

Date: 20090429

Docket: IMM-3771-08

Citation: 2009 FC 431

Toronto, Ontario, April 29, 2009

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

REBECA MENGESHA

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 a Member of the Immigration and Refugee Board of Canada dated August 8, 2008 in which to Applicant's claim for Refugee Protection was rejected. For the Reasons that follow, I will allow this application and return the matter for redetermination by a different Member.

[2] The Applicant is an adult woman, a citizen of Ethiopia. She together with her mother, father and brother fled Ethiopia to the United States of America in 1989 and applied for asylum. That

application was denied. In what has turned out to be an ill-advised move the Applicant's parents arranged for her adoption in the United States by her godparents, however that did not result in her gaining status in the United States. Meanwhile the Applicant's biological mother and father and brother came to Canada and were successful in claiming refugee status. The Applicant followed her biological parents and brother to Canada but was unsuccessful in making a refugee claim.

[3] The Board in accepting the refugee claim of the Applicant's biological parents and brother was very clear. It found that there was a serious possibility of harm should they return to Ethiopia and that there would be no state protection since the state was the persecutor.

[4] In the present case the Board Member inexplicably found that the same biological father whose claim for refugee status was clear, did not present credible or trustworthy evidence that he would be wanted by authorities in Ethiopia for his political opinion. Other findings as to credibility as to the father and the Applicant were made by the present Member as well. These findings are unfounded in the evidence. There must be something to bring the testimony of these witnesses into doubt. Here the Board member pointed to nothing that would contradict their testimony other than a reference to the passage of time of four years. In so doing the member ignored the evidence that the Applicant and her parents were not in Ethiopia during those four years and could not, therefore, be exposed to harassment. On the other hand the documentary evidence, including the Board's own Reports illustrate continuing harassment in Ethiopia by the government of what is perceived to be its political opponents.

[5] The Board failed to give proper consideration to the fact that the Applicant's biological father, mother and sibling all have been accepted as refugee claimants on the same factual circumstance as the basis of her claim. While the Board is not bound to follow previous decisions of this kind, e.g. *Bakary v. Canada (MCI)* 2006 FC 1111 at paragraph 10, it cannot ignore them either, particularly where the circumstances are identical.

[6] Further the Board's comments to the effect that the Applicant could secure another Ethiopian passport under her adoptive name thus concealing her birth name, are disingenuous. To secure such a passport she could have to submit her old passport and adoption Order both of which clearly reveal her birth name.

[7] The Board's decision here was unreasonable. The application is allowed. The matter is returned for redetermination by a different member. There is no question for certification.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ADJUDGES that:

1. The application is allowed;
2. The matter is returned to the Board for redetermination by a different Member;
3. No question for certification;
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: REBECA MENGESHA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 29, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Hughes, J.

DATED: April 29, 2009

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