

Federal Court



Cour fédérale

Date: 20130618

Docket: IMM-8532-12

Citation: 2013 FC 672

Toronto, Ontario, June 18, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ESHETU NEGUSSIE GEBRE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Eshetu Negussie Gebre claimed refugee protection in Canada based on his fear of political persecution in Ethiopia. He stated that he had been arrested, detained and beaten on a number of occasions because of his involvement in an opposition party. Further, he risked mistreatment because of his Amhara ethnicity.

[2] A panel of the Immigration and Refugee Board dismissed Mr Gebre's claim because it disbelieved his account of events in Ethiopia. Mr Gebre claimed to have been an organizer of demonstrations, but the evidence did not support that assertion. Rather, the Board found that he was simply a member of an opposition party. It did not believe that Mr Gebre had been arrested or beaten. Further, it concluded that he had lived safely in Jimma for a number of years and could do so again.

[3] In addition, the Board concluded that Mr Gebre had delayed making a refugee claim in Canada, which contradicted his claim to be at risk of persecution in Ethiopia.

[4] Mr Gebre does not strenuously dispute the Board's credibility findings or its conclusion that his delay in claiming refugee protection in Canada was inconsistent with a fear of persecution in Ethiopia. However, he maintains that the Board failed to recognize that he faced a risk of persecution simply by virtue of his membership in an opposition party and because of his father's political activities. He asks me to quash the Board's decision and order a new hearing before a different panel.

[5] I agree that a new hearing is required. The Board overlooked documentary evidence showing that ordinary members of opposition parties, and their families, are subjected to persecution in Ethiopia. Therefore, even though the Board was entitled to conclude that Mr Gebre had not been arrested, detained, or beaten, it failed to recognize that he faced persecution based solely on his membership in an opposition party. Accordingly, I must allow this application for judicial review.

[6] The sole issue is whether the Board's decision was unreasonable.

II. Was the Board's Decision Unreasonable?

[7] The Minister submits that the Board reasonably concluded that Mr Gebre had no leadership role in the opposition, and was never arrested or detained. Further, he had never experienced persecution based on his Amhara ethnicity.

[8] In my view, the Board appeared to overlook the documentary evidence clearly showing that ordinary members of opposition parties, and their families, face persecution in Ethiopia. Therefore, its finding that Mr Gebre held no leadership position and had not been physically mistreated was not enough to dispose of his claim.

[9] In particular, the evidence showed that Mr Gebre is currently a member of the Unity for Democracy party (UDJ) in Canada. The Board found that the letter containing this information did not provide proof of a risk to Mr Gebre. However, the letter specifically referred to dangers that he would encounter on his return to Ethiopia. The Board had to address whether this evidence, and the other evidence relating to the potential risk to Mr Gebre, showed that he faced a reasonable chance of persecution in Ethiopia if he returned there. The question is whether there was "a residuum of reliable evidence to support a well-founded fear of persecution", notwithstanding that some of the evidence put forward by the claimant should be discounted: *Joseph v Canada (Minister of Citizenship and Immigration)*, 2011 FC 548, at para 11.

[10] Finally, it is not clear from the Board's reasons that it considered the risk to Mr Gebre as a person of Amhara ethnicity.

[11] Therefore, I am satisfied that the Board's decision was unreasonable.

III. Conclusion and Disposition

[12] While the Board may have made reasonable conclusions about Mr Gebre's activities in Ethiopia and his lack of subjective fear of persecution when he arrived in Canada, it failed to consider whether there was still a basis for his claim of refugee protection because of his ethnicity and membership in an opposition political party. Therefore, I find that the Board's decision was unreasonable and must order a new hearing before a different panel. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8532-12

STYLE OF CAUSE: ESHETU NEGUSSIE GEBRE v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 11, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: JUNE 18, 2013

APPEARANCES:

Meera Budovitch FOR THE APPLICANT

Nicole Paduraru FOR THE RESPONDENT

SOLICITORS OF RECORD:

Patricia Wells FOR THE APPLICANT
Immigration Lawyers
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General
Toronto, Ontario