

Federal Court



Cour fédérale

Date: 20250618

Docket: IMM-11824-24

Citation: 2025 FC 1090

Ottawa, Ontario, June 18, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**KIDUSAN ABRAHA GIDEY
TESFAHANIS HAILU GEBRAY
MIHRETAB TESFEHANIS HAILU
ATAKLTİ TESFEHANIS HAILU
NEBAY TESFEHANIS HAILU**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] Kidusan Abraha Gidey [Principal Applicant], Tesfahanis Hailu Gebray [Associate Applicant], and Mihretab Tesfehanis Hailu, Ataklti Tesfehanis Hailu, and Nebay Tesfehanis Hailu [Co-Applicants] seek judicial review of the refusal of their applications for permanent

residence [PR] in the Convention refugee abroad and country of asylum classes by a migration officer [the Officer] on April 24, 2024.

[2] The determinative issue for the Officer was the credibility of the Associate Applicant. The Officer found that the Applicants did not meet the requirements for refugee status under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and section 145 and paragraph 139(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], as the Officer was not satisfied that the Associate Applicant had not discharged his firearm or participated in the mistreatment of detainees during his 11 years of military service in Eritrea.

[3] The sole issue is whether the Officer's decision is reasonable. I find it is not.

[4] The Applicants are citizens of Eritrea. The Principal Applicant and Associate Applicant are spouses. The Co-Applicants are three of their children.

[5] The Principal Applicant and Associate Applicant state that they were married in 1986. They explain that, for several years, they resided in the village of Metera in Eritrea, where they raised their children and worked on their family farm.

[6] The Associate Applicant claims that he "was made to serve" indefinitely in the Eritrean army starting in October 2004. The Associate Applicant claims that he was posted as a guard in two towns near the border of Eritrea and Ethiopia between 2004 and 2015. The Applicants state that, during this time, the Associate Applicant was prevented from seeing his family. In the

words of the Co-Applicant Ataklti Tesfehanis Hailu, “[a]ll the responsibilities of raising [him] and [his] siblings fell on [his] mother,” the Principal Applicant, “who did everything she could to raise [them].”

[7] The Associate Applicant eventually deserted the Eritrean military in December 2015. The Principal Applicant says that the military initiated a search for him at their family home. The Principal Applicant reports being physically assaulted during the search.

[8] The Principal Applicant and Co-Applicants state that the Eritrean military detained the Principal Applicant when they could not locate the Associate Applicant at the family home. They state the military imprisoned her for several weeks, leaving her children without a caregiver. The Co-Applicants report being profoundly affected by this experience, stating that “[t]hat is something [they] could not forget” and “[the family’s] life never went back to normal after that.”

[9] The Principal Applicant claims that she was extorted by the military while in prison and was only released upon payment of a large sum of money. She further explains that, when she returned to her village, she found that her family’s land had been seized. She states: “As my children became helpless and desperate of the deteriorating life at home, they started to escape from their country one after the other on their own, despite [being] minors at the time. The only family members left in Eritrea were [the Principal Applicant] and three of [her] children.”

[10] The Principal Applicant and her children state that they eventually fled to Ethiopia in 2019. There, they were reunited with the Associate Applicant. The Applicants resided together for two years in the Adi Harush Refugee Camp.

[11] The outbreak of civil war in Ethiopia caused them to flee to Adigrat in January 2021. The Applicants claim that they eventually received news of a possible attack on Adigrat by Eritrean forces. Fearing being captured and returned to Eritrea, the family split into two groups and attempted to reach Addis Ababa.

[12] Whereas the Principal Applicant and two of the Co-Applicants arrived safely in Addis Ababa, the Associate Applicant remained stranded in Adigrat until 2023.

[13] The Principal Applicant and Co-Applicants filed applications for PR status in the Convention refugee abroad and country of asylum classes on August 2, 2022. The Associate Applicant submitted his application on March 14, 2023. The Applicants' PR applications are supported by a sponsorship undertaking and settlement plan by family friends and the son and two nephews of the Principal Applicant and Associate Applicant [Sponsors].

[14] Following the approval of the Sponsors' sponsorship application, the Applicants were asked to attend an interview with the Officer. During the interview, the Officer asked the Associate Applicant about his 11 years of military service in Eritrea. He stated that during this period, he never discharged his firearm outside of a training context. He stated that although he heard of the mistreatment of civilians detained by the military, he did not personally witness or participate in their mistreatment. The Associate Applicant stated that he never arrested civilians

attempting to flee Eritrea. However, he later stated that he had. When asked why he originally denied having done this, the Associate Applicant stated: “I am old, I misunderstood the question. But I am telling you the truth.”

[15] On April 24, 2024, the Officer refused the Applicants’ PR application. The basis of the refusal were credibility issues that arose during the interview.

[16] The Officer first noted that the Applicants “were interviewed with the assistance of an interpreter” and “did not indicate that [they] had any difficulty in understanding the translator or in having the translator understand [them].” The Officer then stated:

I do not find it credible that you never used your firearm and participated in any mistreatment of detainees during your National Service.

As a result, I am satisfied that the evidence that you have presented is not credible. I am therefore satisfied that you do not have a well-founded fear of persecution based upon your race, religion, nationality, membership in a particular social group or political opinion. I further considered the country of asylum class and am satisfied that you do not meet the requirements of this class either.

[17] In addition to issues relating to the use of a firearm and the mistreatment of detainees, the Global Case Management System [GCMS] notes indicate that the Officer was concerned with the Associate Applicant’s contradictory responses about whether he assisted with arresting civilians attempting to flee Eritrea. The Officer noted that the Associate Applicant at first denied participating in these arrests, but then “admitted that he had indeed caught people trying to flee the country.” The Officer acknowledged the Associate Applicant’s explanation “that he had misunderstood the question,” but found this explanation insufficient as the Applicants had agreed

“to tell [the Officer] at any point if they had trouble understanding [the Officer’s] questions” and they did not do so when the Associate Applicant was asked about his role in the arrests.

[18] The sole issue is the reasonableness of the Officer’s decision. An assessment of this issue requires determining whether the Officer’s credibility findings and their conclusion that the Applicants do not meet the requirements for protection under section 96 of the *IRPA* and section 145 and paragraph 139(1)(e) of the *Regulations* are justified, transparent, and intelligible: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99.

[19] I find that the Officer has failed to provide a rational chain of analysis for their findings: *Vavilov* at para 85. With respect, there is no logical link between the negative credibility determinations, the Associate Applicant’s military service and the Applicants’ claimed status as Convention refugees.

[20] I find the Officer’s credibility findings are inherently flawed. The Officer impugned the credibility of the Associate Applicant because he “did not indicate...any difficulty in understanding the translator.” However, the GCMS notes show that translation issues were raised during the interview. When the Associate Applicant was being questioned about whether he had discharged his firearm while working for the Eritrean military, the interpreter indicated that “he is having trouble understanding [the] question due to age.” The GCMS notes show that the Officer switched to a different line of questioning immediately after this comment was made. The interpreter’s remark reinforces the Associate Applicant’s subsequent explanation to the Officer that “[he is] old, [he] misunderstood the question.” The remark also demonstrates that translation issues were raised to the Officer not just during the interview generally, but during the

precise moment when the Applicant was being questioned about the use of his firearm, one of the two issues that the Officer would later used to impugn the Associate Applicant's credibility.

[21] Even if the Officer's negative credibility findings were sound, it is unclear how issues with the Associate Applicant's credibility would invalidate the refugee claims of the other Applicants. The Officer made no negative credibility determinations against the Principal Applicant in this matter. Furthermore, many of the Applicants have unique migration histories that warrant independent review: *Samuel v Canada (Citizenship and Immigration)*, 2022 FC 1102 [*Samuel*] at paras 24-29. This Court has previously held that "credibility is not determinative of a refugee claim (or a country of asylum application). Even if [the Associate Applicant]'s testimony is not credible, [he] and [his] family may still be members of the relevant classes:" *Samuel* at para 37.

[22] I find that the Officer in this case fell into the same error as the officer in *Samuel*. By treating credibility as the determinative issue and assessing the Applicants' application based solely on the interview with the Associate Applicant, the Officer has failed to justify their findings against the full scope of the Applicants' claims for protection: *Samuel* at para 44. In their written narratives, the Applicants raised significant issues that were clearly linked to the Convention grounds. The Principal Applicant claims that she was assaulted, wrongfully imprisoned, and extorted by the military. She claims that her family's land was unlawfully seized. She discloses her fear of being imprisoned and tortured in Eritrea for leaving the country without obtaining the permission of the state. None of these allegations are addressed by the Officer. The Officer found that the Applicants "do not have a well-founded fear of persecution based upon [their] race, religion, nationality, membership in a particular social group or political

opinion.” This finding cannot be reasonable, as the Officer blatantly disregarded the Applicants’ submissions addressing the Convention grounds.

[23] Both of the parties submit that the Officer’s findings turned on inadmissibility, rather than the eligibility requirements for refugee status. The Respondent submits that the Associate Applicant’s credibility issues left the Officer unable to conclusively determine that the Applicants were not inadmissible. The Applicants submit that the Officer found the Associate Applicant inadmissible for committing crimes against humanity and war crimes, pursuant to paragraph 35(1)(a) of the *IRPA* and sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24 [*CAHWCA*].

[24] I cannot agree with either party. The Officer’s reasons are clear that the Applicants were found to “not have a well-founded fear of persecution based upon [their] race, religion, nationality, membership in a particular social group or political opinion.” The decision letter concludes with the statement that:

Subsection 11(1) of the Immigration and Refugee Protection Act states that the visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. I am not satisfied that you have met the requirements of the Act...

[emphasis added]

In my view, the written reasons unequivocally show that the denial of the Applicants’ claims was based on their eligibility, rather than inadmissibility.

[25] However, I agree with the Applicants that the Officer’s written reasons do not reflect the Officer’s actual reasoning. Although the Respondent rightly notes that the Officer did not

undertake an analysis of potential war crimes or crimes against humanity, I find that the GCMS notes, the text of the decision letter, and the questions posed by the Officer to the Associate Applicant demonstrate that the Officer was primarily concerned with inadmissibility under the *CAHWCA*.

[26] During the interview, the Officer repeatedly raised the issue of the Associate Applicant's complicity in the torture of civilian detainees in Eritrea. The Officer stated:

I find it hard to believe that you never witnessed any torture, interrogations or beatings yourself with your own eyes. Please respond to my concern.

...

I find it hard to believe that you never saw anybody being beaten or tortured or suffering any mistreatment.

...

But again, I find it hard to believe that even when you would catch them, there would be no punishment ordered or any sort of mistreatment to the people that were caught.

[27] The Applicants rightly note that the Officer's written reasons fail to satisfy the requirements in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40, for inadmissibility findings due to war crimes and crimes against humanity under the *IRPA*. I find the Officer has attempted to circumvent this issue by presenting their inadmissibility findings as credibility determinations related to the eligibility requirements for Convention refugees. This is illustrated by the central credibility finding on which the Officer has based the refusal decision: that it is "not...credible that [the Associate Applicant] never used [his] firearm and participated in any mistreatment of detainees during [his] National Service." Whereas this finding is largely

irrelevant to the Applicants' eligibility on Convention grounds, it is highly relevant to their potential inadmissibility under paragraph 35(1)(a).

[28] By refusing the Applicants' PR application based on what effectively amounts to a veiled inadmissibility finding, the Officer has "[left] the [A]pplicants in the unenviable position of not knowing why their application was rejected:" *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para 14. The Officer's decision is unreasonable as it fails to account for the evidence before the decision-maker, is not responsive to the Applicants' submissions, and is incongruous with the framework for eligibility and inadmissibility determinations in the *IRPA* and the *Regulations*.

JUDGMENT in IMM-11824-24

THIS COURT'S JUDGMENT is that this application is allowed, the decision under review is quashed and the application is referred to a different decision-maker for a new decision, in keeping with these reasons, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-11824-24

STYLE OF CAUSE: KIDUSAN ABRAHA GIDEY, TESFAHANIS HAILU
GEBRAY, MIHRETAB TESFEHANIS HAILU,
ATAKLTİ TESFEHANIS HAILU, NEBAY
TESFEHANIS HAILU v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: JUNE 18, 2025

APPEARANCES:

Vakkas Bilsin	FOR THE APPLICANTS
Nicholas Dodokin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT