

Federal Court



Cour fédérale

Date: 20150508

Docket: IMM-3748-14

Citation: 2015 FC 609

Toronto, Ontario, May 8, 2015

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**LWAM MEKUR GEBRESELASSIE
LULIA MEBRAHTU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The present Application is a challenge to the decision of the Minister's delegate (Officer), dated February 25, 2014, in which the Applicants' application for a permanent resident visa was rejected. The Applicants are a mother (principal Applicant) and her dependent daughter from Eritrea who are seeking permanent residence as members of the family class. The principal Applicant applied as the common law partner of her sponsor. The application was rejected because the Officer did not accept that the principal Applicant had resided with her sponsor for

the required one year and, therefore, was not the common law partner of her sponsor. A primary issue in the present Application is whether the Officer's conclusion is based on fact-finding error.

[2] With respect to the issue, Counsel for the Applicant provides a précis of the evidence tendered to the Officer arising from an interview of the Applicant conducted on October 8, 2013 in Nairobi, Kenya:

The principal Applicant and Mr. Teclmichael [the sponsor] first met on February 4, 2006 in Asmara, Eritrea in church and they set up a date at a coffee shop. They then exchanged numbers and started to meet each other as often as possible to get to know each other. Their relationship developed and on March 25, 2006, Mr. Teclmichael met the principal Applicant's brother, Musie Mekur, and her friends, Helen Tesfay and Eden Selernon. On April 10, 2006, he met the principal Applicant's mother, Letezge Gebreyohanes, and her sister, Helen Mekur.

In May 2006 the principal Applicant and Mr. Teclmichael began to live together in her family's home.

The principal Applicant explained that the minor Applicant was born in 2004 and that her pregnancy was the result of a short relationship with a boyfriend, whom she did not marry. The pregnancy was an accident and her family was not happy. She told the interviewing officer "both of us were young, it was unacceptable". She also explained that the minor Applicant does not know her biological father and only knows Mr. Teclmichael as her father.

The principal Applicant was asked at the interview why her parents agreed to let her and Mr. Teclmichael live together without being married. She answered that this was because she already had a child and that he too had children. The officer's notes state that the principal Applicant stated "if you have a child before marriage, everything is possible, they can accept it."

(Applicants' Record, 161-162)

[3] The rejection letter of February 25, 2014 cites the following reasons:

Based on information available to me, you have been unable to demonstrate that you have a common law relationship with Amanuel Beyene Teclmichael. You were unable to provide me with any proof whatsoever that you and Mr. Teclmichael cohabited for more than one year prior to your departure from Eritrea.

It would have been unusual for your family to consent to you cohabiting in your family's home prior to marriage.

Further, once Mr. Teclmichael left Eritrea he did not join you in Uganda but rather went to Sudan with his family [Emphasis added in the original to identify an uncontested error of fact].

Since his arrival in Canada he has not come to Uganda to visit you.

In addition you have indicated that Mr. Teclmichael has two children with another woman but you are not sure if he simply cohabited with her as if they were legally married.

For these reasons I am not satisfied that you and Mr. Teclmichael meet the definition of common law partners.

[Emphasis added]

(Certified Tribunal Record, p.3)

[4] In my opinion, it is clear that the Officer approached the evidence with a suspicious mind. There is no clear reasoning provided for not accepting the Applicant's evidence at face value. Most importantly, there is no reason provided for rejecting the Applicant's answer to the question of why her family would accept her and Mr. Teclmichael to live together in the family home. Rather than accept the Applicant's evidence, the Officer depended upon an unverified understanding of the "cultural context". This finding constitutes an implausibility finding which is unsupported by any evidence on the record at the time the decision was made.

[5] I find that in the reasons it was incumbent on the Officer to explain the source of the understanding so that its accuracy could be considered against the evidence supplied by the Applicant. If the Officer's understanding arose from experience, the details of that experience were required to be stated in the decision. To not follow this elementary process of fact finding, is contrary to law (see: *Zakhour v Canada (MCI)*, 2011 FC 1178).

[6] I find that, because the decision was rendered in reviewable error, it is unreasonable.

ORDER

THIS COURT ORDERS that the decision under review is set aside and the matter is referred back for redetermination by a different Minister's delegate.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3748-14

STYLE OF CAUSE: LWAM MEKUR GEBRESELASSIE, LULIA
MEBRAHTU v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 6, 2015

ORDER AND REASONS: CAMPBELL J.

DATED: MAY 8, 2015

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