

Federal Court



Cour fédérale

Date: 20150421

Docket: IMM-6820-13

Citation: 2015 FC 489

Ottawa, Ontario, April 21, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MARTA KIDANE HIDAD
BETHEL SEMERE TEKIE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Marta Kidane Hidad and her daughter, citizens of Eritrea, claimed refugee protection in Canada based on fear of ethnic and religious persecution. They travelled from Eritrea to Sudan and stayed until they could make arrangements to flee to Canada on fake British passports.

[2] Their claims were originally considered by an immigration officer, who found that Ms Hidad had confirmed details of her birth in Eritrea and her nationality. Because she had given confusing answers to some questions, the officer referred her file for a hearing before a panel of the Immigration and Refugee Board, with a recommendation that she receive a medical and psychiatric assessment. The assessment revealed that Ms Hidad experienced symptoms of post traumatic stress.

[3] The Board concluded that Ms Hidad and her daughter had failed to establish their identities. It found that their birth certificates were irregular, either improperly obtained or fraudulent. Further, the Board also found that Ms Hidad's testimony was vague, and inconsistent with documentary evidence about the situation in Eritrea. In the Board's view, the problems with her evidence, and her post traumatic stress symptoms, were not attributable to her alleged persecution. Accordingly, the Board dismissed their claims.

[4] Ms Hidad contends that the Board unreasonably discounted the contents of the psychiatric assessment and erred in finding that she and her daughter had not established their identities. She asks me to quash the Board's decision and order another panel to reconsider their claims.

[5] I am satisfied that the Board erred in its findings regarding the significance of the psychiatric assessment and the claimants' identities. I must, therefore, allow this application for judicial review.

[6] There are two issues:

1. Did the Board unreasonably discount the psychiatric assessment?
2. Did the Board unreasonably find that the applicants had not established their identities?

II. Issue One - Did the Board unreasonably discount the psychiatric assessment?

[7] The Minister argues that the Board reasonably downplayed the significance of the assessment in which the psychiatrist found that Ms Hidad was experiencing concentration and attention deficits. Before the Board, Ms Hidad had trouble remembering some basic information about her life in Eritrea, and her entry into Canada, but the psychiatrist's report did not address those issues.

[8] I disagree.

[9] The psychiatrist noted that Ms Hidad was experiencing "complex post-traumatic stress" due to a risk of persecution, and that she would have difficulty testifying before the Board. The doctor recommended that her condition be accommodated when she testified. However, the Board gave little weight to the psychiatrist's report because it did not believe Ms Hidad had suffered persecution in Eritrea.

[10] In general, where a psychiatrist's report does not help explain a claimant's testimony, the Board is entitled to give it little or no weight. On the other hand, where the report addresses issues that should be taken into account in assessing the claimant's credibility, it must be

considered (*Min v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1676 at paras 5-6).

[11] Here, it appears to me that the Board misconceived the relevance and significance of the psychiatric evidence (as in *Mico v Canada (Minister of Citizenship and Immigration)*, 2011 FC 964 at paras 45 and 49). Its purpose was not to corroborate Ms Hidad's claims of persecution. Rather, it helped explain the difficulties Ms Hidad might experience in testifying before the Board.

[12] In making its adverse credibility findings against Ms Hidad, the Board did not appear to appreciate the real significance of the psychiatric report. It correctly noted that Ms Hidad's consistent account of events to the psychiatrist could not help establish her credibility before the Board. But it did not acknowledge that the assessment should be considered in deciding whether Ms Hidad's testimony was credible, an entirely separate issue. The Board was entitled to disbelieve the source of the symptoms, but it could not ignore the symptoms themselves.

[13] Therefore, the Board's credibility assessment was unreasonable as it did not take account of the psychiatrist's assessment of Ms Hidad's capacity to testify.

III. Issue Two – Did the Board unreasonably find that the applicants had not established their identities?

[14] The Minister argues that the Board reasonably found that the Ms Hidad and her daughter had not proved their identities. There were numerous problems with their birth certificates. First,

they were only in English, not in either of Eritrea's official languages (Tigrinya and Arabic). Second, there was no space on the documents for the father's name. Third, Ms Hidad's address was incorrectly recorded as being in Assab instead of Asmara. Fourth, Ms Hidad did not state that she presented a hospital certificate when she registered her daughter's birth, as the documentary evidence indicates would be required.

[15] I disagree. There was evidence before the Board addressing each of these issues, but the Board failed to consider it adequately.

[16] The evidence showed that official documents can be obtained in English, and that Ms Hidad had requested them in English. She also explained that Assab was mentioned on her birth certificate because it was the place of her birth, not the place of her then current residence. It was incorrectly named as her daughter's birthplace. The Board did not address Ms Hidad's testimony on this issue.

[17] Regarding the absence of the father's name, Ms Hidad explained that a father's name is included in a daughter's full name, so there was no need for a separate entry for it. The Board did not address that explanation.

[18] Finally, Ms Hidad explained that she was not required to provide any documentation to obtain the birth certificates. Documentary evidence shows that a hospital certificate is required for registration of a child's birth within three months of delivery. After that, it can be obtained in person without a certificate.

[19] In light of this evidence, the Board's conclusion that the identity documents presented by Ms Hidad and her daughter were irregular, whether improperly obtained or fraudulent, was unreasonable.

IV. Conclusion and Disposition

[20] The Board failed to appreciate the extent to which the psychiatric assessment of Ms Hidad might affect its credibility findings, including its conclusion that Ms Hidad and her daughter had failed to establish their identities. The result was an unreasonable dismissal of their claims. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider their applications for refugee protection. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back to the Board for a new hearing before a different panel.
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6820-13

STYLE OF CAUSE: MARTA KIDANE HIDAD, BETHEL SEMERE TEKIE v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: O'REILLY J.

DATED: APRIL 21, 2015

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