

Federal Court



Cour fédérale

Date: 20250612

Docket: IMM-3814-24

Citation: 2025 FC 1065

Toronto, Ontario, June 12, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

FITHAWIT GUESH WELDEMARIAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant is seeking a judicial review of the rejection of their refugee claim by a visa officer [Officer] under the Convention Refugee Abroad Class. For the reasons below, I find the Applicant has established that the Officer's decision is unreasonable, and I am therefore quashing the decision.

[2] The Officer based their decision on the following unequivocal facts:

1. That the Applicant is a citizen of Eritrea who was born in 2000. She would therefore fall under the age group that was expected to serve indefinitely in the Eritrean military;
2. That the Applicant crossed the border between Eritrea and Ethiopia illegally;
3. That the Officer based their decision “upon all the evidence provided by the applicant and in light of the country conditions in Eritrea”;
4. That the Officer knew that there are penalties for similarly situated returnees to Eritrea, acknowledging that the penalties include having to sign a “regret form”.

[3] The determinative issue for the Officer to reject the refugee claim was credibility. The Officer found that the Applicant was not credible because while she had stated in her written statement that the Eritrean authorities had detained her for six months, she never mentioned this during the interview.

II. Decision

[4] I grant the Applicant’s judicial review application because I find that the Officer’s decision was unreasonable.

III. The Issues and Standard of Review

[5] The parties submit, and I agree, that the standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov] at para 23; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC

1741 at para 15). 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” (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties’ submissions to the decision-maker (*Vavilov* at para 127).

[6] In assessing the reasonableness of the reasons, when the impact of an administrative decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes (*Vavilov* at para 133).

IV. Analysis

A. *Preliminary issue*

[7] Due to an error on the Respondent part, the Respondent did not file a memorandum of fact and law. However, given the prior notice to the Court and the Applicant’s consent, I heard their oral arguments.

B. *Was the Officer’s decision unreasonable?*

[8] “One may be a liar and a refugee both” (*Canada (Public Safety and Emergency Preparedness) v. Gunasingam*, 2008 FC 181, at para 1. This is because the legal test for refugee determination is forward-looking. Therefore, irrespective of the reasonableness of Officer’s credibility finding, and irrespective of whether the Applicant was jailed in Eritrea for six months,

the Officer's assessment of the prospective risk was irreconcilable with the unequivocal facts that the Officer accepted. This makes the decision unjustifiable and unintelligible.

[9] The Officer's Global Case Management System [GCMS] notes state that:

Based upon all the evidence provided by the applicant and in light of country conditions in Eritrea, I am not satisfied that the applicant has established a well-founded fear of persecution. Based on latest information (USDOS report), for individuals who left without an exit visa returning to Eritrea, the penalties appear more administrative now rather than harsh treatment: 'Those who have left the country illegally have to sign a document called the "regret form," in addition to agreeing to pay the 2 percent tax, to obtain a passport or any other services while abroad.

[10] On the issue of "regret form", the publicly available document in the IRB's National Documentation Package, ERI105801.E states:

According to the same source, "Eritreans who have left the country unlawfully have to sign an 'Immigration and Citizenship Services Request Form' to regularise their situation before they can request consular services" (UN 5 June 2015, para. 442). By signing this form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course" (UN 5 June 2015, para. 442).

...

Those who fled the country after the introduction of the timely unlimited national service in 2002 are considered as traitors and/or deserters and face the danger of being imprisoned irrespective of [their] immigration status in other countries. There is absolutely no rule of law in Eritrea, so the punishment they expect may be arbitrary, depending on army commanders who may exercise jurisdiction against deserters, or possible bribes their families may pay to avoid imprisonment. Any Eritrean who is forced to return to their homeland against his or her will can face inhuman treatment including torture, imprisonment for unspecified periods and being forced to stay in a military training camp under very harsh conditions as a punishment. (Associate Fellow 8 May 2017)

[11] It is trite law that an applicant should not be coerced into renouncing fundamental beliefs and rights, or forced into pretending to accept them, to avoid persecution (*Colmenares v Canada (Minister of Citizenship and Immigration)*, 2006 FC 749 at para 14, *Gur v Canada (Citizenship and Immigration)*, 2012 FC 992 at para 22). Having to sign that the Applicant regretted her failure to serve in the military, when her entire case is based on not wanting to serve, is not aligned with her conscious and opinion. However, one cannot even reasonably conclude that signing letter would likely allow the Applicant to avoid or mitigate persecution. the result of signing the regret letter is further punishment and the lifetime military service, which are the very persecutory measures upon which the Applicant had made her refugee claim.

[12] In his oral arguments, counsel for the Respondent argued that the Officer turned his mind into the issue of return, and that in many countries, including Eritrea, the evidence on human rights practices is mixed, and it was the Officer's job to prefer one over the other. So, I asked counsel to point to any evidence that might have formed the basis of the Officer's reasons. Counsel for the Respondent referred to a different part of the same publicly available document to argue that political opponents face a risk, and that there was no evidence that the Applicant was one because the Officer had rejected that she was jailed for six months:

... the arbitrary nature of various [measures] taken by the Eritrean government and lack of legal protective mechanisms demonstrate the risk that returnees can face, especially if they are seen as harboring anti Eritrean government's feelings or political opinions.

[13] It is trite law that the purpose of judicial review is not for the Court to reweigh the evidence. However, in this case, there was no evidence to the contrary upon which the Officer based their decision. Nor did the Officer explain why a "regret form", when the person must sign

it even if it is against their conscious and opinion, and that it is attached to further punishment is not persecutory.

[14] I find that the passage to which the Respondent referred acknowledges a serious possibility of persecution for all returnees, with a higher likelihood for those with some political activism. This is hardly the “contrary” evidence that would make the Officer’s reference to the “regret form” as an administrative punishment reasonable.

[15] I find that the Officer’s reasons are not rationally connected to the conclusion they reached. As such, the decision was arbitrary.

V. Conclusion

[16] The Application is granted. The parties have identified no question of general importance, and none arises.

JUDGMENT IN IMM-3814-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The case is returned to the Visa Post to be decided by a different decision-maker.
2. There is no question for certification.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3814-24

STYLE OF CAUSE: FETHAWIT GUESH WELDEMARIAM V. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 12, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JUNE 12, 2025

APPEARANCES:

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