

Date: 20090306

Docket: IMM-3970-08

Citation: 2009 FC 246

Toronto, Ontario, March 6, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MEKEDLAWETE HAILU SHEFERAW

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Mokedlawete Hailu Sheferaw (the “Applicant”) seeks judicial review of the decision of the Refugee Protection Division, Immigration and Refugee Board “the Board” on August 25, 2008. In that decision, the Board found that the Applicant is neither a Convention refugee nor a person in need of protection as defined in section 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant made her claim by reference to Ethiopia. The Board rejected her claim, on the ground that the Applicant had failed to prove her identity. Although she advanced arguments in

this application for judicial review to challenge that finding of the Board, she also raised an issue of breach of procedural fairness. Specifically, she alleged that the Board breached the requirements of procedural fairness by failing to provide her with the opportunity to ask questions or to make closing submissions. Further, she alleges that the Board had reached a conclusion without having provided the opportunity to ask questions or make submissions.

[3] Having carefully considered the material submitted, including the transcript of the proceedings before the Board and the submissions of Counsel, I am satisfied that this application for judicial review should be allowed.

[4] The transcript of the hearing is contained in the certified Tribunal Record. The transcript records the following:

PRESIDING MEMBER: Okay, we're back on the record.
Is there anything you want to do? To be frank with you I'm having serious concerns about the claimant's identity.

COUNSEL: Well, I spoke to her when I was out and she told me that she I able to get you all the school documents, the Cabale, or whatever, to give her time.

PRESIDING MEMBER: Well, she's had a year and a half to do that, so I don't think I can accept that. She's had plenty of time to provide the Board with adequate documentation regarding her identity, and she has not done that.
I don't know if you want to make any sort of submissions, but I'm prepared to make a decision on this today.
So, can I go ahead and give you my decision?

[5] The Minister of Citizenship and Immigration (the “Respondent”) argues that the transcript shows that the Applicant was indeed given the opportunity to make submissions but declined to do so. Further, the Respondent submits that the speed with which the decision was delivered, that is, after a breach, does not mean that the matter was pre-determined.

[6] I have carefully concluded the material filed and the submissions of counsel. The question of breach of procedural fairness, including pre-determination or the result, is reviewable on the standard of correctness, see *Ha v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 195 and *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[7] I am not persuaded by the Respondent’s defence or the Board. I accept the arguments of the Applicant that, the text of the Board’s so-called oral decision implies that a decision had been reached prior to the close of the hearing. I agree with the view expressed by Justice Blais in *Agastra v. Canada (Minister of Citizenship and Immigration)* (1999) 179 F.T.R. 316 (Fed. T.D.) at para. 10 where he said the following:

10 In my view, there is a clear appearance of lack of fairness from the panel. The panel must not have the appearance of having already decided the case before hearing all the evidence and consulting, even though the hearing might not have brought anything new. These actions tarnish the integrity of the system.

[8] Administrative efficiency cannot trump respect for procedural fairness. While an applicant for protection under the Act has no right to a particular outcome, he or she has the right to a fair hearing.

[9] I am not satisfied that such right was respected in this case and the application for judicial review will be allowed and the matter remitted to a different panel of the Board for determination. There is no question for certification arising.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is allowed and the matter remitted back to a different panel of the Board for determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3970-08

STYLE OF CAUSE: MEKEDLAWETE HAILU SHEFERAW v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: March 4, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** HENEGHAN J.

DATED: March 6, 2009

APPEARANCES:

Mr. Micheal Crane FOR THE APPLICANT

Ms. Ladan Shahrooz FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheal Crane FOR THE APPLICANT
Barrister and Solicitor
Toronto, ON

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON