Federal Court Cour fédérale

Date: 20241001

Docket: IMM-11986-22

Citation: 2024 FC 1536

Toronto, Ontario, October 1, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

MERHAWIT YEMANE OKUBAY
YARED KAHSU GEBREKIDAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Merhawit Yemane Okubay [Ms. Okubay], and the Dependent Applicant, Yared Kahsu Gebrekidan [Mr. Gebrekidan] are married. They applied for permanent resident visas as members of the Convention Refugee Abroad class (*Immigration and Refugee Protection Regulations [IRPR]*, s. 139), or alternatively, as members of the Humanitarian-protected Persons Abroad class (*IRPR*, s. 146).

[2] On October 3, 2022, an Officer from the High Commission of Canada in Kenya interviewed Ms. Okubay and Mr. Gebrekidan in Addis Ababa, Ethiopia. After the interview, the Officer approved Ms. Okubay's application for a permanent resident visa as a member of the Convention Refugee Abroad class, but removed Mr. Gebrekidan from the application because the Officer did not believe the marriage was genuine [the Decision].

[3] For the reasons below, this application for judicial review should be dismissed.

II. Background

A. *Ms. Okubay*

[4] Ms. Okubay was born in Eritrea and is an Orthodox Christian. Her father was conscripted into the Eritrean military on unlimited and indefinite service when she was a young child. He is confined in an Eritrean military prison and is not permitted to see his family.

[5] In June 2016, Ms. Okubay withdrew from school in grade 11 to care for her mother. By the end of 2016, Ms. Okubay and her mother received letters at their home from the local administration threatening them both with imprisonment and conscription into the national service if Ms. Okubay did not return to school.

[6] Fearing imprisonment and conscription, Ms. Okubay fled Eritrea on foot and arrived in Ethiopia where she was granted refugee protection on January 25, 2017. After receiving refugee protection, Ms. Okubay briefly lived in an Ethiopian refugee camp before moving in with her

uncle in Ethiopia. She supported herself and Mr. Gebrekidan with financial assistance from relatives.

[7] Ms. Okubay submitted her application for refugee resettlement in Canada on November 22, 2019 with Mr. Gebrekidan listed as a dependent applicant. Mr. Gebrekidan's brother-in-law agreed to privately sponsor Ms. Okubay's refugee resettlement application.

B. *Mr. Gebrekidan*

[8] Mr. Gebrekidan is a citizen of Ethiopia. He is also an Orthodox Christian and met Ms. Okubay at an Addis Ababa church in November 2018.

[9] Around May 1, 2019, Mr. Gebrekidan applied for a study permit. At the time of his application, he did not intend to bring Ms. Okubay with him to Canada, as they were only friends at the time of this application.

[10] Soon after, however, on May 9, 2019, Mr. Gebrekidan proposed to Ms. Okubay at his home and she accepted.

[11] On May 13, 2019, the High Commission of Canada in Kenya refused Mr. Gebrekidan's study permit application because it was not satisfied that he would leave Canada at the end of this stay, based on the purpose of his visit and family ties. The study permit application is not the subject of the present application for judicial review, and so the reasons for refusal are not part of the Certified Tribunal Record.

[12] Two days after Mr. Gebrekidan's study permit refusal, the couple married on May 15, 2019, in a small ceremony with between five and seven guests. Mr. Gebrekidan moved into the house of Ms. Okubay's uncle the same day.

III. Decision under Review

[13] In the Decision, the Officer was satisfied that Ms. Okubay met the definition of a Convention Refugee and displayed sufficient adaptability, motivation, and skills to successfully establish herself in Canada, or was otherwise exempt due to her vulnerability. Ms. Okubay was granted a permanent resident visa and has come to Canada.

[14] The Officer was not, however, satisfied that the marriage was genuine, nor that it "was not entered into for the purpose of immigration to Canada". As such, the Officer removed Mr. Gebrekidan from Ms. Okubay's application for refugee resettlement.

IV. Issues

[15] The Respondent submits that a preliminary issue is whether Ms. Okubay lacks standing to bring this application for judicial review because she has already been granted permanent residency in Canada. The Applicants oppose the Respondent's position on this preliminary issue.

[16] On the merits of the application, the Applicants and Respondent agree that the central issue is whether the Officer made a reviewable error in assessing the Applicants' marriage and removing Mr. Gebrekidan from the application.

[17] At the hearing into this matter, counsel for the Applicant raised a new issue, namely whether the conduct of the interview with the Applicants in this matter was procedurally fair. Given that this argument had not been raised prior to the hearing, and given that the Respondent could not properly prepare for it, I will not consider it here. Counsel is aware that arguments are to be set out in the written record and should not be introduced in the last moment, at the oral hearing.

V. Relevant Provisions

[18] See Annex "A" below for applicable legislative provisions.

VI. Standard of Review

[19] The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov* at para 85.

[20] Courts should intervene only where necessary, but must assure themselves that the decision, when read in conjunction with the record, bears the hallmarks of reasonableness, i.e. justification, transparency, and intelligibility: *Vavilov* at paras 99, 103. The Court must avoid reassessing and reweighing the evidence before the decision maker, but a decision may be unreasonable if the decision maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov* at paras 125-126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov* at para 100.

VII. Analysis

A. *Preliminary Issue: Does Ms. Okubay have standing to challenge the Decision?*

[21] The Respondent primarily relies on subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 [*FCA*], which makes judicial review available to "anyone directly affected by the matter in respect of which relief is sought." The Respondent submits that Ms. Okubay is not directly affected by the Officer's Decision, as she has been granted permanent residency in Canada and is at no risk of adverse consequences to her own status if Mr. Gebrekidan's application for a permanent resident visa is refused: see *Garcia Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 437 at para 8 [*Garcia Rodriguez]*; *Sinnathamby v Canada (Citizenship and Immigration)*, 2011 FC 1421 at para 22 [*Sinnathamby]*; *Chinenye v Canada (Citizenship and Immigration)*, 2015 FC 378 at paras 17-21 [*Chinenye]*; *Jeevaratnam v Canada (Citizenship and Immigtation)*, 2011 FC 1371 [*Jeevaratnam]*; and *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337, at para 17 [*Douze]*.

[22] In reply, the Applicants submit that the legal test to determine if someone is "directly affected" within the meaning of subsection 18.1(1) of the *FCA* is whether the matter at issue directly affects the party's rights, imposes legal obligations on it, or prejudicially affects it directly: *Rothmans of Pall Mall Canada Ltd v Canada (Minister of National Revenue)* (1976), 67 DLR (3d) 505 at para 13, 1976 CanLII 2258 (FCA); *Apotex Inc v Canada (Governor in Council)*, 2007 FC 232 at para 20; *League for Human Rights of B'Nai Brith Canada v Canada*, 2008 FC 732 at para 24.

[23] The Applicants submit that since Ms. Okubay is the principal applicant, severing her case from that of Mr. Gebrekidan directly affects her as his wife, as well as because his application is entirely dependent on hers. The Applicants also submit that Ms. Okubay's role as the principal applicant carries significant weight because her status and eligibility for refugee resettlement are directly linked to the success of the joint application.

[24] Given that I am dismissing this application for judicial review, little turns on the question of Ms. Okubay's standing. Nevertheless, I agree with the Applicants on this issue. While the Respondent points to a number of cases in which this Court has not granted standing to family members of individuals who are the direct subjects of immigration decisions, I find these decisions are largely distinguishable from the situation that arises in this case.

[25] Recall that the decision at issue in this application for judicial review is Ms. Okubay's permanent resident application, which included Mr. Gebrekidan as her spouse. There is a single decision under review, one that implicated the rights of both Applicants. In this sense, the present application is quite different from essentially all of the cases cited by the Respondent: see *Chinenye*, *Garcia Rodriguez*, *Jeevaratnam*, *Sinnathamby*, and *Douze*. In those cases, an individual submitted an application for permanent residence, sponsored by a family member who was already a Permanent Resident or Canadian citizen. The decision under review, therefore, was wholly unrelated to the family member's status in Canada. By contrast, in this case, the decision under review determined the status of both Ms. Okubay and Mr. Gebrekidan.

[26] While the two Applicants obtained different outcomes from that decision, I nevertheless find that this different decision-making context makes it more prudent to allow both individuals to remain as parties in this proceeding.

[27] I also note that subsection 18.1(1) of the *Federal Courts Act* has been interpreted with flexibility, permitting the Court to exercise some discretion where the circumstances warrant it: Graham Garton, Donald J Rennie & Brian J Saunders, *Federal Courts Practice* (Toronto: Thomson Reuters, 2023) at § 18.1:8. The Federal Court of Appeal has also emphasized that the requirement for standing must be interpreted taking into consideration the objects of the *FCA* - notably justice, fairness, practicality, order, efficiency, and the minimization of cost, delay and waste: *Laurentian Pilotage Authority v Corporation des Pilotes de Saint-Laurent Central Inc*, 2019 FCA 83 at para 32.

[28] Taking into account the above, I dismiss the Respondent's request to have Ms. Okubay removed as a party to this proceeding.

B. *Is the Decision unreasonable?*

[29] I have concluded that while the Officer's decision to remove Mr. Gebrekidan from Ms. Okubay's permanent resident application was not perfect, it does come within a range of possible, acceptable outcomes. The Officer's reasons, moreover, were adequately justified, transparent and intelligible. It follows that the Officer's decision was reasonable, and that this application must therefore be dismissed.

[30] The Applicants essentially make three arguments in support of their application: 1) the Officer unduly relied on the timing of Mr. Gebrekidan's study permit application and his marriage to Ms. Okubay; 2) the Officer's findings related to the Applicants' Canadian sponsor were irrelevant to the assessment of the legitimacy of their marriage; and 3) the Officer erred in assessing Ms. Okubay's knowledge of various aspects of Mr. Gebrekidan's life.

(1) *The Timing of the Study Permit Application and the Applicants' Marriage*

[31] As noted above, prior to submitting their application to be resettled in Canada, Mr. Gebrekidan submitted a study permit application in May 2019. This application was submitted in close proximity to the Applicants' marriage. My understanding of the sequence of events is as follows:

- January 25, 2017 – Ms. Okubay leaves Eritrea
- November 2018 – Ms. Okubay meets Mr. Gebrekidan at a church in Addis Ababa
- May 1, 2019 – Mr. Gebrekidan applies for a study permit – he does not include or mention Ms. Okubay at this time as they were only friends
- May 9, 2019 – Mr. Gebrekidan proposes to Ms. Okubay
- May 13, 2019 – Mr. Gebrekidan's study permit is refused
- May 15, 2019 – The Applicants get married
- November 22, 2019 – Ms. Okubay submits an application for permanent residence in Canada, listing Mr. Gebrekidan as her spouse
- October 3, 2022 – an Officer interviews the Applicants – the Officer removes Mr. Gebrekidan from the application, and grants Ms. Okubay's application

[32] In assessing this sequence of events, the Officer found that the Applicants' marriage was "entered into days after the spouse was refused a student visa, which strongly suggests its

purpose was to allow [Mr. Gebrekidan] to travel to Canada as dependent on [Ms. Okubay's] application."

[33] Of note, the Officer did not rely solely on the timing of the study permit application and marriage to reject the Applicants' permanent residence applications, but did include it as one of the factors that was considered. I am not persuaded that this was unreasonable.

[34] In arriving at this conclusion, I acknowledge that the Officer did commit one clear error. Later in the reasons, the Officer stated: "Spouse also noted that prior to his visa refusal he and PA were just friends, and the relationship turned romantic only after his refusal." As can be seen from the timeline above, this is an error – the Applicants' testimony appears to have been that while they were only friends on May 1, 2019, they were engaged on May 9, four days prior to the refusal.

[35] Despite this error, I remain unconvinced that it was unreasonable for the Officer to have considered the events of May 2019 in assessing the application. I am also unconvinced that it was unreasonable for the Officer to find that those events suggested that there may have been an immigration-related purpose to the Applicants' union.

(2) *The Sponsor*

[36] I also find that it was reasonable for the Officer to raise questions about the Applicants' sponsor, who was Mr. Gebrekidan's brother-in-law. In response to a question from the Officer, Mr. Gebrekidan acknowledged that the sponsorship was initiated by him with the intention that both Applicants could both go to Canada for work. While I agree with the Applicant that this

finding has little relevance to the assessment of the *bona fides* of the Applicants' relationship, it *may* have been relevant to the assessment of the primary purpose of their marriage. To this extent, I also find the Officer's decision to be reasonable.

(3) *Cultural Competency and Ms. Okubay's familiarity with her spouse*

[37] Finally, the Applicants argue that the Officer was overly microscopic in assessing Ms. Okubay's ability to recount various details related to her relationship with Mr. Gebrekidan and details related to his background. This, the Applicants further argues, demonstrates that the Officer unreasonably viewed their marriage from a Canadian or Western paradigm.

[38] While I agree that some of the questions asked by the Officer may have been somewhat "Western" in their orientation, I have concluded that, taken together, the Officer's concerns related to Ms. Okubay's statements were reasonable.

[39] The jurisprudence is clear that decision-makers are entitled to consider various factors in assessing whether applicants meet the requirements of section 4 of the *IRPR* (see Annex "A" below). Some of the factors that have arisen in the case law include: the length of the parties' prior relationship before their marriage, their age difference, their former marital or civil status, their respective financial situation and employment, their family background, their knowledge of one another's histories, their language, their respective interests, the fact that the sponsoree's relatives were living in Canada, and the fact that the sponsoree had tried to come to Canada before: see *Phan v Canada (Citizenship and Immigration)*, 2019 FC 923 at para 30; *Khera v Canada (Citizenship and Immigration)*, 2007 FC 632 at para 10.

[40] An assessment of the above factors must be flexible and cognizant of various geographic, ethnic, religious, or cultural practices. Large age differences between married couples may be common in some places and uncommon in others. Divorce and remarriage may similarly be common to some cultures, but uncommon to others. Expectations about length of relationships prior to marriage may also vary widely across different communities. Further, completely aside from cultural considerations, sometimes relationships take root in the most improbable of circumstances. The point is not that the above factors will always be relevant to, much less determinative of, an assessment of the legitimacy of a spousal relationship. They are merely questions that may, in appropriate situations, assist in the larger task of assessing individual circumstances, and their application to section 4 of the *IRPR*.

[41] With these considerations in mind, I believe it was open to the Officer to at least consider the fact that Ms. Okubay knew very little of Mr. Gebrekidan's study plans, that he intended to be in Canada for an indeterminate period without her, and that the couple married just a few days after Mr. Gebrekidan's visa refusal.

[42] On these last two issues, however, I would also point to the jurisprudence indicating that it is an error to infer a bad faith marriage from an applicant's attempts to establish themselves in Canada without their spouse, if also presented with evidence establishing a genuine relationship: see *Elahi v Canada (Citizenship and Immigration)*, 2011 FC 858 at para 18 [*Elahi*]. Unlike *Elahi*, however, in this case the Applicants provided little evidence establishing the genuineness of their relationship.

[43] As noted above, counsel for the Applicants raised a fairness concern at the hearing into this matter – namely that the Applicants were not aware, when they appeared for their interview, that it would be largely focused on the genuineness of their marriage. While there may be some merit to this argument, the Applicants had not raised it earlier, and only sprung it on the Respondent at the hearing. It is important that allegations of unfairness be raised at the earliest opportunity, as failing to do so can itself be unfair to the opposing party. In this case, for example, the Respondent may have sought to adduce affidavit evidence in response to the Applicants' fairness concerns. They were precluded from doing so by the Applicants' belated raising of this issue. Absent a proper foundation on which to assess this argument, I will not consider it further.

[44] The decision under review is not perfect. Read holistically, however, I can trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. There was, in other words, a rational chain of analysis that lead the Officer from the evidence to the removal of Mr. Gebrekidan from Ms. Okubay's application: *Vavilov* at para 102.

VIII. Conclusion

[45] For the above reasons, I have found that the Officer's decision to remove Mr. Gebrekidan from Ms. Okubay's application comes within a range of possible, acceptable outcomes. It was adequately justified, intelligible, and transparent and was, as such, reasonable.

[46] I want to make it clear, however, that this conclusion should *not* be understood as a further pronouncement on the genuineness of the Applicants' spousal relationship. If the Applicants continue to wish to be reunited in Canada, Ms. Okubay may look into options for

sponsoring Mr. Gebrekidan, fortified with more fulsome evidence of their relationship than was presented to the Officer in this case.

[47] There is no proposed question for certification.

JUDGMENT in IMM-11986-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

Annex "A"

***Federal Courts Act*, RSC 1985, c F-7.**
***Loi sur les Cours fédérales*, LRC 1985, ch F-7.**

Application for judicial review	**Demande de contrôle judiciaire**
18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

***Immigration and Refugee Protection Regulations*, SOR/2002-227.**
***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227.**

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**167** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11986-22
STYLE OF CAUSE:	MERHAWIT YEMANE OKUBAY, YARED KAHSU GEBREKIDAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Teklemichael Ab Sahlemariam	FOR THE APPLICANTS
Prathima Prashad	FOR THE RESPONDENT

SOLICITORS OF RECORD:

The Law Office of Teklemichael Ab Sahlemariam Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT