

Federal Court



Cour fédérale

Date: 20111219

Docket: IMM-3927-11

Citation: 2011 FC 1497

Toronto, Ontario, December 19, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

WORKU DESSIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Worku Dessie claims to fear persecution in Ethiopia as a result of his involvement with the Unity for Justice and Democracy Party [UJDP], which opposes the regime currently in power in that country. At the conclusion of the hearing of Mr. Dessie's application for judicial review, I advised the parties that I would be granting the application. These are my reasons for that decision.

Analysis

[2] The Board found that two details of Mr. Dessie's story of persecution amounted to "embellishments". It did not, however, make a finding in clear and unmistakable terms that his story was untrue. Indeed, counsel for the respondent agrees that the Board seemingly accepted that Mr. Dessie had been arrested, detained and mistreated by government forces in 2009 because of his involvement in political activities on behalf of the UJDP.

[3] The determinative question on this application is thus whether the Board's finding that Mr. Dessie does not have a well-founded fear of persecution in Ethiopia was reasonable. In my view it was not, as it appears from the reasons that the Board overlooked important evidence supporting Mr. Dessie's claim.

[4] The reasons given by the Board in this case were brief, and the issue of forward-looking risk was dealt with in just two paragraphs. After discussing the easing of political tensions in Ethiopia in paragraph eight of the reasons, the Board goes on in the next paragraph to state that "[c]redible reports on Ethiopia indicate that unless an individual is a prominent activist within the opposition parties, he is unlikely to attract the interest of authorities". The reasons then go on to state that "there is *no objective evidence* to indicate that members of the opposition are subject to routine persecution" [my emphasis].

[5] There was, however, substantial evidence before the Board that showed that rank-and-file opposition members are routinely persecuted in Ethiopia, and that government mistreatment of its

opponents is not limited to members of opposition parties, but extends to those who are merely suspected of sympathizing with opposition parties.

[6] Reports from the United States Department of State [DOS], the United Kingdom Home Office, and Amnesty International all attest to widespread arbitrary arrests, detention, and torture of opposition party members and supporters continuing through 2009 and 2010. Indeed, the U.S. DOS report refers to hundreds of opposition members and supporters being arrested in just one three month period in 2009.

[7] It is true that the Board is not required to refer to every piece of evidence in the record, and will be presumed to have considered all of the evidence before it: see, for example, *Hassan v. Canada (Minister of Employment and Immigration)*, (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635 (F.C.A.).

[8] That said, the more important the evidence that is not specifically mentioned and analyzed in the Board's reasons, the more willing a court may be to infer that the Board made an erroneous finding of fact without regard to the evidence: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (Q.L.) at paras.14-17. The evidence here was directly relevant to the central issue in the case, and was thus very important.

[9] Moreover, this is not just a situation where the Board failed to specifically refer to evidence contrary to its findings. In this case, the Board stated quite categorically that there was “*no objective evidence*” to show that members of the opposition are subject to routine persecution in

Ethiopia, when there was in fact substantial evidence in the record leading to the opposite conclusion. This leads to the inescapable inference that important portions of the country condition evidence were overlooked.

Conclusion

[10] As a consequence, I have concluded that the Board's decision was unreasonable and the application for judicial review is allowed.

Certification

[11] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3927-11

STYLE OF CAUSE: WORKU DESSIE v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 19, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: December 19, 2011

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