

Federal Court



Cour fédérale

Date: 20110609

Docket: IMM-6550-10

Citation: 2011 FC 665

Ottawa, Ontario, June 9, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SAMIR NUR HOGJEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Samir Nur Hogjeh claims he was born in Somalia in 1989. His parents lived in the Ogaden region of Ethiopia, but fled to Somalia in the late 1970s or early 1980s to avoid persecution. The family returned to Ethiopia in 1992 to escape the civil war in Somalia. In 2001, the Ethiopian

army targeted the family, believing them to be members of the Ogaden National Liberation Front [ONLF]. Mr. Hogjeh claims the army beat him, his father and brothers, and shot his grandfather.

[2] In 2003, Mr. Hogjeh, then just 14, returned to Mogadishu, Somalia to attend high school. The family followed a few years later. While there, Mr. Hogjeh claims that the Al Shabaab Islamist militia threatened him after he refused to join it. He considered going back to Ethiopia, but continued to fear the Ethiopian army. In 2007, he fled Somalia to Kenya, then Uganda, then back to Kenya. He arrived in Canada in November 2008 and claimed refugee protection.

[3] A panel of the Immigration and Refugee Board denied Mr. Hogjeh's claim after concluding that he was a citizen of Ethiopia and could safely return there. Mr. Hogjeh contends that the Board erred in its finding regarding his citizenship. He asks me to overturn its decision and order a new hearing. I agree that the Board erred and, therefore, will allow this application for judicial review.

[4] While Mr. Hogjeh raised a number of issues, the main question relates to the Board's treatment of the issue of citizenship. As I agree that the Board erred on that point, it is unnecessary to deal with the remaining questions. The sole issue, therefore is:

[5] Issue One – Was the Board's conclusion that Mr. Hogjeh was a citizen of Ethiopia unreasonable?

II. The Board's Decision

[6] Mr. Hogjeh maintained before the Board that he was born in Somalia and was, therefore, a Somali citizen. The Board made no negative credibility findings against him. Mr. Hogjeh also presented a Somali birth certificate that had been issued in 2003.

[7] However, the Board concluded that Mr. Hogjeh was a citizen of Ethiopia and assessed his refugee claim as against Ethiopia, not Somalia. The Board noted that it was impossible to obtain official documents in Somalia given the absence of a functioning government there. Therefore, it placed little weight on Mr. Hogjeh's birth certificate. Further, the Board noted that, while Mr. Hogjeh had relatives in Toronto, none appeared as witnesses on his behalf or supplied corroborating affidavits about his nationality.

[8] On the other hand, given that Mr. Hogjeh's parents had been born in Ethiopia, the Board found that he was entitled to Ethiopian citizenship, according to the Ethiopian Constitution (Article 6). Based on the documentary evidence, the Board concluded that Mr. Hogjeh's fear of persecution in Ethiopia was not well-founded.

[9] Issue Two – Was the Board's conclusion that Mr. Hogjeh was a citizen of Ethiopia unreasonable?

[10] The Board simply relied on the Ethiopian Constitution to find that Mr. Hogjeh is a citizen of Ethiopia. Article 6 provides that a person is a citizen of Ethiopia if one or both parents were born there.

[11] While Mr. Hogjeh conceded that his parents were born in Ethiopia, he testified that it would be difficult to prove it. They were born in the desert, not in a hospital, and had no supporting documentation.

[12] At the same time, the Board discounted the possibility that Mr. Hogjeh was a citizen of Somalia, based on a lack of corroborating evidence. However, he testified that he was born there and the Board had no concerns about his credibility on this point. According to the *Somali Citizenship Act*, a person is a citizen if he or she was born in Somalia or if his father is Somali. A person is considered Somali by virtue of Somali origin, tradition or language. By this definition, being from the Ogaden region of Ethiopia where Somali is spoken, Mr. Hogjeh's parents are Somali.

[13] In my view, the Board failed to consider whether the possibility that Mr. Hogjeh could acquire Ethiopian citizenship was realistic in the circumstances. There was no evidence to suggest that Mr. Hogjeh could "readily acquire" citizenship in Ethiopia (See *Roncagliolo v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1024 at para 19) or could do so with "due diligence" (*Sahal v Canada (Minister of Citizenship and Immigration)* (1999), 166 FTR 149, 88 ACWS (3d) 183 at para 11 (TD)). The Board also failed to analyze adequately Mr. Hogjeh's apparent entitlement to Somali citizenship, notwithstanding the lack of corroborating evidence. Accordingly, I find that the Board's decision was unreasonable.

III. Conclusion and Disposition

[14] Based on the evidence before it, the Board's decision that Mr. Hogjeh was a citizen of Ethiopia and not Somalia was unreasonable. Accordingly, I must allow this application for judicial review. 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. 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-6550-10

STYLE OF CAUSE: SAMIR NUR HOGJEH v MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: May 31, 2011

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

DATED: June 9, 2011

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