Date: 20060511

Docket: IMM-4728-05

Citation: 2006 FC 545

BETWEEN:

MENGISTU KEBEDE SIDA
EMEBET TADESSE GEBRIE
ABENEZER MENGISTU
SELEHOM MENGISTU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[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 July 5, 2005, wherein the Board found that the applicants are not "Convention refugees" or "persons in need of protection" as defined in sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] Mengistu Kebede Sida, Emebet Tadesse Gebrie, Abenezer Mengistu, and Selehom Mengistu (the applicants) are citizens of Ethiopia who claim persecution on the basis of political opinion.

[3] In June 2001, the applicants came to Canada and made their claims for refugee protection.

[4] On July 8, 2003, the Board found that the applicants were not Convention refugees, nor persons in need of protection.

[5] On June 23, 2004, Justice Phelan of this Court granted the applicants' judicial review, quashed the decision of the Board and remitted the matter back to the Board for redetermination.

[6] On July 5, 2005, a newly constituted Board found that the applicants are not Convention refugees, nor persons in need of protection.

[7] In its decision of July 5, 2005, the Board found that the applicants are not "Convention refugees" or "persons in need of protection", finding the principal claimant's testimony not to be credible.

[8] Upon hearing counsel for the parties and upon reviewing the evidence, it appears that the Board made serious errors in its appreciation of the principal applicant's credibility.

[9] Indeed, the Board found that the principal applicant had re-availed himself of Ethiopia's protection by returning four times.

[10] The applicants submit that the Court has already dealt with the previous Board's determination that the principal applicant's returns (four) to Ethiopia were problematic, and therefore the point is *stare decisis*.

[11] The Court stated the following:

> [18] The Member concluded that the Applicants had not left soon enough after the office break in to found a conclusion of risk, presumably both objective and subjective.
>
> [19] However, the evidence is that while the break in occurred prior to May 2001, Sida only had suspicions that it occurred. It was only in May that the suspicions were confirmed by the janitor. Within approximately one month of this confirmation, the Applicants left Italy and made their claim.
>
> [20] With due respect to the Member, I find that it is patently unreasonable to conclude that the delay, either from time of suspicion or time of confirmation, was too long. Consideration must be given to the fact that Sida could not act until he knew the true circumstances, that he had a family to organize to leave and that his risk arose when he had to return to Ethiopia in June not while he was in Rome.
>
> [21] Assuming that the break in occurred (the Member made no finding to the contrary) the evidence suggests that country conditions are very relevant to objective risk. The country conditions upon his return inform the nature of the risk Sida faces. Therefore the Member's conclusion with respect to the relevance of country conditions is in error.

[12] The applicants submit that the Board erred in relation to the re-availment finding. The Board found that the principal applicant had re-availed by travelling to Ethiopia. However, the Board's finding is contrary to the evidence. The applicant stated that his fear was precipitated by the discovery (when the janitor told him) that his office had been searched, which is when the applicant fled to Canada.

[13] I am inclined to agree with the applicant on this point. Though the Court's finding was with respect to the delay in leaving Italy, and not to the numerous re-availments, the finding is relevant. The Court found the Board's error to be that it did not give consideration to the fact that the principal applicant could not be expected to act until he had reason to fear for his life, which, according to the testimony, only occurred in May 2001, when his suspicions were confirmed by the janitor. Within approximately one month of this confirmation, the applicants left Italy and made their claim.

[14] Similarly, with regard to the principal applicant's four vacations to Ethiopia, these would not negate the applicant's subjective fear because he did not fear for his life until May 2001. The Board has therefore erred in concluding that his re-availments in 1997, 1999 and 2000 negate his subjective fear, as at these points, the applicant did not yet fear for his life.

[15] It is my opinion that this conclusion is, therefore, patently unreasonable.

[16] In addition, the Board found that it was normal and therefore not significant for the principal applicant to be accompanied by cadres because this is a "common practice for security purposes". According to the applicants, there is no evidence that supports this finding, and therefore, the Board erred. The applicants submit that this conclusion by the Board was pure speculation, and I agree.

[17] I further agree with the applicants' submission that the Board's following statement was also pure speculation:

> The panel finds on a balance of probabilities that the authorities were aware of the principal applicant's departure from Italy to Canada and also that he is an economic migrant.

[18] There was no evidence of this except the reasonable inference by the applicants that a newspaper article disclosed this. The Board determined that the principal applicant was not being targeted by the authorities, and therefore concluded that on the balance of probabilities that the authorities were aware of his departure. This conclusion does not flow from its premise.

[19] I find, in the context of a decision based on lack of credibility, that the above errors stain the entire decision and are therefore sufficient to warrant the intervention of this Court.

[20] Consequently, the application for judicial review is allowed, the decision of the Refugee Protection Division of the Immigration and Refugee Board dated July 5, 2005, is set aside, and the

matter is sent back to a differently constituted panel of this Board for a new determination in accordance with these Reasons.

"Yvon Pinard"

Judge

Ottawa, Ontario
May 11, 2006

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4728-05
STYLE OF CAUSE:	MENGISTU KEBEDE SIDA, EMEBET TADESSE GEBRIE, ABENEZER MENGISTU, SELEHOM MENGISTU v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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