

**Date: 20090506**

**Docket: IMM-2116-09**

**Citation: 2009 FC 462**

**Ottawa, Ontario, May 6, 2009**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**LEMLEN YIREFU BEGASHAW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] The public interest is to be taken into consideration in determining the balance of convenience and is weighed together with the interests of private litigants (*Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110).

[2] There is undoubtedly a public interest in the enforcement of the provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), and the subordinate regulations and policies. The inherent integrity of the immigration and refugee system and Canadian society as a whole depends on it. This, also, necessitates ensuring that individuals facing serious consequences

on removal from Canada have an effective access to a remedy before the Courts. The purpose of such a justifiable remedy should neither put in jeopardy the immigration and refugee system nor Canadian society as a whole (*Suresh v. Canada (Minister of Citizenship and Immigration)*, [1999] 4 F.C. 206, 90 A.C.W.S. (3d) 443).

## II. Introduction

[3] This is a case unto itself (cas d'espèce) due to the fact situation that unfolds. In the statutory declaration submitted with the Pre-Removal Risk Assessment (PRRA) application, the Applicant, Ms. Lemlem Begashaw, recounts in detail how she underwent three months of imprisonment, torture and rapes. She corroborated her account with evidence from a mental health worker to whom she first disclosed her history, and psychiatric evidence about how these traumatic memories were repressed due to her mental illness. The psychiatrist, Dr. Hung-Tat Lo, concludes: "I am of the opinion that the unusual omission of Ms. Begashaw's imprisonment and rape in her previous testimonies is the consequence of a major psychiatric disorder, namely a schizoaffective disorder, rather than an issue of credibility" (Emphasis added). (Motion Record (MR): Statutory declaration of Applicant at p. 56; letter of Khadija Abdi filed in PRRA application at p. 71; Psychiatric report of Dr. Lo at p. 64).

[4] Dr. Lo's opinion comes at the conclusion of his five-page, detailed report that was based on a thorough review of her medical and immigration history, two assessment interviews and a telephone conversation with her. In the report, he describes her history of trauma and psychotic

illness and, late-onset, post-traumatic stress disorder (recognizing that repression of memories causes delay in recounting and reliving them). It describes her treatment.

[5] This is particularly important in this case because the expert opinion that Ms. Begashaw faces a peril to her life is central to her ss. 108(4) of the IRPA compelling reasons submission. The ss. 108(4) submission was never properly dealt with by the Officer.

[6] In summary, it must be recognized that it is not the mental illness that is considered the significant factor in this case but rather the persecutory treatment that Ms. Begashaw received that would have caused the mental illness (not the mental illness in and of itself).

### III. Judicial Procedure

[7] This is a motion for a stay of removal scheduled to take place on May 7, 2009. The underlying application is an application for leave and for judicial review of the Applicant's negative PRRA decision, dated March 23, 2009.

### IV. Background

[8] In summary, Ms. Begashaw claims the following specific facts as relied upon by the Respondent as a background to the case.

[9] Ms. Begashaw is a citizen of Ethiopia from the Amhara ethnic group. She has schizoaffective disorder, which combines symptoms of schizophrenia and depression. She has

suffered from this illness since at least 1997, though it was not diagnosed until she was hospitalized in Toronto after her refugee hearing in late 2004 (MR: Psychiatric report of Dr. Lo at p. 64; Affidavit of Applicant; Ex. E; Letter from Dr. Martin Chisvin and information on schizoaffective disorder at p. 187).

[10] Ms. Begashaw's family was politically active with the All-Amhara People's Organization (AAPO) in the 1990s. Her mother and one brother were imprisoned and her brother died as a result of political persecution, while another brother remains in jail in Ethiopia to this day. Ms. Begashaw herself was not politically active when she lived in Ethiopia. She had won the U.S. green card lottery and immigrated to the U.S., in 1995; she returned home in 1998 for about two years; by then she was suffering from her undiagnosed mental illness and her family tried to shield her from their activities.

[11] Ms. Begashaw returned to the U.S., in 2000, but was placed into removal proceedings due to her extended absence from the country. She was found to have abandoned her permanent resident status and was ordered deported, in late 2003. She came to Canada and made a refugee claim, in January 2004.

[12] Her mental health was very poor at the time. She was living in a shelter where she spent her time in a dark room, did not take care of her hygiene, and was hardly functioning. She did not understand the Immigration and Refugee Board (IRB) proceedings well and was in no position to gather evidence. When the IRB assessed her claim and rejected it for lack of credibility, she was

suffering from an undiagnosed and untreated major psychiatric illness. Her condition was only properly identified when she had a psychotic break shortly after her hearing, and was hospitalized, diagnosed and treated with proper medication for the first time (MR: Letter from Dr. Chisvin in PRRA submissions at p. 69; Report of Dr. Lo at p. 64).

[13] In late 2005 or early 2006, Ms. Begashaw was watching television when she had a vivid memory of being in prison in Ethiopia and being raped there. Slowly since then, memories returned to her of being arrested in about February 2000 in Ethiopia due to her family's political activities. She remembered that she had spent about three months, during which time she suffered repeated sexual violence and other forms of torture. She had been unable to relate or even remember this experience of persecution at the time of her IRB hearing and for at least a year afterwards.

[14] Her own experience of persecution was presented as new evidence in her PRRA, which was filed in September 2006. She filed psychiatric evidence from her treating psychiatrist and Dr. Lo, a specialist in cross-cultural psychiatry and services to immigrants and refugees and a member of the Medical Network of the Canadian Centre for Victims of Torture. Dr. Lo's psychiatric report explained that Ms. Begashaw was suffering from an untreated major psychiatric disorder at the time of her imprisonment and for years afterward; that this psychosis interfered with her memory and delayed the onset of Post-Traumatic Stress Disorder (PTSD). He concluded that Ms. Begashaw was unable to remember her imprisonment and the treatment she experienced there until her psychosis had been properly treated (MR: PRRA submissions and evidence at p. 45; Report of Dr. Lo at p. 64; Letter from Dr. Chisvin in PRRA evidence at p. 69).

[15] She also filed a letter from her mental health worker, Khadija Abdi, to whom she had first disclosed her rapes in prison. Ms. Abdi describes Ms. Begashaw's condition at the time of her refugee hearing and her obvious fear and distrust of others, particularly of men (Letter from Khadija Abdi at p. 71).

[16] Ms. Begashaw also filed new evidence of her own involvement in political activity in Canada supporting the opposition to the Ethiopian government (MR: Letter from All Ethiopia Unity Cultural and Relief Organization in Toronto, PRRA evidence at p. 74).

[17] Ms. Begashaw's case had to be assessed on all the facts, as the refugee hearing had essentially taken place at a time when Ms. Begashaw could not understand the nature of the proceedings. She had experienced past persecution and had a plausible and documented explanation for not having disclosed this earlier. It was argued that conditions remained dangerous for those suspected of supporting the opposition or related to opposition activists.

[18] Her PRRA was refused in March 2009. Ms. Begashaw is scheduled for removal to the U.S. on May 7, 2009. Since she has no status in the U.S. and was ordered deported from there in 2003, she will be removed from the U.S. to Ethiopia.

## V. Issue

[19] The Supreme Court of Canada has established a tri-partite test for determining whether interlocutory injunctions should be granted pending a determination of a case on its merits, namely, (i) whether there is a serious question to be tried; (ii) whether the litigant who seeks the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm; and (iii) the balance of convenience, in terms of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 11 A.C.W.S. (3d) 440 (F.C.A.); *R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311).

[20] The requirements of the tri-partite test are conjunctive. The Applicant must satisfy all three branches of the test before this Court can grant a stay of proceedings.

## VI. Analysis

[21] An injunctive remedy constitutes an awareness by the Courts that there is often value in maintaining the status quo while issues are argued before the Courts, the outcome of which are not at all certain, at preliminary stage of the proceedings. The role of a Court at an interlocutory and preliminary stage of the proceeding has been clarified by the Supreme Court of Canada:

[41] The limited role of a court at the interlocutory stage was well described by Lord Diplock in the *American Cyanamid* case, *supra*, at p. 510:

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.

...

[43] First, the extent and exact meaning of the rights guaranteed by the *Charter* are often far from clear and the interlocutory procedure rarely enables a motion judge to ascertain these crucial questions. Constitutional adjudication is particularly unsuited to the expeditious and informal proceedings of a weekly court where there are little or no pleadings and submissions in writing, and where the Attorney General of Canada or of the Province may not yet have been notified as is usually required by law...

(*Manitoba*, above).

### A. Serious Issue

[22] The first branch of the test for injunctive relief is:

[32] The first test is a preliminary and tentative assessment of the merits of the case, but there is more than one way to describe this first test. The traditional way consists in asking whether the litigant who seeks the interlocutory injunction can make out a *prima facie* case. ... The House of Lords has somewhat relaxed this first test in *American Cyanamid Co. v. Ethicon Ltd.* ... where it held that all that was necessary to meet this test was to satisfy the Court that there was a serious question to be tried as opposed to a frivolous or vexatious claim.

...

[34] ... In my view, however, the *American Cyanamid* "serious question" formulation is sufficient in a constitutional case where, as indicated below in these reasons, the public interest is taken into consideration in the balance of convenience...

(*Metropolitan Stores Ltd.*, above; *R.J.R.-MacDonald Inc.*, above; *Toth*, above).

### The Officer was required to conduct a hearing

[23] PRRA Officers are to examine whether to conduct oral hearings under certain circumstances specified under s. 113 of the IRPA and section 167 of the Regulations. For ease of reference, subsection 113(b) of the IRPA states:

<b>113.</b> Consideration of an application for protection shall be as follows:	<b>113.</b> Il est disposé de la demande comme il suit :
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...

...



(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

[24] Section 167 of the Regulations states:

**167.** For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

**167.** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

(b) whether the evidence is central to the decision with respect to the application for protection; and

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

(c) whether the evidence, if accepted, would justify allowing the application for protection.

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[25] Thus, where there is an issue as to the credibility of the evidence related to the application, where such evidence is central to the PRRA decision and where the acceptance of such evidence would justify allowing the PRRA application, an oral hearing **may** be required (*Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27, 136 A.C.W.S. (3d) 884).

[26] In her PRRA, Ms. Begashaw presented a personal account of imprisonment, torture and rape that was entirely new at this stage. The new evidence addresses the concerns of the Refugee Protection Division (RPD) that Ms. Begashaw had not experienced past persecution, and provides psychological explanations for the credibility and subjective fear. In light of the documentary evidence of repression of AAPO activists, the RPD may have decided the case differently had these concerns been addressed at the time of the refugee hearing.

[27] The credibility of Ms. Begashaw's new account was central to the PRRA and, if accepted, could have been sufficient to ground a positive decision.

[28] First, at the outset of the decision, the Officer quotes some of the RPD's credibility and subjective fear findings. Despite the new evidence which is put forward, the Officer states that Ms. Begashaw is making the same claim as that rejected by the RPD and that she has not addressed the RPD's concerns:

Regarding the applicant's claim of risk due to her family's membership in the AAPO, her credibility was thoroughly impugned by the RPD; and for the purposes of this PRRA application, she has simply restated her case. She has not addressed this issue. (Decision at p. 5).

[29] The Officer fails to reassess the RPD's credibility concerns in light of the new evidence. (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, 256 F.T.R. 53, aff'd on other grounds 2005 FCA 160, 139 A.C.W.S. (3d) 348; *Latifi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388, 153 A.C.W.S. (3d) 420 at paras. 50-54, 59-60).

[30] Second, in the statutory declaration submitted with the PRRA application, Ms. Begashaw recounts in detail how she underwent three months of imprisonment, torture and rapes. She corroborated her account with evidence from a mental health worker to whom she first disclosed her history, and psychiatric evidence about how these traumatic memories were repressed due to her mental illness. The psychiatrist, Dr. Lo concludes: “I am of the opinion that the unusual omission of Ms. Begashaw’s imprisonment and rape in her previous testimonies is the consequence of a major psychiatric disorder, namely a schizoaffective disorder, rather than an issue of credibility” (Emphasis added). (MR: Statutory declaration of Applicant at p. 56; Letter of Khadija Abdi filed in PRRA application at p. 71; Psychiatric report of Dr. Lo at p. 64).

[31] The Officer does not believe the new evidence. She explicitly distinguishes her acceptance of the psychiatric diagnosis from her rejection of the account that Ms. Begashaw gave:

While I assign appropriate probative value to the psychiatrists’ reports, I note that the source of the reports is the applicant. The psychiatrists’ [sic] have recounted the applicant’s information as provided to them. I find the psychiatrists [sic] reports rest on hearsay as they were not witnesses to the events; they have relied on the applicant’s observations to reach their diagnosis. I therefore accept the diagnosis as offered by Drs. Chisvin and Lo; however give little weight for the explanation of its cause. Objective evidence supports that the applicant suffers from mental health issues....However, she has provided insufficient objective evidence to support that she was imprisoned, tortured and raped while in Ethiopia....

It is determined that the applicant has provided insufficient objective evidence to establish that she was jailed, tortured and raped when she returned to Ethiopia in 2000. The applicant returned to her family’s Ethiopian home in 1998 and states she was arrested in 2000; submissions are silent as to why the Ethiopian authorities waited nearly two years to arrest her... (Emphasis added).

(Decision at p. 10).

[32] At the end of the decision, the Officer states:

It has been determined that the applicant has provided insufficient objective evidence to support that she has experienced past persecution in Ethiopia...

(Decision at p. 11).

[33] This Court has recognized that it must “look beyond the express wording” of the Officer to determine whether her decision is based on sufficiency of evidence, as her words suggest, or credibility. In this case, the conclusions are credibility findings. Either the Officer believes that Ms. Begashaw’s recovered memories are of some non-persecutory traumatic events in her past; or her view is that Ms. Begashaw has not actually recovered any memories at all, but claims to have done so to convince Dr. Lo. Either way, the Officer simply does not believe that Ms. Begashaw was imprisoned, tortured and raped (*Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, 170 A.C.W.S. (3d) 397 at para. 16).

[34] Third, the Officer makes a veiled credibility finding with regard to Ms. Begashaw’s political activity in Canada through the All Ethiopia Unity Cultural and Relief Organization (AEUCRO) in Toronto (which is linked to the AAPO, though both organizations have gone through various name changes). The Officer discounts her letter from the AEUCRO as it is not corroborated by photographs or news accounts (Decision at p. 5; MR: RIR ETH101849.E at p. 256; Letter from All Ethiopia Unity Cultural and Relief Organization in Toronto, PRRA evidence at p. 74).

[35] In the result, the Officer either does not believe Ms. Begashaw’s involvement in the organization or does not believe that the letter proves her involvement. The IRB had specifically

stated in its decision that a letter from the All Amhara People's Cultural and Relief Organization (the predecessor to the All Ethiopia Unity Cultural and Relief Organization) is considered credible documentation of a person's involvement. Ms. Begashaw could not have predicted that she required more than this letter to prove her involvement.

[36] This issue also required the consideration of an interview, as it is new to the claim and could have affected the decision. Country condition evidence indicates that opposition supporters are targeted by the government.

[37] In *Liban v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1252, this Court discussed a PRRA Officer's use of the phrase "insufficient objective evidence":

[14] In my view, when the officer stated that there was "insufficient objective evidence" supporting Mr. Liban's assertions, he was really saying that he disbelieved Mr. Liban and, only if Mr. Liban had presented objective evidence corroborating his assertions, would the officer have believed them. To my mind, these findings are conclusions about Mr. Liban's credibility...

[38] Likewise, in *Latifi*, above, this Court considered the PRRA Officer's statements that there is "little reliable evidence" of the applicant's political activism. The Court concluded that implicit in the PRRA Officer's findings was an overall view that the applicant was not credible, and noted the influence of the credibility concerns of the RPD (reference is also made to *Shafi v. Canada (Minister of Citizenship and Immigration)*, [2006] 1 F.C.R. 129, 277 F.T.R. 104).

#### The Officer erred in her treatment of the medical evidence

[39] The psychiatric evidence before the Officer was that Ms. Begashaw has Schizoaffective Disorder and late-onset PTSD. The evidence was that her untreated psychosis at the time of her

traumatic experiences in Ethiopia and afterwards had blocked her memories of the events, and that her memories could not emerge until her psychosis was treated. Dr. Lo concludes: “I am of the opinion that the unusual omission of Ms. Begashaw’s imprisonment and rape in her previous testimonies is the consequence of a major psychiatric disorder, namely a schizoaffective disorder, rather than an issue of credibility.” (MR at p. 68).

[40] The Officer accepts the psychiatrists’ “diagnosis”, but rejects their acceptance of Ms. Begashaw’s account of imprisonment in Ethiopia as the cause; and she rejects the finding that her health would be at risk upon return:

While I assign appropriate probative value to the psychiatrists’ opinions, I note that the source of the reports is the applicant. The psychiatrists’ [sic] have recounted the applicant’s information as provided to them. I find the psychiatrists [sic] reports rest on hearsay as they were not witnesses to the events; they have relied on the applicant’s observations to reach their diagnosis. I therefore accept the diagnosis as offered by Drs. Chisvin and Lo; however give little weight for the explanation of its cause. Objective evidence supports that the applicant suffers from mental health issues....However, she has provided insufficient objective evidence to support that she was imprisoned, tortured and raped while in Ethiopia....I find Dr. Lo’s statement that the applicant’s return to Ethiopia ‘at this time’ would be hazardous to her health to be speculative in nature; he does not indicate on what information he bases this statement....

(Decision at p. 10).

[41] In the refugee claim context, tribunals can reject a diagnosis (e.g. of PTSD) if they have, for good reason, rejected the credibility of the events underlying the diagnosis. Members who are meeting claimants face to face, and are experts in assessing credibility, do not need to defer to medical professionals on a credibility issue or a medical diagnosis that is based entirely on credibility (*Yilmaz v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1498, 132

A.C.W.S. (3d) 965 at paras. 63-81; *Trembliuk v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1264, 126 A.C.W.S. (3d) 853 at para. 12; *Hassan v. Canada (Minister of Citizenship and Immigration)*, 174 F.T.R. 288, 91 A.C.W.S. (3d) 450 at paras. 19-21; *Khawaja v. Canada (Minister of Citizenship and Immigration)* (1999), 172 F.T.C. 287, 92 A.C.W.S. (3d) 672).

[42] Ms. Begashaw faces a very different situation on this PRRA. The Officer has not met her in order to assess her credibility. Although it is recognized that holding an interview is not a prerequisite to a decision of a PRRA Officer; yet, the consideration for an interview is raised in appropriate circumstances.

[43] By contrast, Dr. Lo has interviewed Ms. Begashaw twice, as well as following-up with her by telephone. He is professionally trained, and is using his training and expertise to determine that Ms. Begashaw has recovered traumatic memories.

[44] The Officer **accepts** Dr. Lo's opinion that Ms. Begashaw has recovered traumatic memories. To accept this opinion, but to reject Ms. Begashaw's account of the memories that she recovered, is contradictory.

[45] Dr. Lo's opinion comes at the conclusion of his five-page, detailed report that was based on a thorough review of her medical and immigration history, two assessment interviews and a telephone conversation with her. In the report, he describes her history of trauma and psychotic

illness and, late-onset, post-traumatic stress disorder (recognizing that repression of memories causes delay in recounting and reliving them). It describes her treatment.

[46] This Court has repeatedly held that a non-expert decision-maker errs when she rejects expert psychological evidence without basis (*Yilmaz v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1498, 132 A.C.W.S. (3d) 965; *Fidan v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1190, 126 A.C.W.S. (3d) 847 at para. 12; *Pulido v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 209, 155 A.C.W.S. (3d) 648 at paras. 27-35).

[47] This is particularly important in this case because the expert opinion that Ms. Begashaw faces a peril to her life is central to her ss. 108(4) compelling reasons submission. The ss. 108(4) submission was never properly dealt with by the Officer.

### **B. Irreparable Harm**

[48] [35] The second test consists in deciding whether the litigant who seeks the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm, that is harm not susceptible or difficult to be compensated in damages...

(*Metropolitan Stores Ltd.*, above; *Toth*, above).

### Risk

[49] Ms. Begashaw's case is based on significant new evidence. Removal at this point would occur without assurance that there has been a proper assessment of the very risks against which the PRRA seeks to protect her.



[50] Though Ms. Begashaw is being removed to the U.S., she has no status there and received a deportation order from the U.S., in 2003. This is what had prompted her decision to come to Canada, in the first place. Removal to the U.S. is just the first step in her removal to Ethiopia (MR, Statutory declaration of Applicant at para. 21; *Damte v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1277, [2008] F.C.J. No. 1620 (QL); *Omar v. Canada (Solicitor General)*, 2004 FC 1740, 136 A.C.W.S. (3d) 112; *Hatami v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1765, 136 A.C.W.S. (3d) 113; *Augusto v. Canada (Solicitor General)*, 2004 FC 801, 131 A.C.W.S. (3d) 924; *Cortez v. Canada (Minister of Citizenship and Immigration)*, (2003) FCT 725, 238 F.T.R. 307; *Gandara v. Canada (Minister of Citizenship and Immigration)* (1997), 125 F.T.R. 151, 68 A.C.W.S. (3d) 711; *Ponnampalam v. Canada (Minister of Citizenship and Immigration)* (1995), 30 Imm. L.R. (2d) 178, 57 A.C.W.S. (3d) 1004).

[51] The Ethiopian government continues to persecute opposition supporters and suspected opposition supporters. The risks set out in the PRRA submissions and accompanying country documentation continue to the present.

[52] Ms. Begashaw continues to face risk due to her relatives' past affiliation with the AAPO. She also faces risk in her own right due to her support for the opposition to Ethiopia's current government. She has developed her involvement in the past few years through attending meetings and demonstrations held by the All Ethiopia Unity Cultural and Relief Organization in Toronto (now the Kinijit Cultural and Relief Organization) (MR: Letter from All Ethiopia Unity Cultural

and Relief Organization in Toronto at p. 74 (in PRRA evidence); Affidavit of Applicant at para. 14, p. 4; Photographs of Applicant at demonstration, Affidavit of Applicant, Ex. G).

[53] The Ethiopian government continues to target opposition activists as well as suspected activists or sympathizers, as well as their family members. They face arbitrary arrest and detention and other human rights abuses. An IRB Response to Information Request also finds that there is information claiming that one of the parties, in the ruling coalition, has posted agents at embassies overseas to monitor Ethiopians abroad, and that the Ethiopian government was attempting to target Ethiopians abroad who are perceived to be against the government (MR: Affidavit of N. Shchepetova, Ex. AA, Recent country condition documents).

[54] Irreparable harm is clearly made out where the applicant's life, liberty or safety might be at risk (*Sivakumar v. Canada (Minister of Employment and Immigration)*, [1996] 2 F.C. 872, 63 A.C.W.S. (3d) 912 (C.A.); *Hernandez v. Canada (Solicitor General)* (1993), 42 A.C.W.S. (3d) 892, [1993] F.C.J. No. 950 (QL); *Membreno Garcia v. Canada (Minister of Employment and Immigration)*, [1992] 3 F.C. 306, 55 F.T.R. 104 (T.D.) ; *Suresh v. Canada* (1998), 49 C.R.R. (2d) 131, 77 A.C.W.S. (3d) 163).

[55] As a woman with Schizoaffective Disorder that is only managed through regular medication, Ms. Begashaw's psychological integrity is at risk in Ethiopia. She has a history of hospitalization and psychotic episodes when she has not been properly treated.

[56] There is one civilian psychiatric facility in her country, and twenty two psychiatrists nationally for a population of eighty million people. Only a few medications are available and in “very limited supplies”. Mental illness is also severely stigmatized (Affidavit of Dr. Clare Pain, p. 196). Nevertheless, it must be recognized that it is not the mental illness that is considered the significant factor in this case but rather the persecutory treatment that Ms. Begashaw received that would have caused the mental illness (not the mental illness in and of itself).

[57] The sworn evidence of Dr. Clare Pain demonstrates that she has expertise in this area in addition to having been involved with training Ethiopian psychiatrists for at least four years as Co-Director of the Toronto Addis Ababa Psychiatry Project. Dr. Pain also affirms that the Director of the Amanuel Psychiatric Hospital in Addis Ababa reviewed her affidavit and concurred with her views (MR: Affidavit of Dr. Clare Pain at p. 196).

[58] A 2006 report by the World Health Organization and the Ethiopian Ministry of Health notes that mental health resources are “especially limited” for women (MR: WHO-AIMS Report on Mental Health System in Ethiopia at p. 237).

[59] While the Officer considered one WHO document on mental health care in Ethiopia, she does not place the information and statistics she derives from that document in any actual context. Her assessment comes to no conclusion about the quality or actual availability of services (Decision at pp. 10-11).

[60] Ms. Begashaw's psychiatrist of the past five years writes:

Ms. Begashaw's stable mental state is due to a combination of the medications listed above as well as a stable home/work environment. I can safely say that a relapse of her psychotic illness would occur if she were to not receive her psychiatric medications for any significant length of time. Additionally, patients with psychotic disorders such as Schizoaffective Disorder are extremely sensitive to changes in their routine and support network. A forced relocation back to Ethiopia would be a severely traumatic event for this patient and could certainly lead to a relapse of her symptomatology including a return of suicidal ideation. Patients with Schizoaffective Disorder are at significantly increased risk for completed suicide compared to the general population....

(MR: Letter from Dr. Chisvin, April 15, 2009 at p. 187).

### **C. Balance of Convenience**

[61] The third branch of the test for a stay or injunction is a consideration as to where the balance of convenience lies, or otherwise put - who would be most inconvenienced.

[62] The public interest is to be taken into consideration in determining the balance of convenience and is weighed together with the interests of private litigants (*Manitoba*, above).

[63] There is undoubtedly a public interest in the enforcement of the provisions of the IRPA and the subordinate regulations and policies. The inherent integrity of the immigration and refugee system and Canadian society as a whole depends on it. This, also, necessitates ensuring that individuals facing serious consequences on removal from Canada have an effective access to a remedy before the Courts. The purpose of such a justifiable remedy should neither put in jeopardy the immigration and refugee system nor Canadian society as a whole (*Suresh*, above).

[64] Ms. Begashaw poses no danger to the public or to the security of Canada. Ms. Begashaw would suffer a far greater harm if the stay were not granted than would the Respondent should the Court permit her to remain in Canada while her application is pending before this Court (*Singh*, above; *Smith*, above; *Sowkey*, above).

## VII. Conclusion

[65] For all of the above reasons, the Applicant's motion for a stay of the execution of the removal is granted pending a final determination of her application for leave and for judicial review of the negative PRRA decision in her regard.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's motion for a stay of the execution of the removal be granted pending a final determination of her application for leave and for judicial review of the negative PRRA decision in her regard.

\_\_\_\_\_  
"Michel M.J. Shore"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2116-09

**STYLE OF CAUSE:** LEMLEM BEGASHAW  
v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 4, 2009

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

**DATED:** May 6, 2009

**APPEARANCES:**

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