Date: 20100223

Docket: IMM-2335-09

Citation: 2010 FC 200

Ottawa, Ontario, February 23, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

LETAY DOMOZ SEBAHTU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of a decision denying Ms. Sebahtu a permanent resident's visa on the grounds that she was a security risk pursuant to s. 34(1)*(f)* of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

II. BACKGROUND

[2] The Applicant is already a UN Convention Refugee living in Sudan having fled Ethiopia with her family. Her husband was a member of the Ethiopian Democratic Union (EDU), a group which had fought against the Derg regime in the 1970s.

[3] The Applicant had a UN form filled out – she being illiterate – which indicated that she had fled Ethiopia in 1977 and her husband in 1978. The form also indicated that she had been a member of the EDU, had participated in meetings and made financial contributions. There are problems with dates in this file as the Immigration Canada file lists her as a member of the EDU from 1980 to 1998 after she fled Ethiopia.

[4] A first interview was held in March 2004. The notes indicate a concern about the literacy of the family and the lack of employment skills. The Officer noted the possibility of having the UNHCR refer them to Australia but there was no mention of security concerns. There were notations of EDU membership.

[5] Before the admission ruling, the Applicant's stepson was accepted as a government sponsored refugee.

[6] The fairness letter was sent May 22, 2005, refusing admission due to the Applicant's EDU membership. She was invited to make further submissions but did not do so because she never received the letter.

[7] Because of these circumstances, the Applicant was given another fairness letter and opportunity to respond. It was her contention that she was never a member of the EDU but had merely supported her husband.

[8] In this second interview the Applicant denied that she was a member of the EDU or attended meetings. The Applicant denied the accuracy of the translation in 2004. The explanation appears to be that in her language "you" in the singular is different from "you" in the plural and the translator had used the plural. The Applicant took the question to be related not just to herself but her husband and herself.

[9] The Visa Officer held that the Applicant was not forthcoming about her EDU membership and therefore denied her application on s. 34(1)*(f)* grounds.

III. ANALYSIS

[10] At its root this decision is a credibility finding. As such, it is subject to a reasonableness standard (*Rajaduri v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 119). The Applicant also claims that there was a breach of procedural fairness – a matter which is subject to a correctness standard of review.

[11] The Court is understanding of the difficulty in sorting out the specifics of these types of cases. Translation may be the least of the problems compared to literacy, cultural norms and vagueness of time related matters. However, this decision suffers from two difficulties.

[12] The first difficulty is that there appears to be an adverse credibility finding without any reasons or analysis. There is no contrary evidence to the Applicant's claim of confusion in the translation; there is no analysis of why her explanation of circumstances is neither credible nor plausible. For example, there is no consideration of how a woman in her circumstances would either find the time to participate or the money to make contributions.

[13] It is within the purview of a Visa Officer to make a credibility finding but the reasons for that decision must disclose, even in a summary way, the basis for the adverse findings. This is an issue which goes to the fairness of the process and the reasonableness of the result.

[14] The second difficulty is in the fairness of the process particularly as regards the translation of her narrative. On the balance of probabilities, there was confusion in the translation – not the fault of either party. That said, it nevertheless results in an unfair process and an unfairness which has serious consequences; in this case, both as regards the s. 34(1) finding and a refusal to consider (s. 34(2)).

[15] The Court is also concerned that the Applicant did not have adequate disclosure of the case she had to meet. It is not that she was entitled necessarily to every document held by the Visa Officer but she was entitled to know the other relevant facts which the Visa Officer had before her.

IV. CONCLUSION

[16] As a result, this judicial review will be granted, the decision will be quashed and the matter remitted to a different Visa Officer.

[17] This is not a case for certification of a question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is granted, the decision is quashed and the matter is to be remitted to a different Visa Officer.

"Michael L. Phelan"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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