

Federal Court



Cour fédérale

Date: 20250516

Docket: IMM-9828-23

Citation: 2025 FC 898

Toronto, Ontario, May 16, 2025

PRESENT: Madam Justice Go

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

Jemila Hagos HASEBELAH

Respondent

JUDGMENT AND REASONS

[1] The Applicant, the Minister of Citizenship and Immigration, seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated July 11, 2023 finding the Respondent, Ms. Hasebelah, has a well-founded fear of persecution by the government of Eritrea [Decision].

[2] The Respondent is a citizen of Eritrea. She appealed a Refugee Protection [RPD] decision rejecting her claim for refugee protection to the RAD. While the RPD was satisfied as to the

Respondent's personal identity and her Eritrean citizenship, it rejected her claim after finding that the central allegations of the Respondent's claim are false and that she does not have a subjective fear of persecution in Eritrea. The RPD also found that the Respondent does not have a well-founded fear of persecution in Eritrea as a failed asylum seeker because it was not satisfied that the Eritrea government would find out that she has made a refugee protection claim in Canada.

[3] On judicial review, the Applicant Minister challenges the RAD's finding that even if none of the central allegations of the Respondent's claim are true, "it remains a fact that deportees and failed asylum seekers from Western countries nevertheless do have a well-founded fear of persecution once they reach Eritrea, as they are automatically suspected to be political opponents of its totalitarian government." In support of its conclusion the RAD cited "all items in sections 1, 2, 8, 13 and 14" of the National Documentation Package [NDP].

[4] The Applicant argues that the Decision lacks transparency and intelligibility as the RAD provided vague and impertinent references to support its findings. The Applicant further argues that even though the RAD could have pointed to information that supports its findings, it did not do so. Moreover, it ignored or failed to consider information that contradicts its findings.

[5] Specifically, the Applicant cites item 14.4 of the NDP, a thematic paper on returnees to Eritrea entitled *Érythrée Retour* by Swiss Refugee Council [SRC] dated September 29, 2020. Quoting from research and fact-finding mission conducted by several countries, the SRC paper highlights a lack of reliable information on the treatment of returned Eritreans due to various

reasons including: a) follow-up of former returned asylum seekers is not possible; and b) the number of cases of forcible return of rejected asylum seekers in Eritrea is low in recent years. The Applicant also points to the European Asylum Support Office stating in 2016 that the Eritrean authorities constantly change their practices towards returnees without changing the official legal basis in this matter.

[6] The Applicant submits, in sum, item 14.4 discusses the lack of empirical data and reliable and verifiable information about the treatment of returnees. While the RAD specifically cited NDP package dated May 31, 2022 which included item 14.4, the RAD's reasons were silent on the content of item 14.4. The Applicant thus contends that the RAD engaged in speculation and relied selectively on sources it cited, yet failed to address contradictory information and rendered a decision without analysis.

[7] I reject the Applicant's submissions for the following reasons.

[8] As the Respondent points out, the submissions the Applicant Minister makes on judicial review were not before the RAD or the RPD. This Court often finds that the RAD cannot be faulted for not treating specific elements of the NDP that were not identified or argued by the applicants: *Stoliarov v. Canada (Minister of Citizenship and Immigration)*, 2024 FC 1882 at para 11 citing *Islam v. Canada (Minister of Citizenship and Immigration)*, 2024 FC 320 at para 26. While this rationale applies most often when the argument is made by claimants, I find it equally applies when the argument is advanced by the Minister, especially when the Minister had chosen to intervene in a claimant's RPD hearing, as they did in this case.

[9] Also, the RPD did not question the objective risk for failed asylum seekers. Rather, the RPD found that Eritrean authorities would not know the Respondent had made a refugee claim so she could avoid the risks as set out in the evidence. The RAD found this finding to be a “critical error,” citing the Court’s decision in *Dehab v Canada (Citizenship and Immigration)*, 2022 FC 1012 [*Dehab*] at paras 30-33. Para 32 of *Dehab* quoted from item 14.2 of the NDP that states in part as follows:

In Eritrea, people are arrested and detained without any formal charges. Therefore, most people can only speculate about the reasons for arrest and detention, the following reasons are cited frequently: . . . (k) failed asylum seekers and refugees who are returned to Eritrea. Similarly, a 2017 report by Freedom House states that “Eritrean refugees and asylum seekers repatriated from other countries are detained.”

....

The 2015 report by the UN Human Rights Council states that “with few exceptions, those who have been forced to return . . . have been arrested, detained and subjected to ill-treatment and torture.”

[10] The Court in *Dehab* went on to find that “[t]he RAD is presumed to have considered all the evidence but as it did not address these directly contradictory submissions, which speak to the fundamental issue of risk to the Applicant if she is returned to Eritrea:” *Dehab* at para 33.

[11] The error that the Court identified in *Dehab* was a similar error that the RAD identified in the Decision. The RAD thus reasonably relied on *Dehab* to reach its finding that the RPD made a “critical objective basis assessment error.”

[12] The Applicant suggests the RAD's reasoning does not "add up." I disagree. While brief, the Decision allows the reviewing Court to understand the RAD's reasons, which directly and succinctly responded to the single "critical error" that the RAD identified in the RPD decision.

[13] While item 14.4 conveys the uncertainty of certain European sources about the data on returnees to Eritrea, it does not contradict the country conditions evidence the Respondent relied on to establish the risks she would face as a failed asylum seeker. As the Respondent points out, item 14.4 also lists some of the same sources that the Respondent relied on concerning the arrest and torture of detainees. As this Court confirmed in *Lugo Cordoba v Canada (Citizenship and Immigration)*, 2025 FC 263 at para 46 where the evidence not mentioned in the decision "does not sufficiently contradict the RPD's conclusion," the Court cannot infer it was overlooked. I find this to be the case at hand.

[14] While it may have been an error for the RAD to provide general citation to the NDP documents, this error on its own does not warrant setting aside the Decision.

[15] In conclusion, as the Applicant acknowledges, the RAD is presumed to have considered all the evidence. The fact that the RAD did not refer to one item in the NDP does not render the Decision unreasonable in the context of this case.

JUDGMENT in IMM-9828-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9828-23

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v JEMILA HAGOS HASEBELAH

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