

Federal Court



Cour fédérale

**Date: 20140709**

**Docket: IMM-3276-13**

**Citation: 2014 FC 675**

**Ottawa, Ontario, July 9, 2014**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**SAMRAWIT HAILE TEWELDEBRHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of the decision of Coralie Buttigieg, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that she had not proven her identity.

I. Issue

[2] The issue is whether the Board's decision was unreasonable in finding that the Applicant has not establish her Eritrean identity under section 106 of the Act and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [the Rules].

II. Background

[3] The Applicant alleges to be a married citizen of Eritrea. According to her Basis of Claim [BOC] form, she was born on November 8, 1980, in Asmara, Eritrea, and has suffered religious persecution as a result of her membership in the Tewahedo Orthodox Church.

[4] The Applicant describes various incidents of generalized religious persecution in Eritrea. The state banned her religion in 1993 and banned worshipping in 2004. Services she attended until that time were regularly interrupted by people throwing stones.

[5] The Applicant also describes several specific incidences of religious persecution. In February, 2005, the Eritrean government arrested more than 100 bible students and property belonging to her church was seized. Her church was shut down, but she continued to practice her faith in small, private groups.

[6] On October 9, 2005, the Applicant married her husband in a secret prayer service. He had been forcibly conscripted into the Eritrean army prior to their marriage. In August, 2010, he was

arrested and detained for three months. The government subsequently transferred his military posting to Asab, in a different region of Eritrea.

[7] In July, 2012, Eritrean security officials visited the Applicant, looking for her husband. They verbally abused her.

[8] On September 2, 2012, security officials illegally searched the Applicant's house, and detained her. She was interrogated about her husband's whereabouts and asked to reveal information about her church. She was verbally abused, beaten and raped.

[9] On September 23, 2012, the Applicant was released. She was depressed and could not sleep following her release. She obtained the services of a smuggler to help her leave Eritrea.

[10] On October 29, 2012, she left for Sudan on a bus. Two days later she reached the border and crossed illegally on foot. She stayed in the Sudanese city of Khartoum until December 19, 2012, when her smuggler provided her with a fraudulent passport and an airplane ticket. She arrived in Mexico on December 22, 2012, and entered the United States on December 23, 2012. She was detained in the United States until January 18, 2013. On February 8, 2013, she arrived in Canada and applied for refugee protection.

[11] In her testimony, the Applicant stated that the police searched her home on July 15, 2012, and returned a week later. She also claimed that following her detention in September, 2012, the police instructed her to bring her identity card to the police station. On September 24, 2012, the

Applicant returned to the police station with her identity card. It was retained by the police but the Applicant was not told why.

[12] In support of her claim, the Applicant submitted a photocopy of her identity card and a document purporting to be her birth certificate.

[13] After considering section 106 of the Act and Rule 11 of the Rules, the Board found that the Applicant had not established her identity. This conclusion was based on a number of negative credibility findings.

[14] The Board found that the Applicant's evidence as to the dates she was detained and her home was searched in 2012 was not credible, as she would have been in jail when her home was allegedly searched. Likewise, the Board found that the Applicant stated in her testimony that the authorities went to her home only in July, not September, a declaration contrary to what is stated in her BOC.

[15] The Board also noted that the Applicant did not mention in her BOC that the Eritrean authorities took her identity card after her detention. When asked by the Board why she did not mention this in her BOC, she stated that she had informed an Immigration Officer when she made her refugee claim. However, according to the notes of the Immigration Officer who interviewed her, the Applicant stated "the Eritrean government kept it (her identity card) while I was in jail." This is inconsistent with her evidence that the Eritrean government took it after her

September, 2012, detention. When asked to explain this inconsistency, the Applicant denied making the noted statement to the Immigration Officer.

[16] In addition, the Board noted statements that were either mentioned in her BOC but not her testimony, or vice versa. First, after repeated questions during testimony, the Applicant did not mention that her home was searched when she was detained on September 2, 2012, despite this being stated in her BOC. Second, the Applicant stated in her testimony that she was threatened with imprisonment when she was visited in her home by the police in July, 2012. This was not mentioned in her BOC. She did not offer an explanation for these inconsistencies.

[17] The Board concluded that the Applicant's explanations as to how she passed through checkpoints on her way to Sudan was not believable, as the Board found it implausible that checkpoints would not be manned in the evening. Despite this, the Applicant later contradicts herself by stating that she passed the checkpoints by avoiding them.

[18] The Board noted that the Applicant told the Immigration Officer that she needed fake pass papers to get through checkpoints. However, in her testimony, she stated that she needed them for her stay in the city of Teseney.

[19] The Board also found it implausible that the copy of the Applicant's identity card that was provided would not have her occupation listed, and that the Applicant's statement of how she obtained her identity card conflicts with the documentary evidence as to how such a card may be obtained from the Eritrean authorities. The Applicant testified that she obtained her

identity card by providing three witnesses and a court-issued document stating that she is Eritrean. According to a Response to Information Request, there are three ways one can obtain an Eritrean identity card. None require the provision of a court-issued document.

[20] With regard to the Applicant's birth certificate, the Board noted that the Applicant states she was married on October 9, 2005, prior to the issuance of her birth certificate in November, 2005. However, the Applicant initially stated in her testimony that she was required to present her birth certificate to be married. When confronted with this inconsistency, the Applicant stated that one applies for a birth certificate after he or she is married.

[21] In addition to the credibility issues, the Board found that there was a lack of documentary corroboration of the Applicant's claims and that the Applicant made little effort to obtain such documentation. For example, the Applicant did not provide any evidence that she was married, or any evidence that she made an effort to obtain her marriage certificate.

[22] The Board also placed no weight on what the Applicant alleged was her brother's Eritrean birth certificate, on the basis that it does not identify the Applicant as his sister. Likewise, the Board found that a letter from the Applicant's church did not serve to establish her identity, nor did the fact that the Applicant can speak Tigrinya, which is a language spoken in Eritrea.

III. Standard of Review

[23] The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 51).

IV. Analysis

[24] The Applicant argues that the Board misstated and misunderstood the evidence before it. The Applicant states that she never testified that she was arrested in July or that the authorities only came to her home in July. However, the Board relied on this fact to conclude that she had never been detained and impugn her credibility.

[25] The Applicant also claims that the Board's findings regarding the checkpoints were unreasonable. The Applicant never stated that no one was working at the checkpoints at night – she stated that no one checked her and her fellow travellers because they passed during the night and avoided the checkpoints.

[26] In addition, with respect to the documents needed to obtain an identity card, the Applicant disputes the Board's finding that the Applicant stated she had to present a form produced by the court in order to receive an identity card. The Applicant cites the affidavit of Andrea Siemens, a legal assistant with the Applicant's counsel. Ms. Siemens states that according to an audio recording of the Applicant's hearing before the Board, the Applicant said that she had to go to court to sign a form that the court provides, with three witnesses. The

Applicant contends that this declaration is consistent with the documentary evidence cited by the Board.

[27] The Applicant argues that these errors of fact are crucial to the determination of the Applicant's identity and the decision should be set aside (*Owjee v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 423 (FCA)).

[28] The Applicant also argues that it was unreasonable for the Board to draw a negative credibility inference based on the fact that she did not inform the Immigration Officer that her identity card was taken by the Eritrean government after her detention.

[29] The Applicant further claims it was unreasonable that the Board drew a negative credibility inference based on the fact that there was no occupation listed on the Applicant's identity card. The Board has no evidence as to the practice of the Eritrean authorities regarding what information is included on that card.

[30] The Applicant also disputes the reasonableness of the Board's finding regarding the Applicant's brother's birth certificate, and argues that the letter from the Applicant's church ought not to be discounted because it is an Eritrean Orthodox church, which is a credible indicator that she is Eritrean.



[31] Finally, the Applicant notes that she is unsophisticated and that the Board seized on perceived imperfections in her evidence to unreasonably determine that she was not credible (*Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792).

[32] While some of the Board's credibility findings are questionable, I find that on the whole the Board's decision was reasonable.

[33] With regard to the police visits to her home, the Applicant states in her BOC that the police visited in July and September. With regard to the July visit, she states that the police questioned her. With regard to the events of September 2, 2012, she states that the police came to her home and detained her for 22 days. In her testimony, the Applicant states that the police first searched her home in July and interrogated her, before returning a week later to again search her home and question her. In response to this testimony, the Board asked the Applicant how many times the police visited her home. The Applicant's response, at page 20 of the transcript, is:

There are two times in my home and a third time they came to my working place. If I remember it was Saturday, but I do not remember the exact date. So they search it three times; two times in my home and one in my working place.

[34] After the Board confronts the Applicant with the fact that she stated in her BOC that the police also visited her home in September, the Applicant acknowledged that when they detained her in September, they took her from her home. While it is possible that the Applicant was confused by the Board's questioning, I find it reasonable that the Board found the Applicant's evidence inconsistent.

[35] The Board was also reasonable in finding that there was an inconsistency between what was stated in her interview with an Immigration Officer (that her identity card was held by the government while she was detained in September, 2012), and what she stated in her testimony before the Board (that the card was at home during her detention and she brought it to the authorities on September 24, 2012, following her detention).

[36] Moreover, the Board's findings regarding the manner in which the Applicant passed through police checkpoints while leaving Eritrea was reasonable. The Applicant first states in her testimony that she was not questioned at checkpoints because she went through them during the evening and they were unmanned, but later states that she evaded the checkpoints altogether.

[37] With regard to how the Applicant obtained her identity card, the transcript of the hearing indicates that the Applicant stated that she had to have three witnesses to obtain her identity card and also had to "...give document which is signed by the court that tells that I am a citizen of Eritrea." This is disputed by the affidavit of Ms. Siemens, which suggests that an audio recording of the hearing indicates that the Applicant instead stated that three witnesses had to sign a form that is provided by the Eritrean court. While the transcript is not very clear, and the Applicant's interpretation could be supported, the Board was present during the hearing and the transcript supports the Board's interpretation. This is within a range of possible, acceptable outcomes. Even if it were not, such a finding would not be determinative of this application.

[38] The Applicant has failed to support its assertions that it was unreasonable for the Board to draw a negative credibility inference from the fact that the Applicant did not mention to the Immigration Officer that her identity card was taken from her by the Eritrean authorities.

[39] While I agree that the Applicant is not sophisticated, she was represented by counsel and many of the Board's cumulative credibility findings, which are central to the decision, are reasonable. As a result, given the totality of the evidence, the Board's decision was reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3276-13

**STYLE OF CAUSE:** SAMRAWIT HAILE TEWELDEBRHAN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 8, 2014

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JULY 9, 2014

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