Federal Court Cour fédérale

Date: 20250703

Docket: IMM-8963-23
IMM-8969-23

2025 FC 1168

Toronto, Ontario, July 3, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

SIMEGN ADEGE BAYEH
GEBREMIKAEL ADEGE BAYEH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Ethiopia and reside there. They are siblings. They applied for permanent residence in Canada, in the Family Class, sponsored by their older brother who lives here.

[2] By decisions dated May 22, 2023, a migration officer at the High Commission of Canada in Nairobi, Kenya, concluded that neither applicant met the criteria in section 117 of the

Immigration and Refugee Protection Regulations, SOR/2002-227, for the Family Class. The officer found that the applicants were not under the age of 18 or *de facto* dependents of their brother/sponsor at the time of the application. The officer also concluded that there was an insufficient basis to grant an exemption on humanitarian and compassionate ("H&C") grounds.

[3] For the reasons that follow, I must dismiss this application for judicial review because the applicants have not demonstrated that the officer's decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

I. **Background**

[4] The applicants are Simegn Bayeh and Gebremikael Bayeh. The applicants' older brother is Desalegn ("Dessie") Bayeh. They all have a younger sister, Meseret. The siblings also have two older brothers in Ethiopia. The siblings' parents are both deceased. They have been orphans since their mother died in 2009. (The information in the record on the year of the father's death is inconsistent.)

[5] After the death of their mother, the applicants and Meseret were under Dessie's care. The applicants filed a letter from a local municipality's social affairs department dated April 18, 2018 to support their position.

[6] Dessie applied and was accepted for permanent residence in Canada. In his application, he did not list his siblings as dependents to support their position.

[7] In 2020, Simegn, Gebremikael and Meseret applied for permanent residence in Canada, sponsored by Dessie as members of the Family Class.

[8] Subsection 117(1) of the IRPR provides, in relevant part:

Member	**Regroupement familial**
117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	**117 (1)** Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
[…]	[…]
(f) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is	f) s'ils sont âgés de moins de dix-huit ans, si leurs parents sont décédés et s'ils n'ont pas d'époux ni de conjoint de fait :
(i) a child of the sponsor's mother or father,	**(i)** les enfants de l'un ou l'autre des parents du répondant,
(ii) a child of a child of the sponsor's mother or father, or	**(ii)** les enfants des enfants de l'un ou l'autre de ses parents,
(iii) a child of the sponsor's child […]	**(iii)** les enfants de ses enfants […]

[9] Meseret's application was accepted because she was under 18 and met the definition of an orphaned sibling. However, Simegn and Gebremikael were 24 and 20 at the time of their applications.

[10] By letters to the applicants dated May 22, 2023, the migration officer was not satisfied that each applicant met the requirements for permanent residence in Canada as a member of the Family Class. The letters found:

- Subsection 12(1) of the *IRPA* states a foreign national may be selected as a member of the family class on the basis of their relationship with enumerated family members as well as other prescribed family member of a Canadian citizen or permanent resident.
- Subsection 117(1) of the *IRPR* defines who may be considered a member of the Family Class. Specifically, subsection 117(1)(f) specifies that a person may sponsor a sibling, a niece, a nephew or a grandchild if that person is orphaned, unmarried, and was under the age of 18 at the time the application was submitted.
- The officer was not satisfied that either applicant met the requirements of subsection 117(1)(f) because the applicants were over the age of 18 at the time their application was submitted. Therefore, neither applicant was a member of the family class.
- The Officer also considered H&C grounds and was not satisfied that sufficient grounds existed.

[11] The officer's notes in the Global Case Management System ("GCMS") on May 10, 2023, found:

> With respect to Simegn's application:
>
> - Simegn was not declared on the sponsor's original application. Had she been declared, she may have qualified as a *de facto* dependent if financial and emotional dependence could have been established at the time.
>
> - Subsection R117(9)(d) did not apply to the applicant as she was not a dependent at the time when the applicant immigrated to Canada.
>
> - At the time of the application, Simegn was over the age of 18.

- There was no direct information provided to indicate that the applicant had any reason to believe she could be persecuted by the Ethiopian regime in the future.

- The sponsor claimed that he financially supports Simegn, but there was no proof of money transfers being sent to Simegn directly.

- A letter from an uncle stated that the sponsor sends him money to provide for the two applicants because they do not have bank accounts. However, there were only two receipts for money transfers to the uncle, both for around CAD $400.00, and both from spring 2018.

- There was no way to tell what the transfers were used for and no notation, but even if they were for the applicants, they were not indicative of long-term financial support.

- There was no evidence of direct communication between the sponsor and Simegn.

- Regarding the H&C request, Simegn had not reached the age of 22 at the lock-in date and therefore meets the age requirements for a dependent child (she was 20 years, 9 months and 11 days old at lock in date).

- There was no proof that Simegn is the sponsor's child; rather she is his sibling, and that was not disputed in the application.

With respect to Gebremikael's application:

- Gebremikael was not declared on the sponsor's original application. Had he been declared, he may have qualified as a *de facto* dependent if financial and emotional dependence could have been established at the time.

- Subsection R117(9)(d) did not apply to the applicant as he was not a dependent at the time when the applicant immigrated to Canada.

- At the time of the application, Gebremikael was over the age of 18.

- There was no direct information provided to indicate that Gebremikael had any reason to believe he could be persecuted by the Ethiopian regime in the future.

- The sponsor claimed that he financially supports Gebremikael, but there was no proof of money transfers being sent to him directly.
- A letter from an uncle stated that the sponsor sends him money to provide for the applicants since they do not have bank accounts, however there were only two receipts for money transfers to the uncle, both for around CAD $400.00, and both from spring 2018.
- There was no way to tell what the transfers were used for and no notation, but even if they were for the applicants, they were not indicative of long-term financial support.
- There was no evidence of direct communication between the sponsor and Gebremikael.
- Regarding the H&C request, Gebremikael was 24 years, five months and 11 days old. Only if he had been declared in the sponsor's original application would he have met the age requirement for a dependent child.
- There was no proof that the applicant is the sponsor's child; rather he is his adult sibling, and that was not disputed in the application.

[12] In the GCMS notes, the officer also conducted an identical H&C analysis of the best interests of the child ("BIOC") for Meseret on both applications. The officer considered that:

- Meseret will be able to live with the sponsor in Canada.
- Meseret was not permanently separated from her other siblings: they can meet in Canada, Ethiopia or a third country.
- There was no parent-child-like relationship between any of the applicants.
- Based on the BIOC analysis for Meseret, the Officer was not satisfied that there were sufficient H&C factors to warrant an exemption from the requirements of the *IRPA*.

[13] The officer therefore denied both applications for permanent residence in Canada.

Simegn and Gebremikael now ask the Court to set aside these decisions.

II. **Were the officer's decisions unreasonable?**

[14] On this judicial review application, the Court applies the reasonableness standard of review described in *Vavilov*. 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, 102-103, 105-106, 125-126 and 194; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 59-61, 66. In order to intervene, the Court on this application must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[15] In applying the deferential standard of reasonableness, it is not the Court's role to determine the merits of the applications for permanent residence. The Court is not permitted to come to its own view of the merits and then measure the decision against the Court's assessment see *Vavilov*, at paras 83, and *Mason*, at para 62 (both citing *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 28). Nor does the Court re-assess or re-weigh the evidence, barring exceptional circumstance: *Vavilov*, at paras 125-126. See also *Amer v. Shaw Communications Canada Inc.*, 2023 FCA 237, at paras 60-62.

[16] The applicants advanced several interconnected arguments, which were principally concerned with the officer's treatment of the information in the record.

[17] The applicants' main submission was that there was a gap in the officer's analysis, because the officer failed to analyze whether the applicants were children for the purposes of an assessment of the BIOC. According to the applicants, the officer considered the BIOC in relation to Meseret only, and should have specifically assessed whether they were also children and if so, considered them in the BIOC analysis. The applicants argued that age is not the only consideration for whether a person should be considered a "child" for BIOC purposes (citing *Naredo v. Canada (Minister of Citizenship and Immigration),* 2000 CanLII 15973 (FC), 192 DLR (4th) 373) and that they were under 18 when Dessie (their now-sponsor) originally entered Canada and were dependant on him throughout.

[18] I am unable to agree with the applicants. First, the relevant time to consider their ages was the date on which they made their applications for permanent residence with sponsorship from Dessie. At that time, they were 24 and 20.

[19] Second, in my view, the officer's reasonable analysis of dependency in this case filled the alleged gap identified by the applicants in the officer's reasoning. The officer considered whether each of the applicants was a dependant of Dessie, financially and personally. Considering the information in the record, the officer found that neither one was a dependant.

[20] The applicants' submissions to the officer advised that Dessie had regularly sent them money, through an uncle (whose statement advised that he sometimes gave the money to other businessmen to give to the applicants in their town). However, as the officer noted, the record only contained evidence of two transfers, both for $400 and both in spring 2018. The officer

found that even if the evidence were accepted as truthful, it did not show long-term financial support. In my view, the officer's approach and findings respected the factual constraints bearing on this finding.

[21] While the applicants contended that Dessie was in regular communications with the applicants, the officer found that there was no evidence of direct communication between them. Looking at the record before the officer, this finding was reasonable. The record did not contain telephone invoices with numbers dialed. The applicants submitted five receipts for phone cards totalling $55.00, four undated and one dated 2019-08-12.

[22] The applicants submitted that the officer failed to adequately engage with their evidence that Dessie had responsibility for them since their mother's death, as supported by the letter from the municipality in their town. I am unable to find that the officer misunderstood or ignored that document. The GCMS notes stated:

> I note that there is a translated document, issued on April 18, 2018, stating that the three applicants, and two other siblings were under the care of the sponsor because both parents were deceased. This is not an adoption order which would create a legal parent-child relationship, nor is it a custody order.

This finding was open to the officer given the contents of the letter.

[23] In these circumstances, I find that the officer's assessment of dependency was reasonable on the modest factual record and that it served to fill any possible gap in the BIOC analysis as alleged by the applicants. The same reasoning also answers the applicants' argument that the

officer did not conduct a proper analysis of whether the applicants were *de facto* members of the same family as the sponsor through financial and emotional dependency.

[24] It is apparent from the entries in the GCMS that the officer was alive to the issues raised in their written submissions and information in the record. The GCMS entries illustrated a thorough grasp of both files.

[25] The applicants also contended that the officer did not conduct an adequate H&C assessment. I find no reviewable error in the officer's assessment. The officer was aware that the negative outcome of the applicants' requests for permanent residence would be that Dessie and Meseret would be in Canada and the applicants would remain in Ethiopia. Thus, there would be a separation of these siblings (and, indeed, two other adult siblings live in Ethiopia). The officer considered the possibility that the applicants would be persecuted owing to their connection with their brother/sponsor, but found there was no evidence that the applicants' other family members in Ethiopia had been persecuted because of their brother's activities in Ethiopia or Canada. Overall, the officer made reasonable H&C findings concerning the age of the applicants and dependency, considered the evidence as to possible persecution in Ethiopia, and did not overlook or misunderstand any facts or information that may have affected a proper H&C assessment.

[26] In their written submissions, the applicants contended that the conduct of Immigration, Refugees and Citizenship Canada raised legitimate expectations that their applications based on H&C considerations would be allowed. However, arguments based on legitimate expectations go only to procedural matters. The doctrine of legitimate expectations cannot give rise to

substantive rights: see e.g., *Agraira v Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36, [2013] 2 SCR 559, at para 97; *Canada (Attorney General) v. Honey Fashions Ltd.,* 2020 FCA 64, at para 50. The applicants' position cannot succeed, although I am quite sympathetic to their concerns given the delay in receiving a decision on their applications for permanent residence.

[27] Despite the capable submissions of the applicants' legal counsel, I am unable to conclude that the officer's decisions contained a reviewable error that would enable the Court to intervene.

III. **Conclusion**

[28] The applications for judicial review are dismissed.

[29] No party proposed a question to certify for appeal and none will be stated.

JUDGMENT IN IMM-8963-23 and IMM-8069-23

1. The applications for judicial review are 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

DOCKET:	IMM-8963-23 & IMM-8969-23
STYLE OF CAUSE:	SIMEGN ADEGE BAYEH, GEBREMIKAEL ADEGE BAYEH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECMEBER 16, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	JULY 2, 2025

APPEARANCES:

Daniel Kebebe	FOR THE APPLICANTS
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Daniel Kebede Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT