

Federal Court



Cour fédérale

Date: 20110204

Docket: IMM-3514-10

Citation: 2011 FC 126

Ottawa, Ontario, February 4, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SELA TESFA WOLDEGHEBRIAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Sela Tesfa Woldeghebrial claimed refugee protection in Canada based on her fear of persecution in Ethiopia as a person of Eritrean ethnicity, and as a person who experiences serious mental health challenges (namely, dementia). A panel of the Immigration and Refugee Board

dismissed her claim on two grounds: (1) the harsh treatment of Eritrean persons in Ethiopia does not amount to persecution, and (2) notwithstanding the abysmal care of, and negative attitudes toward, the mentally ill in Ethiopia, Ms. Woldeghebrial has family members there who can care for her.

[2] Ms. Woldeghebrial submits that the Board's findings were unreasonable. She asks me to order a new hearing before a different panel of the Board. In my view, the Board's conclusion that the treatment Ms. Woldeghebrial could expect to receive in Ethiopia did not amount to persecution was unreasonable in light of the evidence before it. Therefore, I will grant this application for judicial review.

II. The Board's Decision

[3] The Board accepted the evidence provided by Ms. Woldeghebrial's designated representative, her daughter, Ms. Amlest Kifle Dessu. Ms. Dessu explained that her parents had avoided deportation from Ethiopia to Eritrea after the war between those countries broke out in 1998. They bribed officials and obtained false identity documents. However, in 2008, when one of those officials demanded more money and threatened to expose them, Ms. Woldeghebrial decided to leave Ethiopia, while her husband went into hiding. By this time, Ms. Woldeghebrial was quite ill.

[4] The Board considered whether there was objective evidence to support Ms. Woldeghebrial's fear of persecution as a member of the Eritrean population in Ethiopia or as a person experiencing mental illness. The Board found that Eritreans are treated harshly in Ethiopia and are denied basic

rights. Conditions are particularly bad during times when there are skirmishes along the border between the two countries, as has been the case for the past decade. Based on this evidence, the Board concluded that Eritreans are discriminated against in Ethiopia but not persecuted. It found that Ms. Woldeghebrial did not have a public profile that would bring her to the attention of Ethiopian authorities. The Board acknowledged that there was a risk of persecution during times of tension between the two countries but, in respect of Ms. Woldeghebrial, this risk amounted to no more than a mere possibility.

[5] Regarding treatment of the mentally ill in Ethiopia, the Board found that few services were available and described the situation as “abysmal”. One mental hospital serviced a population of 77 million. Further, Ethiopians tend to regard the mentally ill as possessed by “supernatural evil”. However, the Board found that Ms. Woldeghebrial’s husband and two daughters in Ethiopia would care for and protect her.

III. Were the Board’s Findings Unreasonable?

[6] The Board appears to have concluded that, in general, Eritreans experience discrimination in Ethiopia. Circumstances get worse for them when there are hostilities between the two countries (as at present), but there was little risk to Ms. Woldeghebrial because she was not known to be Eritrean and did not live near the border.

[7] In my view, there are two problems with the Board’s reasoning. First, the Board does not explain why the treatment of Eritreans should be characterized as “discrimination” not

“persecution”. Second, the Board overlooked the fact that Ms. Woldeghebrial fled Ethiopia out of fear of being exposed as a person of Eritrean ethnicity.

[8] The Board also appeared to accept that the treatment of the mentally ill in Ethiopia could amount to persecution, but it went on to find that the risk to Ms. Woldeghebrial was slight since she could avail herself of the care of her remaining family members. However, the Board does not explain how the presence of family members would protect her. First, there was no evidence that the family was in a position to care for her. Second, there was no evidence that she could receive the treatment and medication she requires in Ethiopia; in fact, there was evidence to the contrary.

[9] Based on these findings, I conclude that the Board’s decision was unreasonable as it falls outside the range of acceptable outcomes based on the facts and the law.

IV. Conclusion and Disposition

[10] I find the Board’s decision to be unreasonable because it does not appear to take account of the evidence before it relating to the treatment of Eritreans in general, and Ms. Woldeghebrial in particular, in Ethiopia, or Ms. Woldeghebrial’s medical circumstances. Therefore, I must grant this application for judicial review and order a re-hearing before another panel of the Board. 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 granted. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3514-10

STYLE OF CAUSE: WOLDEGHEBRIAL v MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: January 18, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: February 4, 2011

APPEARANCES:

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