

Federal Court



Cour fédérale

Date: 20121002

Docket: IMM-1128-12

Citation: 2012 FC 1164

Ottawa, Ontario, October 2, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MERHAWI NEGASH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant seeks judicial review of the January 13, 2012 decision of the Refugee Protection Division of the Immigration and Refugee Board (“the Board”) in which the Board determined that the Applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons that follow, the application for judicial review is dismissed.

I. Facts

[3] The Applicant states that he is an Eritrean citizen. He arrived in Canada in October 2010, and made a claim for refugee protection in December 2010 on the grounds of religious persecution for his membership in the Pentecostal Church in Eritrea.

[4] The Applicant grew up in the Orthodox Church, of which his parents are active members. In his late teen years, he began attending a Pentecostal church, much to the chagrin of his parents and the priests of the Orthodox Church. He was expelled from the Orthodox Church, and his parents sent him to live with his grandparents in another region of Eritrea. He later returned to live with his parents, on the condition that he forfeit his ties to the Pentecostal Church.

[5] After his return, the Applicant again began attending Pentecostal services without his parents' knowledge. In June 2010, the Applicant was arrested in a raid of a Pentecostal gathering he was attending. He alleges that he was beaten while in custody. He was released almost three weeks later, agreeing to provide the police with information about subsequent Pentecostal gatherings.

[6] After his release, the Applicant describes being watched. Out of concern for his safety, the Applicant's mother gave him her dowry, and sent him to live in Khartoum, Sudan. Once there, the Applicant met Jemal, the Sudanese agent who assisted him in procuring travel documents and relocating to Canada.

II. Decision under Review

[7] The Board determined that the Applicant had not established his identity on a balance of probabilities and that this finding, along with other reasons, demonstrated that the Applicant's allegations and testimony were not credible.

[8] The Applicant submitted two documents to establish his identity: a baptismal certificate and a birth certificate. The Board rejected the baptismal certificate because the Applicant testified at the hearing that it was erroneous. The Board had several concerns about the authenticity of the birth certificate, namely that only the mother's name was included, and that it was prepared only in English, in contrast to the baptismal certificate that was prepared in both English and Tigrinya. In addition, the size of the paper on which the birth certificate was printed was different from that of the other documents emanating from Eritrea, and the certificate was issued when the Applicant was 23 years old. The Applicant was unable to explain where it came from and how it was procured. The Board further relied on what it claimed was a "made up legal phrase" on the face of the certificate: "This Birth certificate is issued for the purpose of any legal effect."

[9] The Board drew a negative inference regarding the Applicant's credibility from his "inability to provide basic information regarding the travel documents he used to travel to Canada". On one immigration form, the Applicant stated that the passport was a fraudulent, Dutch passport issued to a certain Berhe Habte, and that it was no longer in his possession when he made his claim

for refugee protection. When asked at the hearing whether the passport was an Eritrean passport, the Applicant responded that he did not know, and then that it may have been Sudanese.

[10] In addition, the Board identified several inconsistencies between the Applicant's testimony at the hearing and his Personal Information Form (PIF) and other documents submitted in support of his application. Specifically, the Board was not satisfied that the Applicant submitted sufficient evidence to demonstrate his membership in Full Gospel Pentecostal Church in Eritrea.

[11] Furthermore, the Board drew a negative inference as to the Applicant's credibility based on his inability to give basic information about his three-month stay in Khartoum and his conflicting accounts as to how he funded his payment of \$10,000 to Jemal, the agent who helped him come to Canada. The Applicant omitted "salient information" on his PIF regarding how he funded his trip, notably that many members of a Catholic church in Khartoum provided him with around half of the amount required. On the PIF, the Applicant stated only that he paid Jemal with the money he procured from the sale of his mother's dowry.

[12] The Board determined that the documents submitted by the Applicant to demonstrate his membership in the Pentecostal Church and the persecution both that he faced in, and that he would face if he returned to, Eritrea were "self-serving and unsupported by more reliable 3rd party documents." It thus gave them "no weight." One such document was a letter from the Applicant's friend, who claims to be an "underground" member of the Pentecostal Church in Eritrea. However, the friend used the address of the Pentecostal Church as the return address on the envelope of the

letter he sent to the Applicant. The Board drew a negative inference as to the Applicant's credibility from his "unreasonable explanation" of this discrepancy.

[13] The Board thus concluded that the claimant's allegations and testimony were not credible, and, consequently, that he had not established that there was a serious possibility that he would be persecuted based on his religion or other grounds listed in section 96 of IRPA or that he would face a personal danger of torture or personal risk to his life or cruel and unusual treatment or punishment if he were removed to Eritrea.

III. Issues

[14] The issues raised by the Applicant can be articulated as follows:

- (a) Was the Board's determination with respect to the Applicant's identity reasonable?
- (b) Was the Board's credibility finding reasonable?

IV. Standard of Review

[15] Both credibility findings and the treatment of evidence are areas within the Board's specialized expertise, and are thus owed significant deference. The Board's decisions on such matters is reviewable on the reasonableness standard (*Mico v Canada (Minister of Citizenship and*

Immigration), 2011 FC 964, [2011] FCJ No 1187 at para 20; *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ No 732 at para 14).

[16] Reasonableness is concerned “mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *Determination of the Applicant’s Identity*

[17] The Applicant contends that the Board’s decisions with respect to the birth certificate and the baptismal certificate submitted by the Applicant to establish his identity are speculative and conjectural. He submits that the Board’s comments about the birth certificate did not clearly explain why it did not accept the document as proof of the Applicant’s identity. The Applicant further alleges that the Board’s decision was based on its purportedly erroneous interpretation of the word “confirmed” on the face of the certificate.

[18] I am unable to accept the Applicant’s arguments. The many concerns raised by the Board with respect to the authenticity of the Applicant’s birth certificate demonstrate a justifiable, intelligible and transparent decision-making process that led to the reasonable conclusion that the document did not establish the Applicant’s identity on a balance of probabilities. Moreover, the

Applicant was given an opportunity to address the Board's concerns at the hearing, and was unable to give a satisfactory answer. The Board's decision on this point was reasonable.

[19] With respect to the baptismal certificate proffered by the Applicant to establish his identity, the Board did not rely on an interpretation of "confirmation" as posited by the Applicant. Rather, the Board's reasons underline the fact that the Applicant admitted at the hearing that the document was erroneous. There was thus nothing unreasonable about the Board's conclusion that the Applicant failed to establish his identity on a balance of probabilities.

B. *Credibility Findings*

[20] The Applicant contests the Board's adverse credibility findings on three grounds. First, he submits that the Board erroneously discounted the documents submitted to establish his membership in the Pentecostal Church because they were "self-serving" and unsupported by third-party documents. Second, and relatedly, the Applicant argues that the Board unreasonably expected a document from the Pentecostal Church in Eritrea to support his claim of membership therein. Third, the Applicant contends that the Board's credibility findings were made with respect to peripheral issues, and thus were not sufficient to dismiss the Applicant's entire case.

[21] As the trier of fact, the Board is entitled to weigh the evidence, and to assess both its reliability and its probative value. While the Board's reference to the Applicants' submitted letters as "self-serving" is questionable, it is well established that it is "not necessary for every element of the tribunal's reasoning to pass the reasonableness test. The question is whether the reasons as a

whole support the decision” (*Tenorio v Canada (Minister of Citizenship and Immigration)*, 2007 FC 63, [2007] FCJ No 98 at para 7; *Voice Construction Ltd. v Construction & General Workers’ Union, Local 92*, 2004 SCC 23, [2004] 1 SCR 609 at para 31; *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247, at paras 55-56).

[22] A review of the record, including the transcript of the hearing, reveals a myriad of inconsistencies and omissions that the Board considered in coming to its conclusions. The Board further gave the Applicant a number of opportunities to address its concerns with respect to the evidence, and the Applicant was unable to give satisfactory explanations. Taken as a whole, I find that the Board’s reasons support the reasonableness of its decision.

VI. Conclusion

[23] The Board reasonably considered the evidence before it. Its conclusion that the Applicant failed to establish his identity on a balance of probabilities and its negative credibility finding were within the range of possible, acceptable outcomes and are defensible with respect to the facts and the law.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1128-12

STYLE OF CAUSE: MERHAWI NEGASH v MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: SEPTEMBER 20, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: OCTOBER 2, 2012

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