

Federal Court



Cour fédérale

Date: 20250414

Docket: IMM-5957-24

Citation: 2025 FC 686

Ottawa, Ontario, April 14, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ALGANESH SIUM TEDLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 66-year-old citizen of Eritrea, made a refugee claim in 2019 alleging a fear of returning to Eritrea on the basis that her husband had been recently imprisoned for unclear reasons. In her Basis of Claim [BOC] form, the Applicant indicated she joined the Eritrean People Liberation Front [EPLF] in 1978 when she was approximately 20 years old. In her Details of Military Service Form [Service Form], where asked to provide an answer to the question “Conscript or volunteer (career) service?”, the Applicant wrote “Servant”.

[2] The Applicant attended an eligibility interview with an officer from Immigration, Refugees and Citizenship Canada [IRCC Officer] in December 2019 and answered questions with the assistance of an interpreter. Thereafter, her matter was referred to the Immigration Division [ID] of the Immigration and Refugee Board of Canada for an admissibility hearing.

[3] Following a hearing, the ID found that the Applicant was inadmissible to Canada under paragraph 34(1)(f) of the *Immigration Refugee Protection Act*, SC 2001, c 27 [IRPA] as there were reasonable grounds to believe that the Applicant was a member of an organization (the EPFL) that has engaged in or instigated the subversion by force of any government and has engaged in terrorism.

[4] On this application, the Applicant seeks judicial review of only the portion of the ID's decision that found that the Applicant was a voluntary member of the EPLF, which was the central contested issue before the ID. It is the Applicant's position that she was forcibly recruited by the EPFL and acted in the name of the organization while under duress, and thus not inadmissible under paragraph 34(1)(f) of the IRPA [see *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at para 79]. The Applicant asserts that her statement given during the eligibility interview regarding the voluntariness of her membership was mistranslated.

[5] On this application, the Applicant challenges both the reasonableness of the ID's decision and the fairness of the process that led to the decision. Having considered the grounds of review raised by the Applicant, I am satisfied that the determinative issue is the ID's flawed consideration

of the Applicant's evidence regarding the mistranslation of her statement, which rendered the decision unreasonable.

[6] With respect to the standard of review, the ID's decision is reviewable on a reasonableness standard. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 *Vavilov, supra* 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].

[7] It is important to recall the principles applicable to an assertion of a denial of procedural fairness based on interpretation issues, even though this case turns on the reasonableness of the ID's decision. The interpretation provided to an applicant must be continuous, precise, competent, impartial and contemporaneous [see *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4]. The standard of interpretation is high but does not need to be perfect, it is linguistic understanding [see *R v Tran*, [1994] 2 SCR 951; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161 at para 3]. Where a breach of this standard is shown, it is not necessary for an application to show actual prejudice [see *Mohammadian, supra* at para 4]. However, an applicant must demonstrate that the errors are material to the findings made in the

decision under review [see *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 14].

[8] An applicant is expected to raise concerns or objections about the quality of interpretation or translation at the earliest possible opportunity and the burden rests on the applicant to show that, on a balance of probabilities, mistranslation occurred [see *Yakoubi v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 776 at para 15; *Xu v Canada (Citizenship and Immigration)*, 2007 FC 274 at para 12].

[9] Turning to the evidence that was before the ID regarding the nature of the Applicant's membership, the initial documents were her Service and Details of Military Service forms. Where she was asked to provide an answer to the question "Conscript or volunteer (career) service?", the Applicant wrote "Servant" and under details of military service, she wrote "basic army training" and "taking care of children born of war".

[10] The ID also had additional documentation related to her service in the EPLF – namely, a certificate of service and a certificate celebrating her military service. These documents do not shed light on the voluntariness of the Applicant's membership. As found by the ID, they are "neutral" in terms of whether they negate or support her assertion that her membership was involuntary.

[11] The next piece of evidence before the ID was the purported statements made by the Applicant during the eligibility interview in December 2019. The interview was not recorded and complete notes from the interview do not form part of the record. All that has been produced by

IRCC is a declaration dated August 31, 2022, signed by a Canada Border Services Agency [CBSA] employee [Declaration] who declared that they searched the Global Case Management System [GCMS] on August 31, 2022, and then stated as follows:

Based on the information searched for TEDLA, Alganesh Sium, born January 1, 1958 in Eritrea, from application L010289054, dated 2019/12/12 12:02:12 PM and entered by RT01690 of Edmonton IRCC, include the following statement:

Interview notes

Tell me about your military history-Q-When did you join the army, and when did your service end?

A-1976, I joined the army.

A-1993, I ended the service.

Q-What was your position on your rank and where were you based?

A-I did not have any rank.

A-Eritrea

Q-Were you involved in active combat?

A-No-Never participate in any battles.

Q-Why did you join the army?

A-It was hard period for gorillas [sic] and I joined them.

[12] Thus, before the ID was a small excerpt of the English translated version of the Applicant's statement. Any inaccuracy regarding the translation of the Applicant's statement would therefore not be apparent. There was no affidavit from the IRCC Officer who interviewed the Applicant attesting to the accuracy of the GCMS notes or otherwise as to what occurred during the interview.

[13] At the commencement of the ID hearing, the Applicant raised the discrepancy with the translation of her answer to the question of why she joined the EPFL. I am satisfied that this was the Applicant's first opportunity to raise this issue. Specifically, when her counsel asked her about the circumstances of her conscription by the EPLF, the Applicant answered:

Back then, it was during the wintertime that I joined the EPLF, and I didn't want to join. I was forced to join because they were forcible...they were forcing us to join them and it was not just me,

but others also were being forced to join, so that's the manner in which we had to be recruited by them that way, not voluntarily.

[14] When asked about the contradiction between that evidence and the GCMS notes from the eligibility interview, the Applicant stated that the interview was not accurately interpreted or recorded. She testified:

Those words shouldn't have been mine, because what I remember telling her or responding to that question is that I was forcefully or forcibly taken to that place, not voluntarily. That's exactly what I told her. But what was written, sounds to be different than what I told her.

[15] When asked by the ID why she believed the IRCC Officer wrote that her answer was that she had willingly joined the EPLF, the Applicant testified:

Okay. There was obviously some kind of miscommunication. I was not able to read the English version; otherwise, I would have had the chance to correct it, but the way I put my answer to that question was that the EPLF or the armed struggle that was going on there, was at a period where they had hard time. They were struggling to get reorganized or to reinforce themselves and so on. It was a tough time for them. That's why they were desperate enough to come to towns and cities around the country to conscript forcibly and I feel as a victim of this attempt by them out of desperation, out of their hard time, hard period, they were desperate to recruit new ones to reinforce themselves. So, I fall into that trap and that's why I was involuntarily taken away from where I was hoping to get married. So, the way it is written was as a result of a miscommunication.

[16] The ID then asked the Applicant why, on her Service Form, she did not write "conscript" and she answered:

So, the way they were operating in the 70s is they would surround people and take them by force to military camps or other service areas, but when they take us, when they take 35 people, they don't really explain anything. They wouldn't say that people were being

conscripted or not. They will be in the military or help in other capacities. So, there was nothing communicated really. That's why I didn't really mention the word conscript or anything like that.

[17] The Applicant also testified that she tried to escape from the EPLF on two separate occasions, but was caught both times and suffered hard beatings and threats of death. She stated that she thereafter chose to remain with the EPLF out of fear that she would be killed if she unsuccessfully tried to escape again.

[18] Turning now to the ID's reasons, the ID found that "though two [country condition] reports accuse the EPLF of forced conscription, I find that none of neither of them [sic] outweigh the credible evidence that Ms. Tedla joined the EPLF voluntarily". However, the only evidence that was before the ID suggesting that she voluntarily joined the EPLF was the brief GCMS note, the accuracy of which the Applicant contested. The Applicant's response on the Service Form where she stated "servant" was, at best, inconclusive.

[19] Rather than address the merits of the Applicant's assertion that her response as recorded in the GCMS notes was inaccurate, the ID found that it was "not persuaded that this explanation is reasonable under the circumstances. When providing her answers to Officer Zalisko in August 2022, Ms. Tedla was provided with an interpreter to assist her. There was no request to audit the interpretation prior to the admissibility hearing".

[20] The ID's finding is problematic for numerous reasons. First, the ID misapprehended the Declaration. Officer Zalisko was not the officer who interviewed the Applicant. She merely pulled

the GCMS notes from the GCMS system. Second, there was no recording of the interview that would have enabled the Applicant to “audit” the interpretation.

[21] Third, and importantly, there was no evidence from the IRCC Officer attesting to what occurred during the interview and attesting to the accuracy of the GCMS notes. There was, however, the Applicant’s sworn testimony attesting to the inaccuracy of the translation of her statement as recorded in the GCMS notes.

[22] The Federal Court of Appeal has clearly stated that GCMS notes that record what transpired during interviews of candidates (as opposed to GCMS notes that constitute the reasons for a decision) are not admissible to prove the truth of their contents. In such cases, an investigation is being conducted, evidence is being taken and there is no collateral guarantee of authenticity as the declarant may well be motivated to record the interview in a manner that buttresses their decision [see *Cabral v Canada (Citizenship and Immigration)*, 2018 FCA 4 at para 28]. However, additional evidence, such as an affidavit from the officer who conducted the interview attesting to the accuracy of the GCMS notes, would be sufficient to allow the GCMS notes to be treated as evidence for the truth of their contents [see *Mekonnen v Canada (Citizenship and Immigration)*, 2024 FC 1927 at para 14].

[23] This Court has repeatedly confirmed that the sworn evidence of an applicant as to statements made at an interview is to be preferred to notes made by the interviewer that are unaccompanied by an affidavit [see *Fsahaye v Canada (Citizenship and Immigration)*, 2019 FC 1657 at para 15; *Gharzeldin v Canada (Citizenship and Immigration)*, 2018 FC 841].

[24] Notwithstanding the Applicant's sworn evidence before the ID attesting to the inaccuracy of the translation of her statement and the absence of an affidavit from the IRCC Officer, the ID accepted the GCMS notes for the truth of their content, which I find constituted an error. This error tainted the ID's determination that the Applicant was a voluntary member of the EPLF, as the Applicant's statement given during her eligibility interview was attributed the "most weight" by the ID.

[25] Moreover, contrary to the submissions of the Respondent at the hearing, I do not find that the Applicant's testimony before the ID was, in any event, "remarkably similar" to what was recorded in the GCMS notes. The ID certainly did not come to that conclusion, as the ID found that her testimony before the ID contradicted her earlier statement.

[26] I find that this error rendered ID's determination that the Applicant was a voluntary member of the ELPF unreasonable. Accordingly, the application for judicial review shall be granted, the decision of the ID set aside and the matter remitted to a different panel of the ID for redetermination.

[27] No question for certification was raised and I agree that none arises.

JUDGMENT in IMM-5957-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted for redetermination by a different panel of the ID.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5957-24

STYLE OF CAUSE: ALGANESH SIUM TEDLA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: APRIL 10, 2025

JUDGMENT AND REASONS: AYLEN J.

DATED: APRIL 14, 2025

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