

CANADA / JUDGMENT

TB9-05782

COURT
Refugee Appeal DivisionDECIDED
30 July 2020

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RAD File / Dossier de la SAR : TB9-05782 TB9-05783 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 July 30, 2020 Date de la décision Panel T. Card Tribunal Counsel for the persons who are the subject of the appeal Daniel Tilahun Kebede Conseil des personnes en cause Designated representative XXXX XXXX XXXX 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 "Minor 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 the Principal Appellant was found not to be credible.
- [2] The Principal Appellant is the mother of the Minor Appellant and was appointed as Designated Representative (DR) of the Minor Appellant.

DETERMINATION

- [3] The appeals are dismissed. BACKGROUND AND ALLEGATIONS
- [4] The Principal Appellant is an Ethiopian citizen. She alleges to XXXX XXXX XXXX XXXX XXXX. In XXXX XXXX, the Principal Appellant XXXX XXXX XXXX in protest against an unfair levy of taxes by the government. On XXXX XXXX XXXX, the Principal Appellant was taken to a police station, attacked and questioned about the protest.
- [5] The Appellants then fled Ethiopia and travelled via several countries to Canada, where they made their refugee claims. The RPD refused the claims on the basis that the Principal Appellant was found not to be credible. ADMISSIBILITY OF EVIDENCE SUBMITTED ON APPEAL
- [6] In support of this appeal, the Appellants proposed the admission of a psychotherapist report¹ as new evidence.

- [7] S.110(4) of the Immigration and Refugee Protection Act (IRPA)² provides that the Appellants may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that they could not reasonably have been expected³ in the circumstances to have presented, at the time of the rejection. It is for the Appellants to make full and detailed submissions in their Memorandum about how any proposed new evidence meets the requirements of s.110(4) and how that evidence relates to the Appellants.⁴
- [8] In addition, if the new evidence meets one of the explicit legislative factors in s.110(4), then the second step of the analysis is for the Refugee Appeal Division (RAD) to apply the adapted Raza factors endorsed in Singh.⁵ In Singh, the Federal Court of Appeal held that the RAD should assess the admissibility of the new evidence for its credibility, relevance and newness. Psychotherapist report rejected
- [9] The Appellants have presented a psychotherapy report used to illustrate the Principal Appellant's mental state at the time of the RPD hearings. The Appellants have stated that "...she did not know that XXXX XXXX XXXX XXXX XXXX XXXX XXXX at the time of her hearing."⁶
- [10] The Principal Appellant states that she did not mention much about the XXXX XXXX XXXX to her Counsel, and that she did not know she had a health issue before the hearing.⁷
- [11] The statement that the Principal Appellant "did not know she had a health issue before the hearing" seems a little strange, when the RPD Member made clear reference, and gave clear instruction during the hearing, that she knew about XXXX XXXX XXXX XXXX. The RPD Member in fact went as far as to say that she would not ask questions about this assault in order to avoid retraumatizing the Principal Appellant about an event that was not related to the claim. The XXXX XXXX was not related to the perceived anti-government actions which form the core of the claim.
- [12] The Appellants' Counsel also knew about the assault, as he had assisted in preparing the Basis Of Claim (BOC), and the incident was contained in the narrative. Counsel ought to know, and advocate for their client, in helping to point them in the direction of where aid is available, including medical care.
- [13] I am therefore not convinced that the report was unavailable prior to the RPD Hearing. The condition also existed before the RPD Hearing, and the general issue of credibility was known to the Principal Appellant. For these reasons, I find the report does not meet the requirements of s.110(4) of the IRPA.
- [14] Additionally, even if the document did meet the requirements of s.110(4), I find that while the document would be credible, the findings of mental health issues stemming from the XXXX XXXX would not be enough to overcome other adverse credibility findings discussed below, and thus not meet the relevance factor. Furthermore, the document is simply a confirmation of what the RPD Member knew, which is that the Principal Appellant had endured a trauma, and that this could affect her evidence. It therefore cannot be said to be

an occurrence that arose after the RPD Hearing, a fact unknown to the Principal Appellant (as it was certainly known to the RPD Member), or something contradicting a finding of fact made by the RPD. In other words, the document would also fail the newness factor.

[15] For these reasons, I reject the proposed new evidence. NO ORAL HEARING

[16] The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection 110(3) of the IRPA that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.⁸

[17] As no new evidence has been accepted, the requirements of subsection 110(6) of the IRPA have not been met, and an oral hearing cannot be held. ISSUES IN APPEAL

[18] The Appellants argue the following issues in their appeals:

- a. The RPD erred in its assessment of the Principal Appellant's credibility and failed to take into account the Principal Appellant's mental health when assessing her testimony.
- b. The RPD erred in its finding that the Appellant's and Witness Y's evidence was inconsistent, and that there were only minor variations in their respective testimonies.
- c. The RPD erred in finding the some of the Appellant's Ethiopian documentation was not reliable.

[19] I find that the determinative issues in these appeals are:

- a. Credibility.
- b. Correct assessment of the documentary evidence provided. RAD ANALYSIS

[20] I have conducted an independent analysis of the evidence concerned, including reviewing the record of the RPD hearing, as well as considering the Appellants' Memorandum,⁹ the RPD Decision,¹⁰ and the Principal Appellant's BOC form.¹¹ RPD did not err regarding allegation of ongoing threat from 2007 attacker

[21] During the RPD hearings, the Principal Appellant stated that she feared her attacker from 2007 as an ongoing threat. While the 2007 assault was mentioned in the BOC¹² there was no mention of an ongoing threat.

[22] The RPD Member drew an adverse credibility finding against the Principal Appellant as there was no mention of the ongoing threat, and found that the Principal Appellant had invented this ongoing threat as embellishment for her claim.

[23] The Principal Appellant has argued that her mental health condition is why she did not previously mention the ongoing threat in the BOC.

- [24] In assessing all of the evidence before me, including other credibility problems discussed below, I find that the RPD Member correctly drew an adverse credibility finding against the Principal Appellant. The issue of mental trauma certainly can explain issues such as certain details about an incident being omitted or recalled inaccurately. However, it is a major detail to omit that a threat is ongoing, rather than something that has ended in the past. I am not convinced that the mental trauma endured can explain this omission.
- [25] Furthermore, I note that there were no additional details provided in the new evidence submissions, such as explaining how this threat is ongoing, or who the attacker was. This lack of evidence means there is insufficient weight of evidence to overturn the earlier adverse credibility finding. It is for the Appellants to establish their case, and not for the RPD or the RAD to disprove it.
- [26] Accordingly, I find the RPD did not err in its analysis on this issue, and uphold the RPD's findings on this matter. RPD did not err in its analysis of Y's letter
- [27] The RPD also made a finding regarding a letter from XXXX XXXX XXXX XXXX XXXX. In his letter, XXXX states that a person called XXXX XXXX the coordinator of the protests, "came to check if [the Principal Appellant] XXXX XXXX XXXX XXXX."13 However, in both her BOC, and oral testimony, the Principal Appellant made it clear that she was awaiting an instruction from XXXX about when she XXXX XXXX XXXX XXXX. The Principal Appellant had said that the instruction would be given about a day before to prevent information about planned closures from reaching the government.
- [28] The Appellants have argued that this is a minor inconsistency and that in any case, the Principal Appellant's mental state explains the inconsistency. I do not agree on both counts.
- [29] Firstly, I find the inconsistency is not a minor one. The Principal Appellant had been quite detailed in both the BOC and oral testimony about how these protests were to be carried out, and that the XXXX XXXX XXXX XXXX happened. XXXX letter is equally categorical that XXXX visit was to check XXXX XXXX XXXX XXXX XXXX XXXX XXXX, indicating that an instruction XXXX XXXX would have been issued.
- [30] The order of events at this point then falls completely apart, and a mental lapse at both the BOC preparation stage and over the course of the RPD Hearings is unlikely below a level of balance of probabilities.
- [31] I find that the RPD did not err in its analysis on this element and uphold its findings on this issue accordingly. RPD did not err in its analysis of the Ethiopian documents
- [32] The Appellants have also argued that the RPD erred in its analysis of certain documents provided and in finding them not to be genuine. The Appellants have argued that the RPD failed to consider that documents from developing countries may not reach Canadian standards.

- [33] In this case, I find the explanation insufficient to overcome the problems correctly identified by the RPD member.
- [34] For example, a pixelated revenue stamp¹⁴ is an indicator of a fraudulent stamp, rather than a clerical error. This relates to the business licence provided.
- [35] Further to this, the fact that the Principal Appellant could not recall XXXX XXXX XXXX XXXX XXXX, and that the Unit number provided in testimony did not match the XXXX XXXX XXXX, does undermine the premise that the Principal Appellant XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The Appellants' earlier explanation of mental illness problems experienced by the Principal Appellant is not a satisfactory explanation, given the detail provided in other areas, given that she allegedly XXXX XXXX XXXX XXXX XXXX XXXX, and given that it relates to a benign part of the Principal Appellant's life unrelated to her XXXX attack.
- [36] The fact that the Principal Appellant's surety's signature is missing from the bond letter¹⁵ is also problematic. I concur with the RPD Member that it makes no sense that bail would be issued without the surety signature.
- [37] Overall, I find the RPD's analysis of the Ethiopian documents to be correct and uphold its findings accordingly.

CONCLUSION

- [38] Having reviewed the entire claim, and having conducted my independent analysis, I find the RPD did not err in finding the Principal Appellant not credible, not to have a political profile, and to be of no interest to the Ethiopian authorities.
- [39] The Minor Appellant's claim is entirely dependent on the credibility of the Principal Appellant's claim, and thus also must fail.
- [40] Pursuant to s.111(1)(a) of the IRPA, the RPD's decision that the Appellants are neither Convention refugees nor persons in need of protection is confirmed.
- [41] The appeals are dismissed. (Signed) T. Card T. Card 30 July 2020 Date 1 Exhibit P-2, Appellants' Record, Psychotherapist Report, Pages 20-25. 2 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 3 In the French version of the IRPA, this phrase is instead the equivalent of "normally have been expected;" see Singh, Parminder v. M.C.I. (F.C., no. IMM-6711-13), Gagné, October 28, 2014, 2014 FC 1022, Paragraph 51. 4 Refugee Appeal Division Rules, SOR/2012-257, rule 3(3)(g)(iii). 5 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385, cited in Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96, Paragraph 64. 6 Exhibit P-2, Appellants' Record, Memorandum, Page 39, Paragraph 29. 7 Exhibit P-2, Appellants' Record, Principal Appellant's Affidavit, Pages 17-18, Paragraphs 3-7. 8 Immigration and Refugee Protection Act, S.C. 2001, c. 27, subsection 110(6). 9 Exhibit P-2, Appellants' Record, Memorandum, Pages 32-45. 10 Ibid., Pages 2-16. 11 Exhibit RPD-1, RPD Record, Exhibit 2, Pages 18-31. 12 Ibid., Page 27, Paragraph 1. 13 Ibid.,

Exhibit 7, Page 124. 14 Exhibit RPD-1, RPD Record, RPD Decision, Page 10, Paragraph 20. 15 Ibid., Exhibit 7, Pages 109-110.

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Prepared on 27 October 2026 · Esheria