Federal Court  Cour fédérale

Date: 20120518

Docket: IMM-6918-11

Citation: 2012 FC 613

Ottawa, Ontario, May 18, 2012

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

GENET DEMISSIE TESEMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mrs. Genet Demissie Tesema (the "Applicant") seeks judicial review of a decision made by the Immigration and Refugee Board, Refugee Protection Division (the "Board"). In that decision, dated September 1, 2011, the Board determined that the Applicant is not a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "Act"), respectively.

[2] The Applicant came to Canada in February 2010 to visit her pregnant daughter. She entered Canada on a visitor's visa. In April of 2010, she received a call from another daughter in Ethiopia, advising that her husband had been imprisoned and her son had gone missing.

[3] The Applicant applied for refugee protection on April 8, 2010. At the time of her hearing before the Board, her son had been located in South Africa, but her husband was still imprisoned and had not been charged or appeared before a Court since his detention began.

[4] The Applicant is a citizen of Ethiopia. She based her claim for protection upon a fear of persecution for her political opinion and membership in a particular social group, specifically her membership in the Kinijit political party in Ethiopia, support for the Unity for Democracy and Justice ("UDJ") political party in Ethiopia, and membership in the Unity for Human Rights and Democracy ("UHRD") group in Canada. The Kinijit party, the UDJ party, and the UHRD are opposed to the governing party in Ethiopia, that is the Ethiopian People's Revolutionary Democratic Front ("EPRDF").

[5] The Applicant joined the UHRD group in Canada on May 21, 2010. It is described as an action group for Ethiopian refugees to express opposition against the current government in Ethiopia.

[6] The Board rejected the Applicant's claim because it was not persuaded that she had been involved in any significant political activities or had significant problems with Ethiopian authorities as a result of her limited political involvement. It noted that there was no evidence that her husband

had been arrested for political activities or beliefs and that her children have not experienced problems in Ethiopia. It concluded that the Applicant had no strong political convictions and that she had become involved with the UHRD in Canada in order to strengthen her claim.

[7] The Applicant challenges the Board's decision on several grounds. First, she argues that the Board erred by failing to give her an opportunity to respond to concerns about her credibility. She casts this argument in terms of procedural fairness, reviewable on the standard of correctness. She further submits that the Board made unreasonable findings with respect to her claims that she had been detained by the authorities in Ethiopia on two occasions.

[8] The Applicant challenges the Board's finding that she had only limited involvement with Ethiopian politics in Ethiopia and that she had joined the UHRD after arriving in Canada in order to bolster her claim. In this regard, the Applicant submits that the Board failed to provide her with an opportunity to respond to concerns about her political beliefs and involvement in Ethiopia. She also submits that the Board was relying on specialised knowledge to diminish the importance of her membership in the UHRD, that the specialised knowledge should have been disclosed and that she should have been given an opportunity to respond to it. Failure to do so amounts to a breach of procedural fairness, reviewable on the standard of correctness.

[9] Further, the Applicant argues that the Board's reasons are insufficient and that this issue is reviewable on the standard of correctness.

[10] As well the Applicant submits that the Board erred by failing to conduct an analysis pursuant to subsection 97(1) of the Act, to determine whether she was a person in need of protection within the scope of that provision.

[11] The Minister of Citizenship and Immigration (the "Respondent") argues that the Applicant had misled the Court as to the nature of her involvement with the Kinijit in Ethiopia. The Respondent notes that in her affidavit filed in support of the application for leave and judicial review, the Applicant described herself as a "member" of that party in 2005 and that she and her husband were only "supporters" of the UDJ party, the successor to the Kinijit party**.** The Respondent says this evidence contradicts the Applicant's statements in the Personal Information Form ("PIF") and her testimony before the Board.

[12] In both her PIF and her written refugee application, the Applicant described herself as a member of the UDJ. She repeated that description at the expedited hearing before a refugee protection officer ("RPO"). However, at the full hearing of her claim before the Board, the Applicant described herself as "supporter" of the UDJ. The Respondent submits that on the basis of this mischaracterization of her status, repeated in the Reply memorandum filed by her, that the Applicant misled the Court and that this application for judicial review should be dismissed on that basis alone.

[13] The first matter to be addressed is the applicable standard of review. The standard of review for questions of procedural fairness is correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para 43. The issue of sufficiency of

reasons is subsumed in the issue concerning the reasonableness of those reasons and will be reviewed upon the standard of reasonableness per se; see the decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708 ["*Newfoundland and Labrador Nurses' Union*"]. I will first address the alleged issues of procedural fairness, that is the failure of the Board to allow the Applicant the opportunity to address its concerns as to her credibility.

[14] The Applicant's submissions concerning the alleged failure to allow her to respond to concerns about credibility arise from the Board's findings that she had failed to present credible evidence about her political opinion and whether that political opinion would support a claim for protection pursuant to section 96 of the Act. Her arguments in this regard are not so much an allegation of breach of procedural fairness but an attack upon the Board's alleged failure to give her the opportunity to address its credibility concerns.

[15] I see no merit in the Applicant's arguments on this issue. It is trite law that an Applicant, seeking protection as either a Convention refugee or as a person in need of protection, carries the burden of establishing his or her case; see the decision in *Kovacs v. Canada (Minister of Citizenship and Immigration)*, [2006] 2 F.C.R. 455 at para 33.

[16] In the present case, the Applicant had the opportunity to be heard. She had the opportunity to present her case. There was no obligation upon the Board to point out to her, in the course of the hearing, that it had concerns about her credibility. This argument must fail.

[17] The Applicant also argues that the Board breached procedural fairness by failing to provide adequate reasons. This argument cannot succeed. In its decision in *Newfoundland and Labrador Nurses' Union*, above at para. 22, the Supreme Court of Canada ruled that as long as reasons are provided, there is no basis for arguing insufficiency of reasons**.**

[18] Turning now to the remaining arguments raised by the Applicant, it appears that she is challenging the Board's findings that she was not at risk on the basis of her political opinion and affiliation**.** The Board did not find the Applicant to be credible. The Board's findings on credibility are reviewable on the standard of reasonableness; see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (FCA) at para 4 and *Wu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 929 at para 17.

[19] Upon reviewing the evidence in the certified tribunal record, including the Applicant's oral evidence before the Board, I am not persuaded that the Board's finding on credibility is unreasonable. The Applicant had the benefit of an expedited hearing before the RPO**.** She was advised that her credibility was an issue when her claim was referred to a full hearing before the Board. It was up to the Applicant to present the evidence necessary to establish her claim. The Board found that the Applicant's evidence with respect to her political affiliation was not believable. Having regard to the evidence in the certified tribunal record, I am not persuaded that the Board committed any reviewable error in reaching this conclusion.

[20] Finally, the Applicant argues that the Board committed a reviewable error by failing to conduct an independent analysis of her claim pursuant to subsection 97(1) of the Act. I agree with

the submissions made by the Respondent, that the Board was not required to conduct such a separate analysis when the same evidence was used for the credibility assessment with respect to both section 96 and subsection 97(1); see the decision in *Soleimanian v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1660 at paras 22 and 24.

[21] In the result, this application for judicial review will be dismissed. The Applicant has not shown that the Board breached procedural fairness or otherwise committed a reviewable error. However, notwithstanding dismissal of this application, it is necessary for me to comment on the bad faith argument raised by the Respondent.

[22] In the course of the hearing, I advised counsel that I did not think the Respondent had shown that the Applicant or her counsel had misled this Court, either in the materials filed in the application for leave and judicial review or in the Reply memorandum filed by the Applicant. In my opinion, the argument advanced by counsel for the Respondent on this point was highly technical and unfounded.

[23] In the result, the application for judicial review is dismissed, no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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