

CANADA / JUDGMENT

TC0-02088

COURT

Refugee Appeal Division

DECIDED

6 November 2020

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RAD File / Dossier de la SAR : TC0-02088 TC0-02089 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 November 6, 2020 Date de la décision Panel Joel Bousfield Tribunal Counsel for the persons who are the subject of the appeal Micheal Crane Conseil de la| des personne|s en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

[1] This is the decision in the appeals of XXXX XXXX XXXX (the principal appellant) and XXXX XXXX XXXX (the minor appellant). The appellants claim to be citizens of Ethiopia. They appeal a Refugee Protection Division (RPD) decision dated January 7, 2020, rejecting their claims for refugee protection. They are requesting that the Refugee Appeal Division (RAD) set aside the RPD's negative determination and find that they are Convention refugees or persons in need of protection. In the alternative, they request that the RAD refer the matter back to the RPD for redetermination by a differently constituted panel. They have not requested to submit new evidence or to hold an oral hearing.

DETERMINATION

[2] The RAD allows the appeal and sets aside the decision of the RPD. The RAD substitutes the determination that, in its opinion, should have been made, namely that the appellants are Convention refugees, pursuant to section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA).¹

BACKGROUND

Basis of Claim

[3] The appellants allege that they fear persecution by the government of Ethiopia because their family was involved with the Ethiopian opposition over many years. They allege that the principal appellant has been falsely accused of being involved with Ginbot 7. The rest of the central allegations are set out in the principal appellant's Basis of Claim form (BOC) narrative.² RPD Decision

- [4] The RPD rejected the claims because it drew negative credibility inferences and because it found the appellants had not established their personal identity and their Ethiopian citizenship.

ANALYSIS

Determinative Issue

- [5] The determinative issue in this appeal is whether the RPD made errors in assessing the appellants' credibility, and their personal and national identity. For the following reasons, the RAD finds that it did.
- [6] The RAD has done an independent assessment of the record. The RAD is reviewing the RPD decision on a standard of correctness. Carrying genuine identity documents during travel
- [7] The RPD drew a negative credibility and identity inference because the appellants carried their allegedly genuine Ethiopian identity documents with them to Canada while they were travelling under false names using false Dutch passports. The RPD found this risky and therefore implausible. The RPD rejected the appellants' explanation that they did so on the advice of the smuggler as unreasonable.
- [8] The appellants argue that the RPD was wrong to draw this inference. The RAD agrees. As the appellants argue, it is not implausible for genuine refugees to rely on advice from a smuggler. In its independent assessment, the RAD therefore declines to draw the negative inference drawn by the RPD. Appellants' journey and post arrival to Canada too lucky for belief
- [9] The RPD drew another negative inference because it found the appellant's journey and post arrival to Canada too fortuitous, and therefore implausible.
- [10] The appellants argue that the RPD should not have drawn this inference. The RAD agrees. The RPD did not explain why it found the appellant's journey and post arrival to Canada to be too fortuitous for belief and, in its independent assessment, the RAD cannot discern why it is implausible. The RAD therefore declines to draw the negative inference drawn by the RPD. Principal appellant could not recall the name of the church
- [11] The RPD found that the principal appellant could not testify to the exact name of the church in Nairobi where the appellants allegedly stayed for forty days. The RPD found that inconsistent with her BOC narrative which explicitly identified the church as 'XXXX XXXX XXXX XXXX XXXX' and it therefore drew another negative inference.
- [12] The appellants argue that the RPD should not have drawn this inference. The RAD agrees. Having examined a transcript of the hearing, the RAD finds, as the appellants argue, that the RPD has misconstrued the principal appellant's testimony. The church was in the shopping centre and, when she was specifically asked the name of the church, she testified 'XXXX.' The RAD finds that answer sufficiently consistent with her BOC narrative and it therefore

declines to draw the negative inference drawn by the RPD. Failed to claim with Kenya UNHCR

- [13] The RPD drew another negative inference because the appellants did not claim asylum with the United Nations High Commission for Refugees (UNHCR) in Kenya. Given that they stayed at a church in Nairobi for forty days, the RPD found that failure implausible. The RPD rejected the appellants' explanation that the UNHCR was too far away from the church as unreasonable.
- [14] The appellants argue that the RPD should not have drawn this inference. The RAD agrees. As the appellant argues, the principal appellant also explained that it would have been risky to travel to the UNHCR because they could have been intercepted by Kenyan authorities and deported back to Ethiopia. In its independent assessment, the RAD therefore finds the appellants' explanation to be reasonable and it declines to draw the negative inference drawn by the RPD. Minor appellant's birth certificate
- [15] The RPD drew a negative inference and discounted the minor appellant's birth certificate³ only because the photo upon it appeared to the RPD to be of a child older than the minor appellant at the time the photo was allegedly taken.
- [16] The appellants argue that this RPD finding is speculative and therefore wrong. Having examined the photo, the RAD disagrees with the appellants about speculation. The RAD concurs with the RPD that the photo does appear to be of a child older than three months. However, in its independent assessment, the RAD has compared her birth certificate to a sample⁴ in the country documentary evidence and can discern no other issues with it. The RAD is not prepared to discount her birth certificate only because of a questionable photo. The RAD therefore declines to discount the birth certificate as proof of the minor appellant's identity and it declines to draw the negative inference drawn by the RPD. Daycare business
- [17] The RPD drew a negative inference because the appellants did not produce documents to corroborate the sale of the principal appellant's daycare. The RPD found this relevant because they alleged that the principal appellant had used the funds from the sale to travel to Canada.
- [18] The appellants argue that the RPD should not have drawn this inference because it is a secondary, microscopic matter. The RAD disagrees with the appellants here. As the appellants allegedly did use the funds from the sale of the daycare to travel to Canada, the RAD concurs with the RPD that it is a relevant matter and it therefore draws the same negative inference for the same reason. Principal appellant's identity documents
- [19] The RPD also drew a negative inference because it found some of the contents of the principal appellant's national identity card (NIC)⁵ inconsistent with her birth certificate and with what the country documentary evidence⁶ indicated it should contain. For the same reasons, the RPD also found both documents to be fraudulent.

- [20] The RAD finds it unnecessary, however, to make a finding about the NIC or about whether the RPD made any errors in discounting it because, unlike the RPD, the RAD is satisfied, as the appellants argue, that her birth certificate is reliable documentary evidence of her identity. The RAD has examined her birth certificate⁷ and compared it to the sample in the response to information request⁸ relied upon by the RPD and, just as with the minor appellant's birth certificate, the RAD can discern no issues by comparison to the sample. While the RAD acknowledges that the Canadian source in the response to information request indicates that the emblems on her NIC and birth certificate should match but do not, the RAD also notes that the source does not indicate specifically what emblems should appear in the birth certificate and the RPD identified no other issues with her birth certificate. Again, the sample is the best evidence as to what her birth certificate should contain and the RAD can discern no issues with her birth certificate by comparison to it. The RAD is therefore not satisfied that the discrepancies in the emblems between her birth certificate and her NIC are sufficient to establish that her birth certificate is unreliable. The RAD therefore declines to discount her birth certificate as documentary proof of her identity and declines to find it to be a fraudulent document. Identity and Credibility
- [21] The affirmed evidence of refugee claimants is presumed to be true unless it is internally inconsistent, inherently implausible, or inconsistent with the documentary evidence on country conditions.⁹ Having reviewed the record, the RAD finds no such issues with the principal appellant's testimony concerning the central allegations in its independent analysis. Regarding the presumption of truth, the RAD finds that her testimony about the central allegations was internally consistent, plausible, and consistent with the documentary evidence on country conditions. The RAD also notes that the appellants' alleged personal and national identity, and credibility is corroborated by their birth certificates¹⁰ which the RAD has found reliable, and by letters¹¹ from the principal appellant's mother-in-law, her sister, and her friend, which the RAD also finds it has insufficient reason to discount. Therefore, despite of any issues with the principal appellant's NIC and the lack of corroboration of the sale of her daycare, the RAD still finds that the principal appellant is a credible witness, that the appellants are who they say and that they are citizens of Ethiopia, and that the central allegations in this claim are all true, on a balance of probabilities. Well-foundedness
- [22] The documentary evidence¹² on country conditions indicates that, despite some improvements in the human rights situation, the Ethiopian government continues to perpetrate serious human rights abuses against perceived political opponents. Based on these country documents and the credible allegations, the RAD is therefore satisfied that the appellants' claims are well-founded and that adequate state protection and viable internal flight alternatives (IFAs) are not available to them.

CONCLUSION

- [23] The RPD made credibility and identity assessment errors which are fatal to the RPD's determination of the claim.
- [24] After an independent assessment of the evidence in the case, the RAD has arrived at positive conclusions about the appellant's personal and national identity and overall credibility, and about the central allegations in their case. The RAD finds that their claims are objectively well-founded, that adequate state protection is not available to them, and that they do not have a viable IFA anywhere in Ethiopia.
- [25] The RAD, therefore finds that the appellants have a well-founded fear of persecution in Ethiopia by reason of their perceived anti-government political opinion and/or their family relationship to the principal appellant and her family.
- [26] The RAD therefore allows the appeal and sets aside the decision of the RPD. The RAD therefore substitutes the determination that, in its opinion, should have been made, namely that the appellants are Convention refugees, pursuant to section 111(1)(b) of the IRPA. (signed) JOEL BOUSFIELD Joel Bousfield November 6, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Exhibit RPD-1, RPD Record, Exhibit 2.1, pp. 16-21. 3 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 70-71. 4 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Ethiopia (March 29, 2019), p. 72, item 3.7. 5 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 65-67. 6 Ibid. note 4 7 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 68-69. 8 Ibid., note 4. 9 Maldonado v. Canada (M.E.I.), [1980] 2 F.C. 302 (C.A.). 10 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 68-71. 11 Exhibit RPD-1, RPD Record, Exhibit 5, pp. 79-86, 90-92. 12 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Ethiopia (March 29, 2019), p. 72. See all items in sections 1, 2 and 4. See also all country conditions items in Exhibit 5, pp. 93-104.

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