

Date: 20080307

Docket: IMM-5739-06

Citation: 2008 FC 316

Ottawa, Ontario, March 7, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**YONNAS GEBREMESKEL HABTEMARIAM
(a.k.a. YONNAS GEBREMES HABTEMARIAM)**

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 29, 2006 concluding that the applicant, an Ethiopian citizen, was not a Convention refugee or a person in need of protection.

FACTS

[2] The applicant is a 37-year-old Ethiopian citizen of Oromo ethnicity. He arrived in Canada on January 19, 2005 claiming refugee protection on account of his and his father's involvement in

the Oromo Liberation Front (OLF), an outlawed independence movement. Prior to arriving in Canada, the applicant had previously made two unsuccessful asylum claims; in Norway in 1999 and in the United States in 2001.

[3] The applicant states in his Personal Information Form (PIF) that he became an Oromo activist through the teachings of the OLF and his father, who joined the OLF in 1990. The applicant states in his PIF that while he never attended meetings or personally joined the OLF, his father had him registered and gave the applicant specific OLF-related tasks to perform. These tasks mainly included the distribution of pamphlets in schools, stadiums, coffee and tea houses, churches, and mosques.

[4] The applicant states that his trouble with the Ethiopian government began on April 1, 1998, when police officers came to his home in the middle of the night. Both the applicant and his father were awakened by the officers. When the applicant's father opened the door, the officers forced themselves into the house. The applicant was taken into custody and was held until May 31, 1998. The applicant states that during this time he was subjected to extensive interrogation about his father's involvement in the OLF and was "tortured almost every day." Upon being released, the applicant was told to report to the police every week.

[5] In July 1998, the applicant went into hiding after his father was detained by authorities. He remained in hiding until August 1998 when he fled Ethiopia for Norway with the help of an agent and a friend of his father. His asylum claim was rejected by Norwegian authorities in 1999. In July

2001, fearing deportation, the applicant left Norway for the United States, where he was again denied asylum. The applicant arrived in Canada on January 15, 2005 and filed a claim for refugee protection, which was heard by the Board on May 5 and September 26, 2006.

Decision under review

[6] On September 29, 2006, the Board held that the applicant was not a Convention refugee or a person in need of protection. While the Board accepted the applicant's identity as an Ethiopian citizen, it concluded that the applicant's evidence was not credible.

[7] The Board found inconsistencies between the applicant's evidence in his PIF narrative and oral testimony before the Board, and the evidence in the applicant's "Personal Statement," which formed the basis of his U.S. asylum claim. These inconsistencies included:

- a. in his PIF narrative and oral testimony, the applicant stated that he never personally became a member of the OLF, but rather that his father was the one who registered him. However, in the "Personal Statement" supporting his U.S. asylum claim, the applicant stated that he joined the OLF with two friends in 1994;
- b. in his PIF narrative and oral testimony, the applicant stated that he never attended meetings and only performed those tasks assigned by his father. However, in the "Personal Statement" the applicant held that he was an "active member" and attended meetings two or three times a week to talk about the OLF; and

- c. in his PIF narrative, the applicant testified that his father opened the door for the police on the night he was detained. However, in his U.S. “Personal Statement” the applicant stated that his father was not home and that he, himself, opened the door.

[8] The Board posed these and other contradictions to the applicant at the hearing and considered his explanations. However, the Board did not accept the explanations as satisfactory and concluded that the inconsistencies raised serious credibility issues including whether the applicant was actually a member of the OLF. Further, the Board held at page 10 of its decision that the third contradiction about the police was particularly concerning, “since so much of the claimant’s fear of returning flows from his initial encounter with the police on April 1, 1998.”

[9] The Board found further inconsistencies between the applicant’s evidence before the Board and that summarized by the Norwegian Immigration Directorate concerning the applicant’s failed asylum claim in Norway. The Board held that the length of his incarceration was different in the two accounts, and drew a negative inference from this finding. The Board did not accept the applicant’s explanation that the Norwegian authorities were incorrect and that he had been denied a fair hearing in Norway.

[10] Finally, the Board concluded that the applicant’s credibility was further undermined by the fact that he did not produce a single document verifying his membership in the OLF despite having had the opportunity to request such evidence. Two of the documents proffered by the applicant were

expressly rejected by the Board as not being “independent confirmation” that the applicant was ever a member of the OLF. Accordingly, the Board rejected the applicant’s claim for refugee protection.

ISSUE

[11] The sole issue to be considered in this application is whether the Board made patently unreasonable credibility findings without regard to the evidence before it, in particular an affidavit supporting the applicant’s version of the events and the reliability of his version of the events as reported in the Norwegian and U.S. decisions on the applicant’s asylum claims in those two countries.

STANDARD OF REVIEW

[12] No pragmatic and functional analysis is required with respect to the issue of the appropriate standard of review of the Board’s credibility findings because the standard of review is well settled in the jurisprudence as “patent unreasonableness.” In *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1194, [2002] F.C.J. No. 1611 (QL), I held at paragraphs 4-5:

¶ 4 ... Before a credibility finding of the Board is set aside ... one of the following criteria must be established ... :

1. the Board did not provide valid reasons for finding that an applicant lacked credibility;
2. the inferences drawn by the Board are based on implausibility findings that in the view of the Court are simply not plausible;
3. the decision was based on inferences that were not supported by the evidence; or,
4. the credibility finding was based on a finding of fact that was perverse, capricious, or without regard to the evidence.

See *Bains v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1144 at para. 11 per Madam Justice Reed.

¶ 5 Credibility findings of the Board are entitled to the highest degree of curial deference, and the Court will only set aside credibility decisions ... in accordance with the criteria outlined above. The Court should not substitute its opinion for that of the Board with respect to credibility or plausibility except in the clearest of cases. For this reason, applicants seeking to set aside credibility findings have a very heavy onus to discharge....

ANALYSIS

Issue: Did the Board make patently unreasonable credibility findings without regard to the evidence before it?

The failure to consider affidavit evidence

[13] The applicant submits that in reaching its conclusion, the Board erred in failing to consider relevant evidence that supported the applicant's membership in the OLF. This evidence was an Affidavit of Sentayehu Kassa dated October 25, 2001, which corroborates the applicant's membership in the OLF and the police harassment and arrest.

[14] The Affidavit of Sentayehu Kassa is not from an independent source that could substantiate the applicant's story. The deponent was not in Ethiopia when the applicant was allegedly arrested in 1998; the deponent left Ethiopia in 1986. The deponent relies on information told to him by the applicant and by the deponent's brother. This is not a credible, independent source of evidence that the Board needed to expressly address in its decision. Moreover, the deponent is a friend of the applicant from Ethiopia and Texas.

Evidence emanating from the U.S. asylum claim

[15] The applicant argues the Board erred in basing its credibility findings on the negative outcome of his failed 2001 U.S. asylum claim. The applicant submits that the Board failed to undertake an assessment of his claim independent of the assessment made by the U.S. immigration judge in 2001.

[16] If the Board's conclusion was premised on the decision in the U.S. claim, then the Board erred by abdicating its responsibility to make an independent assessment of the facts based on the evidence before it. As Madam Justice Mactavish stated in *Dokaj v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1416, [2005] F.C.J. No. 1740 (QL) at paragraph 5:

¶ 5 I agree with counsel for Mr. Dokaj that a tribunal cannot simply look at findings of fact and credibility made by an earlier adjudicative body, and adopt those findings as its own. This would amount to an abdication of the Board's responsibility to make an independent assessment of the facts, based upon the evidence before it. In other words, it would not have been open to the Board to say that because the US immigration judge did not believe Mr. Dokaj's story, the Board did not believe him either. ...

[17] However, the Board's decision in the case at bar was not premised on the findings of the U.S. immigration judge, but rather on the applicant's own evidence proffered in support of his claim. Having reviewed the applicant's "Personal Statement" made in support of his U.S. asylum claim, the Court finds there to be inconsistencies between this account of events and that which the applicant provided in his PIF narrative and oral testimony before the Board. Specifically, the Court agrees with the Board's finding that there are significant differences between the two accounts with

respect to: 1) how the applicant became a member of the OLF; 2) the extent of his involvement within the group; and 3) the events leading up to his arrest on April 1, 1998.

[18] In *Dokaj*, above, Madam Justice Mactavish was faced with a similar fact scenario, where the Board concluded the applicant lacked credibility on the basis he provided inconsistent statements between his Canadian refugee claim and his claim for asylum in the United States. In concluding that the Board did not err in its use of the applicant's testimony before a U.S. immigration judge, Madam Justice Mactavish stated at paragraph 7:

¶ 7 In my view, there was nothing improper about this. Mr. Dokaj's testimony before the US immigration judge amounted to a prior inconsistent statement. It was no different for the Board to have relied upon inconsistencies between Mr. Dokaj's earlier evidence and his testimony before the Board than it would have been for the Board to have relied upon inconsistencies between a claimant's testimony before the Board and statements given by the claimant at the Port of Entry or in the claimant's Personal Information Form.

[19] The Court reaches the same conclusion in the case at bar. In concluding the applicant lacked credibility, the Board's decision was not erroneously based on the negative decision of the U.S. immigration judge. Rather, it was based on evidence proffered by the applicant in support of his U.S. asylum claim that the Board found to be materially inconsistent with the evidence provided by the applicant in his claim for refugee protection in Canada. These inconsistencies were noted by the Board and put to the applicant at the hearing. The Board's finding that the applicant lacked credibility on the basis of these inconsistencies was open to it on the evidence and will not be interfered with by this Court.

Evidence emanating from the Norwegian asylum claim

[20] The applicant makes a similar argument with respect to the Board's treatment of his failed asylum claim in Norway in 1999. The applicant states that the Board erred in relying on the decision of the Norwegian Immigration Directorate to find inconsistencies between the applicant's Canadian and Norwegian claims for protection.

[21] The applicant submits that he was under great pressure from the Norwegian policemen questioning him, and that this impacted on his ability to recall events. The Court rejects this explanation for three reasons:

1. the applicant had counsel in Norway;
2. the applicant could have appealed the decision of the Immigration Directorate; and
3. such interviews often are difficult and make witnesses nervous. This is not a reason to ignore or discount the answers given.

CONCLUSION

[22] The Board conducted this hearing over two days and provided a detailed set of reasons. The Court cannot interfere with the Board's credibility findings unless they are patently unreasonable, which, in this case, they are not.

[23] Both parties and the Court agree that this case does not raise a question that should be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5739-06

STYLE OF CAUSE: YONNAS GEBREMESKEL HABTEMARIAM (a.k.a. YONNAS GEBREMES HABTEMARIAM) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 25, 2008

REASONS FOR JUDGMENT: KELEN J.

DATED: March 7, 2008

APPEARANCES:

Mr. Ronald Shacter FOR THE APPLICANT

Ms. Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Helen Kim FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada