Aron Berhane Teklai [Associate Applicant] seek judicial review of a decision of the Refugee Protection Division [RPD] dated January 24, 2023, denying the Applicants' claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicants, citizens of Italy, claimed that the Principal Applicant feared gender-based persecution by her husband and the

Associate Applicant feared domestic violence and religious persecution at the hands of his father (the Principal Applicant's husband) and his father's relatives. The RPD rejected the Applicants' claims on credibility grounds, with the RPD also concluding that the claims had no credible basis pursuant to subsection 107(2) of the *IRPA*.

[2] The Applicants assert that the RPD's decision was unreasonable on the basis that the RPD erred: (a) in its assessment of the Applicants' credibility; (b) in failing to assess the Applicants' corroborative evidence that supported their claims; and (c) in finding that the Applicants' claims had no credible basis.

[3] For the reasons that following, I am not satisfied that the Applicants' have demonstrated that the RPD's decision is unreasonable and accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicants arrived in Canada on June 2, 2018. They initiated inland refugee claims in July or August of 2018. In her original basis of claim [BOC] form, the Principal Applicant identified herself as Nighisti Tesfamariam Gaim, a citizen of Eritrea and no other country, and the Associate Applicant identified himself as Aron Berhane Teklai, and claimed he was a minor and a citizen of Eritrea and no other country. At the time they made their claims, the Applicants both relied on the Principal Applicant's narrative in the original BOC.

[5] In her original BOC, the Principal Applicant alleged persecution in Eritrea due to her political opinion. She stated that, because she refused to join and support the People's Front for Democracy and Justice, she was targeted by the Eritrean security forces. The Principal Applicant alleged that she was detained by security forces in October of 2017 and released in January of 2018, during which time she was interrogated five times, physically abused and tortured. The Principal Applicant stated that after being released from prison, she and her son fled to Sudan and, with the help of a smuggler, travelled to Canada in June of 2018 using false passports.

[6] In September of 2018, the Minister intervened in the Applicants' claim, adducing evidence that the Applicants were Italian citizens and their identities were Hadas Bokre and Heism Zahir Khalil Ahmed.

[7] On September 5, 2022, three years after the Minister's intervention and eight days prior to the hearing of their refugee claim, the Applicants each submitted separate amended BOCs which changed, among other things, their names, dates of birth, nationalities and grounds for seeking refugee protection. In their amended BOCs, they also acknowledged that their identities and nationalities were those put forward by the Minister and that the Associate Applicant was not a minor, as indicated in the original BOC, but an adult at the time of initiating his refugee claim.

[8] In her amended BOC, the Principal Applicant claimed that she had left Eritrea in 1989, during the war between the Ethiopian government and the Eritrean People's Liberation Front, and made a successful refugee claim in Italy thereafter obtaining Italian citizenship in 2013. She further alleged that she entered into a relationship with, and eventually married, Zahir Khalil Ahmed

[Zahir], a Muslim man from Sudan who had obtained Italian citizenship in 2004. She alleged that when she became pregnant with her son (the Associate Applicant), Zahir became abusive and started to pressure her to convert to Islam notwithstanding that he had promised he would convert to Christianity after marriage. She alleged that, on two occasions, she reported his abuse to the police but the police told her that she needed to have a witness or show injuries. The Principal Applicant further alleged that, when the Associate Applicant was approximately 10 months old, she became pregnant again. During this pregnancy, Zahir found the baptismal certificate of their son, became angry, threatened her with a knife and forced her to have an abortion.

[9] The Principal Applicant further alleged that in 2017, after Zahir returned from a trip to Sudan, he started pressuring the Associate Applicant to follow Islam and attend prayers at the mosque. The Associate Applicant refused to do so and had confrontations with his father. The Principal Applicant claimed that some unknown people began to call the Associate Applicant and threaten their lives. Moreover, she alleged that Zahir's brothers called them from Sudan and threatened that they would kill the Associate Applicant if he did not follow Islam.

[10] In his amended BOC, the Associate Applicant claimed that he saw his parents arguing about religion when he was growing up and that his father was violent over the years. He claimed that his father would throw dishes, hit him and his mother, and would threaten his mother using a knife. He alleged that when he turned 18, he told his father that he wanted to be a Christian and that his father threatened to kill him.

[11] In her amended BOC, the Principal Applicant also alleged that she experienced harassment in Italy on the streets and at work where people would insult her and tell her to go back to her country. Similarly, the Associate Applicant alleged in his amended BOC that he experienced racism in Italy, both in school and on the streets.

II. Decision at Issue

[12] The RPD heard the Applicants' claims on September 13, 2022. In its decision dated January 24, 2023, the RPD determined that the Applicants are not Convention refugees pursuant to section 96 of the *IRPA* because they had not established that they face a serious possibility of persecution in Italy; and that the Applicants are not persons in need of protection pursuant to section 97 of the *IRPA* because they have not established, on a balance of probabilities, that they face a risk to their lives or a risk of cruel and unusual treatment or punishment upon return to Italy.

[13] In finding that the determinative issue was credibility and that the Applicants' claims had no credible basis, the RPD made the following findings and inferences:

- A. The Principal Applicant did not provide a reasonable explanation for the significant inconsistencies between her original and amended BOCs. The fact that she feared Zahir, and the possibility that he might find her in Canada, did not explain why she did not limit the false statements in her BOC to their names; instead, she went so far as to concoct an elaborate story of persecution in Eritrea. Similarly, the Associate Applicant did not provide a reasonable explanation for the significant inconsistencies between his original and amended BOCs, given that he was an adult at the time that the original BOC was submitted and he knew it was false.

- B. A significant negative credibility inference was drawn from the Applicants' willingness to submit a false story to Canadian authorities in order to secure refugee status after they arrived in a safe country, their significant delay in raising allegations concerning Italy and the fact that they only disclosed their true identities after the Minister intervened and provided evidence undermining their entire narrative. A further negative inference was drawn as to the Applicants' general credibility.
- C. A negative credibility inference was drawn from the Applicants' submission of two fraudulent Eritrean birth certificates.
- D. A negative credibility inference was drawn from the Applicants' destruction of their most recent Italian passports, and their decision to hide the existence of the Associate Applicant's previous Italian passport, which they did to withhold their travel histories.
- E. A negative credibility inference was drawn due to inconsistent evidence concerning the Principal Applicant's allegation she was married to Zahir and with respect to the allegation that she faced domestic violence in this marriage. The Principal Applicant's evidence was evolving and inconsistent regarding when she married Zahir. Given that Zahir is the asserted agent of persecution and she alleges that the domestic violence only began after they were married, this inconsistency was central to her claim.
- F. A negative credibility inference was drawn from the vague statements and inconsistencies concerning the Principal Applicant's allegations of domestic abuse. No detailed information was provided about the domestic violence she alleges she

suffered from 2001 to 2017 and her amended BOC — completed with the assistance of counsel only days before the hearing — failed to include serious allegations of the physical abuse that the Principal Applicant raised for the first time at the hearing.

- G. A negative credibility inference was drawn from the Associate Applicant's failure to take any measures to stay safe, such as contacting police, through the years that he alleged he was receiving death threats. The Associate Applicant did not provide a credible explanation for why he believed that the police would not take his complaints seriously if he had made them.
- H. The Associate Applicant did not receive threatening phone calls as alleged and it was implausible that his father would have his community members call and threaten him for one or two years when the Associate Applicant was still living with his father at that time.
- I. In relation to the five unsworn supporting letters attesting that the Principal Applicant was in an abusive marriage with Zahir, none of them provide detailed information of specific incidents the authors were aware of and many of them had a shifting tone — sometimes written from the perspective of the author and, in other parts, written from the perspective of the Principal Applicant. Moreover, the names on the five letters did not match the identity documents provided and none of the authors were produced as witnesses at the hearing. Given these concerns, coupled with the Applicants' history of creating and producing forged documents in support of their initial refugee claims, the letters are unreliable and no weight was given to them in establishing the Applicants' allegations of risk in Italy. Even if the letters

were credible and reliable, the content of the letters were vague and general, providing no details as to the source of the authors' knowledge. As such, they would be insufficient to overcome the RPD's credibility concerns with respect to the Applicants' allegations.

- J. The Applicants' respective psychological reports were not reliable documents, did not overcome any of the RPD's credibility concerns and did not establish the Applicants' new allegations of risk in Italy.
- K. The presumption of truthfulness had been rebutted and the Applicants had not established their allegations on a balance of probabilities.

[14] On the issue of credibility, the RPD concluded as follows:

[74] As noted above, there were multiple significant credibility issues in this claim. These credibility concerns cannot be justified based on the stressful conditions of the hearing, the considerations in Guideline 4, or the psychotherapy reports provided, because many of the [Applicants'] misrepresentations and untruthful statements were premeditated and provided at the time of submitting their claims.

[75] Despite changing the entirety of their allegations with respect to their identity, country of nationality, past incidents of persecution, and the ground on which they are seeking protection, the [Applicants] did not provide any documents directly relevant to their allegations of domestic violence such as medical records or police reports. Above, the panel discussed the documents that have been provided and was unable to assign them any weight in establishing the [Applicants'] allegations of domestic abuse and persecution in Italy.

[15] The RPD went on to find that the Applicants did not experience discrimination amounting to persecution in Italy and that the objective documentary evidence did not indicate that they would face a serious possibility of discrimination amounting to persecution if they were to return.

[16] Finally, the RPD concluded that no credible documentary or testimonial evidence had been provided by the Applicants upon which the RPD could have made a favourable decision and, as such, there was no credible basis for their claim.

III. Issues and Standard of Review

[17] The sole issue for determination is whether the RPD's decision was reasonable.

[18] The parties agree and I concur that the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

IV. Analysis

A. *The RPD did not err in finding that the Applicants lacked credibility*

[19] The Applicants assert that the RPD erred in its assessment of the Applicants' credibility by focusing on peripheral issues and in finding that: (i) the Applicants were dishonest in their BOC narratives, which means they lied about their claim generally; (ii) the Applicants would never have admitted their true identities if not for the Minister finding out about their true identities; (iii) the Principal Applicant lied about the abuse she experienced at the hands of Zahir between 2001 and 2017; and (iv) the Associate Applicant is not credible because he did not report the threats to the police that he experienced after 2017.

[20] There is no merit to the Applicants' assertions. Throughout their submissions on this issue, the Applicants repeatedly assert that it was unreasonable for the RPD to find the Applicants were not credible based on "minor inconsistencies" in light of the credibility of the totality of the evidence. However, the RPD's credibility findings were not based on minor inconsistencies but, rather, significant inconsistencies that went to the core of the Applicants' asserted claims. Moreover, while the Applicants refer repeatedly to the "credibility of the totality of the evidence," nowhere do they detail what this allegedly credible evidence was, which is not surprising given that the RPD reasonably found that none of their evidence was credible.

[21] Importantly, the Applicants' submissions also conveniently ignore the fact that the RPD's credibility findings were not limited to the four findings they now challenge. Rather, the RPD made numerous other credibility findings that, considered in their totality, would have been

sufficient to undermine their credibility. These include the Applicants' submission of fraudulent birth certificates, the Applicants' concealment of their Italian passports, the Applicants' deliberate destruction of their Italian passports and the Principal Applicant's inconsistent evidence about whether and when she married Zahir.

[22] The case at bar does not involve minor or peripheral omissions from the Applicants' BOCs. To the contrary, the Applicants fundamentally altered almost every detail about their refugee claim from that which appeared in their original BOCs. They changed their names, their nationalities, the agent of persecution and the Associate Applicant's age, alleged an entirely different basis for refugee protection and admitted that their story of persecution and fear in Eritrea was fabricated. The Applicants assert that the change to their narrative was reasonably explained by their testimony — namely, that they concealed their identities to avoid being found by Zahir. However, the RPD rejected this explanation, noting that any fear of being located by Zahir (assuming that locating them in Canada was even a realistic possibility) would only explain the use of false identities and would not explain the need to fabricate a story about persecution in Eritrea. The RPD's rejection of this explanation was certainly reasonable. Given the drastic change to their BOCs, their admitted fabrication of a false narrative and their failure to provide a reasonable explanation for why their initial narrative was fabricated, I am satisfied that it was reasonable for the RPD to find the Applicants lacked credibility.

[23] With respect to the RPD's finding that the Applicants would never have admitted their true identities if not for the Minister's intervention, the Applicants argue that amending their materials nine days before the hearing is permitted under the RPD's rules and that the RPD's finding that

they would not have amended their BOCs without the Minister's intervention was speculative. The Applicants assert that many events happened between the time they filed their initial and amended BOCs besides just the Minister's intervention (such as retaining new counsel and receiving psychological therapy) and that it is these other events that could have caused the Applicants to amend their BOCs. However, there is no evidence in the record from the Applicants themselves suggesting that this was the case and that they had intended to amend their BOCs to correct their identities without the Minister's intervention. In the circumstances, I find that the RPD's finding that the Applicants would not have revealed their true identities, but for the Minister's intervention, was reasonable.

[24] With respect to the abuse experienced by the Principal Applicant at the hands of Zahir between 2001 and 2017, the RPD's findings were based on their conclusion that the evidence of the Principal Applicant regarding abuse was vague and inconsistent and that the Principal Applicant had failed to mention physical abuse in her amended BOC. The Applicants assert that, in making these determinations, the RPD misunderstood and misapplied the *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board* [*Gender Guidelines*].

[25] I find that the RPD did not misapply the *Gender Guidelines*. The *Gender Guidelines*, in and of themselves, cannot cure all of the deficiencies in the Applicants' claims, or the evidence provided in support thereof. Importantly, the Applicants have not pointed to any specific findings in their memorandum that would indicate the *Gender Guidelines* were unreasonably applied [see *Jayaraman v Canada (Citizenship and Immigration)*, 2022 FC 458 at para 24]. Contrary to the

Applicants' assertions, a fair reading of the RPD's reasons for decision demonstrate that the RPD did not expect the Principal Applicant to recall every incident of abuse and the details thereof. Moreover, it was reasonable for the RPD to expect that she would have mentioned the extensive physical abuse she testified to at the hearing and, generally, the abuse that transpired between 2001 and 2017 in her BOC, which she amended extensively in the days leading up to the hearing.

[26] With respect to the RPD's finding that the Associate Applicant failed to report the threats he experienced after 2017 to the police, the Associate Applicant's evidence demonstrated that he took no measures (such as contacting the police) to ensure his own safety, despite evidence that the police had attended previously to check on him when he was a child. Further, the objective country condition evidence did not support the Associate Applicant's assertion that the police would not have assisted him. In the circumstances, the RPD's finding was reasonable.

B. *The RPD did not fail to assess the Applicants' corroborative evidence*

[27] The Applicants assert that the RPD erred in placing little to no weight on most of the Applicants' documentary evidence, which they assert substantiated their claim. They assert that the RPD owed at least the most relevant documentary evidence "more consideration."

[28] The Applicants have not pointed the Court to any documentary evidence, or portion thereof, that the RPD overlooked. Rather, by asserting that the RPD owed certain documents "more consideration," the Applicants are impermissibly asking this Court to reweigh the evidence and arrive at a different conclusion, which is not the role of the Court on an application for judicial review [see *Vavilov, supra* at para 125].

[29] With respect to the letters of support, the Applicants assert that the RPD erred in not affording sufficient weight to these letters and in finding that the tone of the letters shifted, when any issues related to the phrasing of the letters was very likely caused by translation errors. The RPD's attribution of weight to these letters was based on the RPD's finding that the letters were unreliable due to their lack of detail, shifting tone, inconsistencies with respect to the identity of the authors, the failure to produce the authors as witnesses at the hearing and the Applicants' history of producing forged documents in support of their claim. I find that it was reasonable for the RPD to take these factors into consideration and to ultimately assign no weight to these letters. Moreover, the Applicants did not raise any concerns with the translation of the letters before the RPD when confronted with the RPD's concerns and, as such, it is not open to the Applicants to now raise this issue before the Court.

[30] With respect to the psychological reports, the Applicants assert that the RPD failed to properly assess the reports by disregarding the fact that the Applicants would experience significant stress and trauma if returned to Italy. However, in advancing this argument, the Applicants fail to address the fundamental problems with these reports, as noted by the RPD, which undermined their reliability. In the case of the Principal Applicant, the RPD was concerned with the impact of the Principal Applicant's changing narrative on the conclusions reached in the report; for example, the report speaks of the Principal Applicant reporting having experienced "flashbacks and nightmares about the torture she encountered in prison when she was in Eritrea." Further, the RPD noted the Principal Applicant's failure to produce any earlier reports, which likely would not support her current narrative, and that the report overstepped into advocating for the Principal Applicant. In the case of the Associate Applicant, the RPD was concerned with the vague

comments regarding previous psychotherapy sessions, the absence of results of the psychological tests that were administered, the author's vague source of knowledge of the events in Italy and the inconsistent testimony of the Associate Applicant about the therapy. In light of these concerns, which I find to be valid, the RPD's assessment of the reports was reasonable.

[31] With respect to the country condition documents, the Applicants assert that, contrary to the RPD's findings, the Applicants submitted country condition documents that outline how racialized people are still harassed in Italy and provided sufficient evidence to support that they have been repeatedly harassed and discriminated against by both the police and the general public in Italy. However, in making this assertion, the Applicants have pointed the Court to no specific evidence that was before the RPD of such repeated harassment and discrimination endured by the Applicants, or to any evidence that the RPD failed to consider. I find that the RPD engaged with the all of the evidence adduced by the Applicants, reasonably finding that the Applicants did not experience discrimination amounting to persecution in Italy and that the objective documentary evidence did not indicate that they would face a serious possibility of discrimination amounting to persecution if they were to return.

C. *The RPD did not err in finding that the Applicants' claims had no credible basis*

[32] The RPD may make a finding that there is no credible basis for a refugee claim pursuant to subsection 107(2) of the *IRPA* if "there was no credible or trustworthy evidence on which it could have made a favourable decision."

[33] The leading case interpreting subsection 107(2) of the *IRPA* (then subsection 69.1(9.1) of the *Immigration Act*, RSC 1985, c I-2) is *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, wherein the Federal Court of Appeal stated:

[28] Moreover, the wording of subsection 69.1(9.1) provides that a "no credible basis" finding may only be made if there was no credible or trustworthy evidence on which the Board member *could* have upheld the claim. In other words, the Board member may not make a "no credible basis" finding if there is credible or trustworthy evidence before it that is capable of enabling the Board to uphold the claim, even if, taking the evidence as a whole, the Board decides that the claim is not established.

[29] However, as MacGuigan J.A. acknowledged in *Sheikh, supra*, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

[30] On the other hand, the existence of *some* credible or trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination of the claim. Indeed, in the case at bar, Teitelbaum J. upheld the "no credible basis" finding, even though he concluded that, contrary to the Board's finding, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the documentary evidence. However, the claimant's evidence on this issue was not central to the Board's rejection of his claim.

[34] The RPD found that no credible documentary or testimonial evidence had been provided by the Applicants on which the RPD could have made a favorable decision. The Applicants assert that this finding is unreasonable because the RPD erred in finding that the corroborative evidence (letters of support and psychotherapist's reports) lacked credibility and by giving it no weight. The Applicants argue that the RPD's findings regarding the corroborative evidence and the amendment

to the Applicants' BOCs are credibility findings and not findings that support a no credible basis argument. The Applicants therefore assert that the RPD improperly conflated the two concepts.

[35] For the reasons stated above, I find that the RPD did not err in assigning no weight to the Applicants' corroborative evidence. Moreover, I do not accept the assertion that the RPD conflated the concepts of credibility and no credible basis. The RPD found that the Applicants' testimony was not credible and that the corroborative evidence was unreliable, such that it was afforded no weight. Moreover, even if the corroborative evidence could have been found to be trustworthy, the existence of some trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination, which was the case here [see *Rahaman, supra* at para 30]. There was nothing in the corroborative evidence that was independently capable of establishing the Applicants' claims of persecution. Therefore, I find that it was reasonable for the RPD to find that the Applicants' claims had no credible basis.

V. Conclusion

[36] As the Applicants have failed to demonstrate that the RPD's decision was unreasonable, the application for judicial review shall be dismissed.

[37] The parties proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-2149-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2149-23

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