Federal Court		Cour fédérale

Date: 20100430

Docket: IMM-3844-09

Citation: 2010 FC 482

Ottawa, Ontario, April 30, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

TEWODROS GEBRE-HIWET
HARUYA TEWODROS GEBRE-HIWET
SAMRAWIT-KORAL TEWODROS GEBRA-HIWET
BANCHIAMLAK GEBRE-HIWET
ROBEL GEBRE-HIWET
SENAY TEWODROS GEBRE-HIWOT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicants, who are Israeli citizens of Ethiopian/Eritrean descent, were found by the Immigration and Refugee Board (Board) not to be Convention refugees or persons in need of protection. The Board concluded that the Applicants were not at risk due to their objection to

military service and the alleged discrimination did not amount to persecution. The Applicants' claim was further undermined by their failure to seek state protection.

[2] The central issues in this judicial review are the obligation to perform military service as grounds for refugee/protection status and the consideration of the cumulative effects of discrimination.

II. FACTS

[3] The five Applicants include two minors. They are a family who moved from Ethiopia to Israel in 1995. While the father and mother were baptised Christians, the mother's mother was Jewish and therefore the family was able to take advantage of Israel's favourable resettlement policy for Ethiopian Jews. The family left Ethiopia because they claimed that as "Felasha" (the term for Ethiopian Jews), they were mistreated even though they lived as Christians.

[4] The Applicants' complaint about their treatment in Israel was (a) discrimination on the basis of race and religion, and (b) objection to performing military service.

[5] The Applicants outlined a number of incidents of discrimination ranging from mistreatment on the transit system, dismissal from his work, poor treatment by parents and others when he was a teacher, vandalization of a car and insulting epithets being used against them. It appears that these incidents were never reported to the responsible authorities.

[6] The objection to military service arises in respect of the oldest son and the daughter. The son had served his mandatory service of three years but objected to operations in Gaza and alleged that Ethiopians were mistreated by being given either the most menial jobs or the most dangerous. The daughter has a general objection to military service and a belief that Ethiopians are mistreated.

[7] The family came to Canada in 2007 on visitors' visas. Three of their daughters remain in Israel, living in the same area the family had lived in. One daughter is working, one is going to college through Israel's program of free education and one is serving in the military.

[8] The Board had significant concerns about the Applicants' credibility, the internal inconsistencies of the stories, the memory lapses, the embellishments and the failure to report incidents and to seek state protection.

[9] The Board canvassed and assessed each incident of discrimination and to the extent that there was some credible basis for the allegation, the Board tended to find them to be minor incidents. Ultimately, the Board found that the cumulative incidents did not constitute persecution.

[10] The only fear consistently and credibly founded was the problems the Applicants had with the Ethiopian Jewish community due to their Christian heritage. That claim was undermined by the failure to report incidents or to take steps to relocate. The Board found that there was no objective evidence that state protection was not available in Israel to citizens like the Applicants nor did any of them seek it out.

[11] On the issue of military service, neither the eldest son or daughter took any steps with respect to either alleged discrimination nor to avail themselves of the available alternatives to military service.

[12] Finally, the Board examined Israel's policy toward discrimination and integration. The Board noted both the efforts of the government to facilitate integration of the Ethiopian Jews and also the problems experienced with such integration. It concluded that given the generous absorption packages available to these new communities, Israel could hardly be seen as enabling discrimination.

III. ANALYSIS

[13] The standard of review in respect to whether evasion of military service constitutes persecution has been held by Justice de Montigny in *Lebedev v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 728, to be a question of law for which the standard of review is correctness. I adopt his conclusion. The failure to consider the cumulative effects of discrimination is also a question of law; however, whether the events themselves constitute persecution is a question of mixed fact and law which is subject to the reasonableness standard (*Talman v. Canada (Solicitor General)*, [1995] F.C.J. No. 41, 93 F.T.R. 266).

[14] The state protection finding in cases such as the present is subject to the reasonableness standard of review (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171).

[15] A finding of state protection would in most instances dispose of the claim of discrimination/persecution. However, the Applicants argue that the analysis of this issue is in error. I concur with them that a failure to properly assess from what one needs to be protected can undermine a state protection finding. State protection must relate to a proper assessment of the type of risk or harm from which one needs to be protected.

[16] The finding on cumulative effects is somewhat confusing. While the Board acknowledges the test, there is a suggestion that the Board only assessed cumulatively those events which were persecutory in themselves. If that was the case, it would be an error of law.

[17] However, where the state protection analysis concludes that for the types of events alleged as discriminatory, there is state protection, then the cumulative assessment is unnecessary. Where each of the constituent events said to cumulatively constitute persecution are themselves state protected, any error in the cumulative assessment is irrelevant; state protection exists for those matters for which protection is required.

[18] Therefore, even if the Applicants were correct on the cumulative assessment - a matter on which there is doubt – it does not undermine the state protection finding. In this case the state protection analysis was thorough and reasonable.

[19] On the issue of objection to military service, the law is that conscription is permissible as a law of general application and does not constitute persecution. The son was not a conscientious objector to all wars nor did he show that he would be forced to commit crimes against humanity. The daughter took no steps to avail herself of alternative means of service which is available to true conscientious objectors. The finding of no discrimination in respect of military service was likewise reasonable.

[20] Therefore, this judicial review must be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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