

CANADA / JUDGMENT

TB9-21535

COURT
Refugee Appeal DivisionDECIDED
11 June 2020

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RAD File / Dossier de la SAR : TB9-21535 TB9-21536 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision June 11, 2020 Date de la décision Panel T. Card Tribunal Counsel for the persons who are the subject of the appeal Paul Vandervennen Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

INTRODUCTION

- [1] XXXX XXXX XXXX (the "Principal Appellant"), and XXXX XXXX XXXX (the "Female Appellant") are citizens of Ethiopia. They are appealing a decision of the Refugee Protection Division (RPD) denying their claims for refugee protection on the basis they have not established well-founded fears of persecution.

DETERMINATION

- [2] The Appeals are allowed.

BACKGROUND

- [3] The Appellants are citizens of Ethiopia. Both were supporters of the Coalition for Unity and Democracy (CUD) who left Ethiopia after problems with the government due to their opposition activities. Both Appellants went to the United States (US). The Principal Appellant went in 2006, while the Female Appellant went in 2008. Both continued their political activities in the US.
- [4] The Appellants went to Canada after Donald Trump became US President and made their refugee claims in Canada.
- [5] At the RPD stage, the Minister of Immigration, Refugees and Citizenship Canada (the Minister) intervened on the basis that the Appellants should be excluded under Article 1E of the of the United Nations Convention on the basis they could stay in the US.

- [6] The RPD found that the Appellants were not excluded under Article 1E. The Minister has not intervened at the Refugee Appeal Division (RAD) stage and exclusion is no longer an issue.
- [7] The RPD did find, however, that the Appellants were neither refugees nor persons in need of protection on the basis they had not established a well-founded fear of persecution in Ethiopia given country evidence regarding new acceptance of previous opposition members and supporters. NO NEW EVIDENCE OR ORAL HEARING
- [8] The Appellants did not submit any new evidence to be considered under s.110(4) of the Immigration and Refugee Protection Act (IRPA).¹ No analysis of new evidence is therefore required.
- [9] As an oral hearing can only be held where there is new evidence that has been admitted under s.110(4), and since there is no new evidence in this case, no oral hearing is required. ISSUES IN APPEAL
- [10] The Appellants argued the following issue in their appeals:
- (a) The RPD erred in its analysis of the country conditions in Ethiopia and in its subsequent finding that the Appellants would not face a serious possibility of persecution if they were to be returned to Ethiopia.
- [11] I find the issue as outlined above to be determinative.

ANALYSIS

- [12] I have conducted an independent analysis of the evidence concerned, including reviewing the RPD hearing, as well as considering the Appellants' Memorandum,² the RPD Decision,³ and the Basis of Claim (BOC) forms,⁴ amongst other documents. Change in Ethiopia is not sufficiently durable at this time
- [13] The principle reason the RPD rejected the Appellants' claims was that after the rise of Abiy Ahmed as Prime Minister of Ethiopia (the PM), the PM took steps to decriminalise previously opposition political movements and released thousands of political prisoners. Free elections are also due to be held in May 2020.
- [14] The RPD had otherwise found the Appellants to be credible.⁵
- [15] As a result, the RPD held that as a result of these changes, the risk of persecution to the Appellants, if they were to be returned, dropped to below that of a mere possibility.
- [16] The Appellants have argued that the RPD erred by disregarding other pieces of evidence in the National Documentation Package (NDP), and that the changes instituted did not amount to a durable change in circumstances. If the RPD had properly factored in these circumstances, the RPD would have found that the Appellants' risk of persecution still stands at the level of serious possibility, if not higher.

- [17] Having reviewed the Appellants' arguments and submissions, I find that I am convinced by their arguments. Reports from Human Rights Watch⁶ and Amnesty International⁷ still show that there are problems relating to opposition figures.
- [18] However, in making my independent analysis, I find I am most convinced by the International Crisis Group (ICG) report⁸, which has been published about nine months after the United States (US) Department of State (DOS) Report.⁹
- [19] The ICG Report does state "Prime Minister Abiy Ahmed has taken important steps to move the country toward more open politics. But his efforts to dismantle the old order have weakened the Ethiopian state and given new energy to ethnonationalism. Hostility among the leaders of Ethiopia's most powerful regions has soared."¹⁰
- [20] The report goes on to say "Such tensions could derail Ethiopia's transition. Meanwhile, reforms Abiy is making to the country's powerful but factious ruling coalition anger opponents, who believe that they aim to undo Ethiopia's ethnic federalist system, and could push the political temperature still higher. Elections in May 2020 could be divisive and violent."¹¹ These elections were postponed due to the COVID-19 pandemic and as at the time of writing have been rescheduled to 29 August 2020.
- [21] Significant changes certainly have taken place since the Appellants left Ethiopia, and I can certainly see why the RPD Member could interpret these changes as resulting in a drop in the risk to the Appellants. However, the change does need to be durable. Intentions of those in control is not enough.
- [22] It is certainly possible that the PM's changes will last, and that the risk of persecution is a forward-looking test. It is also quite possible that persecution from the ruling party in fact has dropped to a level below that of serious possibility of persecution. However, what may be happening is an ethnic conflict that could create just as serious a possibility of persecution against the Appellants.
- [23] The problem is that the situation is still evolving. I must take into account the circumstances as they are right now. When doing so, I find that the risk of persecution to the Appellants still stands at a serious possibility, even if the original dynamics of that persecution may be at an end.
- [24] When taking all of this into account, I find that the RPD erred in finding that the Appellants did not face a serious possibility of persecution if they are to be returned to Ethiopia.
- [25] I substitute a finding that the Appellants would face a serious possibility of persecution if they were to be returned to Ethiopia. State protection is not certain and there is no safe Internal Flight Alternative (IFA)
- [26] In making this assessment, I find that I cannot be certain that there would be adequate state protection for the Appellants due to the high possibility of ethnic violence. I therefore find on a balance of probabilities that there is insufficient state protection available.

- [27] As ethnic tensions exist across Ethiopia, I find on a balance of probabilities that there is no safe IFA for the Appellants in Ethiopia.

CONCLUSION

- [28] Pursuant to s.111(1)(b) of the IRPA, the determination of the RPD is set aside, and I substitute my determination that the Appellants are Convention refugees. The Appellants have a well-founded fear of persecution due to their political opinions.
- [29] The appeals are allowed. (Signed) "T. Card" T. Card June 11, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Exhibit P-2, Appellants' Record, Pages 3-14. 3 Exhibit RPD-1, RPD Record, RPD Decision, Pages 2-6. 4 Ibid., Exhibit 2.1, Principal Appellant's BOC, Pages 9-21; Exhibit 2.2, Female Appellant's BOC, Pages 22-35. 5 Exhibit RPD-1. RPD Record, RPD Decision, Page 4. 6 National Documentation Package, Ethiopia, 31 January 2020, tab 2.3: ?Ethiopia. World Report 2020: Events of 2019. Human Rights Watch. January 2020. 7 National Documentation Package, Ethiopia, 31 January 2020, tab 2.2: ? Ethiopia. Amnesty International Report 2017/2018: The State of the World's Human Rights. Amnesty International. 22 February 2018. 8 National Documentation Package, Ethiopia, 31 January 2020, tab 4.1: ?Keeping Ethiopia's Transition on the Rails. Africa Report N° 283. International Crisis Group. 16 December 2019. 9 National Documentation Package, Ethiopia, 31 January 2020, tab 2.1: ?Ethiopia. Country Reports on Human Rights Practices for 2018. United States. Department of State. 13 March 2019. 10 National Documentation Package, Ethiopia, 31 January 2020, tab 4.1: ?Keeping Ethiopia's Transition on the Rails. Africa Report N° 283. International Crisis Group. 16 December 2019, Page 3. 11 Ibid.

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