Federal Court  Cour fédérale

Date: 20110505

Docket: IMM-6010-09

Citation: 2011 FC 522

Ottawa, Ontario, May 5, 2011

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SELAM PETROS WOLDESELLASIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant, Selam Petros Woldesellasie, is a citizen of Eritrea. In September 2006, she left Eritrea, travelling to Egypt. In October 2008, the Applicant applied for permanent residence in Canada as a refugee outside Canada. In a letter (also referred to as the rejection letter) dated

October 11, 2009, a visa officer (the Officer) with the Canadian Embassy in Cairo, Egypt refused her application. The Applicant seeks to overturn this decision.

[2] For the reasons which follow, I will allow this application for judicial review.

II. Issues

[3] The issues raised by this application are as follows:

1. Did the Officer err by failing to have regard to CIC Guideline OP 5 (discussed below)?

2. Did the Officer make erroneous findings related to credibility, by failing to have regard to the evidence before her or by misunderstanding or misinterpreting the evidence?

3. Did the Officer err by failing to assess all possible grounds of persecution – specifically, the Applicant's claim to have left Eritrea illegally and her gender-related risk?

4. Did the Officer err by failing to give adequate reasons?

5. Does the Officer's decision give rise to a reasonable apprehension of bias?

III. The Related Files

[4] This file is one of four judicial review applications heard together by this Court. The other three files are Court File Nos. IMM-6000-09 (Henok Aynalem GHIRMATSION), IMM-6005-09 (Tsegeroman Zenawi KIDANE) and IMM-6009-09 (Tsegay Kiflay WELDESILASSIE). These four files are representative of a group of almost 40 files, for which judicial review applications have been commenced. The remaining files have been held in abeyance pending the outcome of these four files. The common elements of the four files and, as I understand it, of the entire group of files, are as follows:

- each of the claimants is an Eritrean citizen;
- each of the Applicants claims to be a member of the Pentecostal Church;
- the applications for permanent residence were refused for each; and
- the same Officer interviewed each of the claimants and made the decision to refuse the application for permanent residence.

[5] While the individual merits of each of the applications for judicial review are raised in the separate application records, the four cases were selected as representative cases because, in the words of the Applicant, “they evince several distinct errors and patterns of decision making that are common to many or all of the other cases”.

[6] I wish to stress that this decision is addressed to this particular application by this Applicant. I make no overall finding or order that binds the disposition of any of the remaining files. Each file presents a unique set of facts and requires separate review and determination.

[7] Having said this, there are issues that are common to the four files. With respect to those common issues, I present my analysis and conclusions more fully in the first of the four files – IMM-6000-09. The Reasons for Judgment and Judgment in that file can be found at *Ghirmatsion v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 519 [*Ghirmatsion*]. Where appropriate, in these Reasons, I will refer the parties and the reader to the applicable sections of *Ghirmatsion*.

IV. The Affidavits

[8] In *Ghirmatsion*, above, I reviewed the affidavits that were filed in support of the judicial review application.

[9] The affidavits presented in this case by the Applicant (besides that of the Applicant herself) are identical. I have the same concerns as were previously expressed. For the reasons set out at paragraphs 6 to 23 of *Ghirmatsion*:

- the affidavits of Ms. Janet Dench will be given little weight;

- the affidavit of Mr. Tewolde Yohanes will be given little weight;

- Dr. William Griffin is accepted as an expert in matters related to the Pentecostal faith and, if required, the evidence and opinions set out in his affidavit will be treated as expert evidence provided to assist the Court; and

- the documents attached to the affidavit of Ms. Natalia Shchepetova were not before the Officer and will not be considered by this Court.

[10] To the extent that the affidavit of the Officer purports to add to or amend her reasons, as set out in the computer assisted immigration processing system (CAIPS) and the rejection letter, it will not be considered.

V. Background of the Applicant

[11] In this section of these reasons, I will briefly set out the background of the Applicant as she has described it. I observe that this is the Applicant's story, as set out in the narrative that was part of her application; I make no findings of its truth or of the merits of the claim.

[12] The Applicant was born on January 29, 1974 and is a citizen of Eritrea. The Applicant's family is Christian and belongs to the Pentecostal Church. The Applicant has considered herself a Pentecostal her whole life.

[13] In 1997, the Applicant entered the mandatory National Service. The Applicant attempted to keep her faith secret while she was in the military, as she personally witnessed the persecution of other Pentecostals.

[14] In May 2002, the Eritrean government banned Pentecostals and some other religious groups.

[15] In September 2002, the Applicant was discovered and taken to a detention centre at the Sawa Military Camp. At the camp, the Applicant claims that she was detained in a metal container and forced to do “difficult military punishments and hard labour work”. The Applicant was released, after four months, when she agreed to sign a paper recanting her religion.

[16] In 2003, the Applicant was released from her military service. She returned home to Asmara and began working and attending Pentecostal meetings.

[17] In January 2006, the Applicant was arrested and detained after being caught worshipping in a house church. In April 2006, the Applicant was sent back to the Sawa Military Camp, where she claims that she was subjected to persecution, including being tortured and sexually abused by prison guards and military interrogators.

[18] While she was in detention, the Applicant’s family bribed officials to have a passport issued for her. After two months at the Sawa Military Camp, the Applicant was able to escape.

[19] After her escape, the Applicant went to stay with relatives for another two months before leaving Eritrea on a valid exit visa.

[20] In November 2009, the Applicant was recognized as a Convention refugee by the United Nations High Commission for Refugees (UNHCR). Apparently, this designation was not in place at the time of the interview and decision by the Officer. The UNHCR status is not relevant to this decision.

[21] I also observe that, in her affidavit, the Applicant added considerable more detail to her claim. It is difficult to assess these allegations. They were made 15 months after the decision in question. I also observe that these specific claims were not mentioned during her interview with representative of the Africa and Middle East Refugee Assistance (AMERA). It is not unreasonable to expect that the Applicant would be reluctant to give explicit details in her narrative or even to the Officer during the interview (particularly since the interpreter was male). However, there is little reason why additional details would not be forthcoming at an AMERA interview. This failure to provide additional details at the relevant times may impact the weight that this Court will give those specific affidavit allegations of abuse while in detention in 2006.

VI. The Interview

[22] On October 7, 2009, the Applicant was interviewed by the Officer. The interview was conducted in English and Tigrinya, with the aid of an interpreter. There is no transcript of the

interview. The Officer took notes on her computer during the interview and copied those notes into CAIPS, apparently on the same day.

[23] Further descriptions of what went on at the interview are contained in the affidavits of the Officer (sworn on September 5, 2010) and the Applicant (sworn on February 21, 2011). Given the time that has passed between the interview and the affidavits, during which time memories can become dim or distorted, I am reluctant to rely on these affidavit versions of the details of the interview held in 2009.

[24] In this case, as was also the situation in *Ghirmatsion*, above, the Applicant came to the attention of an organization known as Africa and Middle East Refugee Assistance (AMERA). The role of AMERA is described in more detail in *Ghirmatsion*, above, at paragraphs 33 and 34.

[25] The Applicant was interviewed by a representative of AMERA on November 1, 2009, during which interview she provided further details of her interview with the Officer. The notes are contained in the Applicant's Affidavit. The notes were made within a short time following the interview with the Officer; they are more contemporaneous than the comments in the affidavits of either the Officer or the Applicant. However, as I noted earlier in these reasons, the AMERA notes do not contain any explicit reference to the abuse that she claims to have suffered while in detention.

[26] As I concluded in *Ghirmatsion*, above, and for the same reasons, I will accept the AMERA notes with considerable reservations that may go to weight.

VII. The Decision

[27] In her rejection letter dated October 11, 2009, the reasons for rejection were set out as follows:

> After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed because I am not satisfied that you have been forthcoming at your interview. I find that your story of escape is not credible. I find it unreasonable that only two guards would be sent to guard 20 prisoners. I equally find it unreasonable that your passport was issued at the time you were supposedly in detention. Further, I am not satisfied that you are indeed a follower of the Pentecostal faith. You were not able to provide basic information about the faith that you are allegedly following. As I do not find you credible, I am not satisfied that you meet the country of asylum or the convention refugee definition.

[28] The above paragraph contains the reasons for the rejection of the application. As I understand the decision, the Officer made the following observations or findings concerning the Applicant:

1. she was not forthcoming;

2. the Officer did not believe the Applicant's story of escape because it is "unreasonable" that two guards would be sent to guard 20 women prisoners;

3. it is "unreasonable" that the Applicant obtained a passport while she was in detention; and

4. she was unable to provide “basic information” about the Pentecostal faith .

[29] Although not expressed clearly, I infer that the Officer did not believe that the Applicant had been held in detention or that she was of the Pentecostal faith. Whether these two key conclusions should stand depends on the reasonableness of the underlying analysis.

[30] It is common ground that the Officer’s reasons are those set out in the decision letter augmented by the contents of the CAIPS notes on the file. What additional reasons for these four key findings can be obtained from the CAIPS notes? The portions of the CAIPS notes reproduced in these reasons are transcribed as closely to the original version as possible:

1. Not forthcoming: There is nothing whatsoever contained in the CAIPS notes to explain what the Officer meant by “not forthcoming”.

2. Two guards: In the CAIPS notes, the Officer set out the Applicant’s claim that she was detained in 2006 for participating in a “prayers program” and was kept in detention for four months. The Applicant was asked about her escape from detention:

> WHEN DID YOU ESCAPE FROM DETENTION? IN JUL 2006
>
> HOW DID YOU ESCAPE? WHAT HAPPENED TO ME IN DETENTION, COULDN’T BEAR IT, TOOK US AT 3:00 AM TO FORT ASAWA IN ORDER TO COLLECT WOOD, AS IT WAS DAWN, THERE WAS A CHANCE, I ESCAPED.
>
> HOW MANY PEOPLE? AROUND 20

HOW MANY GUARDS? TWO GUARDS
TWO GUARDS FOR 20? THEY ONLY TAKE TWO GUARDS

HOW CAN TWO GUARDS KEEP TRACK OF 20 PEOPLE? THEY DIDN'T EXPECT PEOPLE TO ESCAPE.

. . .

I DO NOT FIND YOUR STORY CREDIBLE, I FIND IT VERY HARD THAT THEY WOULD SEND TWO GUARDS WITH 20 PEOPLE? WHAT I TOLD YOU WAS THE TRUTH. I THINK GOD WANTED ME TO ESCAPE.

3. Passport: the Applicant was asked about when and how she obtained her passport:

THEN WHAT HAPPENED [AFTER THE ESCAPE]?
AFTER I ESCAPED, I WENT TO RELATIVE HOUSE AROUND TWO MONTHS. WHILE I WAS HIDING IN MY RELATIVE'S HOUSE, SECURITY CAME AND ASKED WHERE I WAS, MY RELATIVES OBTAINED PASSPORT FOR ME, THEN THEY DID THE NECESSARY PROCESS, THEY HELPED ME FLEE THE COUNTRY.

WHEN WAS YOUR PASSPORT ISSUED? JUN 2006

BEFORE YOU WERE RELEASED FROM DETENTION?
BEFORE I WAS [REDETAINED].

. . .

YOUR VISA AND PASSPORT WAS ISSUED WHILE YOU CLAIM TO HAVE BEEN DETAINED? MY FAMILY DID THAT.

. . .

I ALSO FIND IT HARD TO BELIEVE THAT YOUR PASSPORT WAS ISSUED WHILE YOU WERE IN DETENTION? IT WAS OBTAINED BY PAYING BRIBES.

4. Pentecostal Faith: According to the CAIPS notes, the Applicant referred to her religion on a few occasions during the interview. However, there is only one reference in the CAIPS notes regarding "basic information" for the Pentecostal faith. Right at the end of the interview, after expressing her concerns with the Applicant's testimony, the Officer asks a single question about the tenets of the Pentecostal faith:

> WHAT ARE THE 7 GIFTS OF THE HOLY SPIRIT? I DON'T UNDERSTAND 7 GIFTS HOLY SPIRIT? WORSHIP IN TONGUES.THE HOLY SPIRIT IS VERY IMPORTANT IN THE PENTE RELIGION, HE GIVES SEVEN GIFTS? I DON'T HAVE AN IDEA ABOUT THAT.

VIII. Statutory Framework

[31] A brief outline of the statutory scheme affecting this application is described in my reasons in *Ghirmatsion*, above, at paragraphs 41 to 45. The full text of the relevant statutory provisions is set out in Appendix A to that those reasons.

[32] In summary form, to be eligible for resettlement in Canada as a refugee abroad under s. 139(1), s. 144 and s. 145 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPA Regulations*], a person:

- must meet the Convention refugee definition;

- must be outside Canada; and

- must meet the requirement that there is no reasonable possibility in a foreseeable amount of time of any other durable solution such as,

    - voluntary repatriation or resettlement in their country of nationality or habitual residence; and

    - resettlement or an offer of resettlement in another country.

IX. Standard of Review

[33] Overall, the decision of a visa officer is reviewable on the standard of reasonableness. When reviewing a decision on the standard of reasonableness, the Court is concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." That is, the decision will stand unless it does not fall “within the range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*New Brunswick v Dunsmuir*, 2008 SCC 9, [2008] 1 SCR. 190 [*Dunsmuir*] at para. 47).

[34] However, the issues of failure to consider a ground for protection, reasonable apprehension of bias and the adequacy of reasons are reviewable on a standard of correctness (*Ghirmatsion*, above, paras 46-53).

X. Failure to have regard to OP 5

[35] The Applicant argues that the Officer failed to carry out a proper assessment as to whether she met the definition of a Convention refugee. In particular, the Applicant faults the Officer for not explicitly following the steps outlined in section 13.3 of the Citizenship and Immigration Canada (CIC) Guideline OP 5, "*Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes*" (August 13, 2009)(OP 5).

[36] This argument was raised and rejected in *Ghirmatsion*, above. For the same reasons, I am not persuaded that the Officer erred by failing to follow the steps set out in OP 5, section 13.3.

[37] As in *Ghirmatsion*, above, the problem with the Applicant's argument on this point is that it ignores that the Officer's decision was based on a negative credibility finding. Moreover, the Applicant held a valid passport. Thus, much of the documentary evidence related to the persecution of Pentecostals in Eritrea, or to the treatment of those who left Eritrea illegally was not relevant. Thus, if the credibility findings are sustainable, I would conclude that there was no error by the Officer in failing to refer to each and every step outlined in section 13.3.

XI. Reasonableness of the Credibility Findings

A. *Pentecostal Faith*

[38] The Officer concluded that the Applicant was not Pentecostal. As noted above, the CAIPS notes contain only one question related to the tenets of the Pentecostal faith. Specifically, the Officer asked the Applicant to name the "seven gifts of the Spirit". The Applicant was unable to name "seven" gifts.

[39] In both written and oral submissions, the Respondent argues that the Officer's references to "the gifts of the Holy Spirit" were not perverse as this term is taken directly from the Bible, at 1 Corinthians 12:4-11.

[40] The problem is that the Officer arbitrarily asked for "the seven gifts of the Holy Spirit", which is not a defined concept in the Pentecostal faith. As noted by Dr. Griffin (see Applicant's Application Record, Volume 2, Affidavit of Dr. Griffin, para 13):

> It would be a great error if someone were to evaluate a person's Pentecostal faith on the basis of lack of knowledge about the "seven gifts of the Spirit." Such an expression is absolutely foreign to a Pentecostal. [Emphasis added.]

[41] When asked how the Officer learned about the Pentecostal faith, she answered (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q195-197 and Q239):

> Q. So is it fair to say that you learned about the Pentecostal faith while you were in Cairo?
>
> A. Yes.

> Q. And where and what did you read to learn about Pentecostal faith?
>
> A. I did Google searches with websites and I can't recall them right now.
>
> …
>
> Q. And would you say that your knowledge of Pentecostalism relates specifically to Pentecostalism in Eritrea or Pentecostalism more generally?
>
> A. Pentecostalism more generally.
>
> …
>
> Q. Do you agree that there's not specific reference or no reference to a specific number of gifts in either 1 Corinthians 12 or the UK country document on Eritrea?
>
> A. Yes, I would agree with that. There's no specific number mentioned.

[42] When asked how she chose to ask the Applicants' about "the 7 gifts of the Holy Spirit" she stated (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q241):

> Q. How did you determine whether to ask – whether there were seven gifts or nine gifts?
>
> A. I just chose a number. I could have asked for three or four. I chose seven.

[43] In my opinion, the faith-based questions posed by the Officer were without factual foundation. It is an important function for a visa officer to decipher the sincerity of an applicant's religious belief. In order to do this, the visa officer must be informed regarding the relevant religious beliefs and practices. This cannot be done by arbitrarily applying a test that would confuse an applicant. This was the case with the line of questioning posed by the Officer. The Officer did not

assess the sincerity of the Applicant's Pentecostal religious beliefs. Instead, the Officer asked questions designed to test the Applicant's knowledge of "the seven gifts of the Holy Spirit". Moreover, the Officer's admission that she knew little of the Pentecostal faith in Eritrea taints all of the questions that she asked and the inferences that she drew from the Applicant's responses. The matter of the Applicant's faith was central to her claim. This error in assessing that aspect of the Applicant's claim is fatal to the decision.

B. *Passport from Eritrean Embassy*

[44] The Officer found that it was "hard to believe" that the Applicant could obtain a passport while she was in detention. The Applicant's explanation that the passport was obtained by her family through the payment of bribes was apparently rejected by the Officer. In my view, this implausibility finding is unsupported by any evidence. We have no idea from the documentary evidence whether this part of the Applicant's story is true or not. An inference based on a total lack of documentary evidence is either (a) mere speculation; or (b) based on what the Officer knows about Canadian immigration procedures.

[45] Common sense, based on our trust in Canadian authorities, would lead us to assume that a person could not obtain a passport by having her family pay bribes. But, can we measure the possible actions of the authorities in Eritrea by that high standard – particularly when the country in question has been criticized for corruption? Visa officers must be careful not to judge actions which appear implausible when judged from Canadian standards; such actions might be plausible when considered within the "claimant's milieu" (*Ye v Canada (Minister of Employment and*

Immigration), [1992] FCJ No 584 (QL), 34 ACWS (3d) 241(FCA)). In the case at bar, the Officer may erroneously have judged the reasonableness of the Eritrean passport authorities against how Canadian authorities would have considered such a passport application. Or, quite simply, she speculated. In either event, the Officer erred on a material issue.

C. *Escape from Detention*

[46] It appears that the Officer rejected the credibility of the Applicant's story of detention in 2006. The key finding by the Officer was that it was not reasonable that two guards would be guarding about 20 women who were foraging for wood early in the morning.

[47] There was absolutely no documentary evidence before the Officer about the ratio of prisoners to guards in similar situations. The Officer, when cross-examined on her affidavit, was asked about the basis for her determination that a prisoner-to-guard ration of 20:2 was not redible or plausible. The Officer acknowledged that she did not rely on any documentary evidence to support her conclusion. Her response was simply that, "I just thought there would be more than two guards for 20 people" (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q 341).

[48] In my view, this implausibility finding is pure speculation or conjecture. Neither the Officer nor this Court can have any idea of how many guards are needed to guard 20 women gathering wood. Were the women shackled or otherwise restricted in their movements? How far from the camp were they? How were the guards armed? A conclusion that the Applicant was never detained

is simply not supportable on the basis of the Officer's belief that there would have been "more" guards.

[49] The Applicant's treatment during this 2006 detention is a key component of her claim. It was open to the Officer to disbelieve the Applicant's story. However, the Officer erred by doing so on the basis of pure conjecture or speculation. The Officer's error provides sufficient grounds to overturn this decision.

D. *Conclusion on credibility*

[50] As a whole the credibility finding of the Officer is unreasonable. This is based on errors with respect to all of the Officer's stated reasons. Specifically:

- the finding that the Applicant was not Pentecostal was based on misunderstanding of the Pentecostal faith;

- the Officer's determination that the prisoner-to-guard ratio was unreasonable was not based on any factual underpinnings – it was based on pure speculation; and

- the Officer did not have any documentary record to support her finding that it was not likely that the Applicant could obtain a passport while she was in detention;

[51] Finally, I note that the Officer provided no justification for her statement that the Applicant was not “forthcoming”.

XII. Other Grounds of Persecution

[52] In this case, as set out in the rejection letter and the CAIPS notes, the Officer considered only one ground of persecution. Specifically, she examined whether the Applicant was at risk on grounds of religious persecution. The Applicant submits that her application discloses she has been , and could be in the future, subjected to risks based on her gender. The Applicant argues that the Officer erred by not considering this additional ground of persecution. Documentary evidence, in her view, strongly suggests that persons who return after leaving Eritrea, and women in her position, would be subject to gender-based persecution by Eritrean authorities.

B. *Gender-based risks*

[53] The Applicant submit that the Officer erred by failing to take into account the gender persecution suffered by her. On this issue, I agree with the Respondent – to a point. The Applicant, in her narrative describes one direct instance of sexual mistreatment. That mistreatment allegedly occurred during the four months that she was detained in 2006. As she stated, “[t]hat was where I faced the worst persecution, torture and sexually harassed several times by the prison guards and interrogators”. Since the Officer did not believe the Applicant’s story of detention in 2006, it follows that the claim of abuse by prison guards is not credible. If another visa officer were to find

the claim of detention in 2006 to be credible, I believe that the facts disclosed by the Applicant would give rise to a duty on the visa officer to assess the claim of gender persecution.

[54] However, there is another aspect of the Applicant's narrative that was not explicitly rejected by the Officer. The Applicant's narrative also contains a reference to mistreatment of women in detention at the Sawa Military Camp during her 2002 detention. During her military service, the Applicant was arrested in 2002, allegedly because she was caught with a bible. With respect to her treatment, the Applicant stated the following:

> I was taken to the notorious detention in sawa military camp along with other prisoners of conscience. Females were separated from the males and I and other twelve girls were detained in metal cargo containership. With out any questionnaires, the kept us there for 4 months, every day, we were forced to do difficult military punishments and hard labor work, until we agree to convert our faith and sign a document under several conditions: such as to give names of believers in Pentecostal faith

[55] During her interview, the Applicant explained that, "I suffered a lot in detention". It is possible that the Officer did not believe that the Applicant was ever detained in 2002 since the basis of the arrest was the Pentecostal faith; the Officer found that the Applicant was not Pentecostal. But, this is not clear from the rejection letter or the CAIPS notes. The Officer did not put any concerns to the Applicant about this first detention. There is no explicit finding in the rejection letter that the Officer did not believe that the first arrest took place. Neither the Applicant nor I could possibly discern the reasoning or conclusion of the Officer on this point. There are two possibilities: (a) the Officer did not believe the story of the first detention based on her conclusion that the Applicant was not of the Pentecostal faith; or (b) the Officer believed that the first detention took place.

[56] Assuming that the Officer believed that the Applicant was arrested in 2002, the Officer erred by failing to analyze the treatment that the Applicant received to determine whether it rose to the level of persecution as a result of the Applicant's gender. On the other hand, if I accept that the Officer rejected the story of the first detention because of the lack of credibility of the Applicant's Pentecostal faith, the lack of a clear (or any) lines of reasoning makes this part of the decision unreasonable. There is a reviewable error.

[57] With respect to the possibility of persecution based on gender – particularly during periods of detention – the documentary evidence is replete with stories of women being subjected to abuse during times that they were in detention.

[58] I conclude that, on these facts, the Officer was obliged to consider the possibility of gender-based persecution. She erred by not doing so.

XIII. Adequacy of Reasons

[59] The Applicant asserts that the reasons of the Officer are inadequate.

[60] I might agree with the Applicant that the reasons are insufficient on one narrow point. That is, I do not believe that the Officer adequately explained if and why she did not accept that the detention in 2002 took place.

[61] However, for the reasons set out in *Ghirmatsion*, above, I would conclude that the reasons, as a whole, are adequate. They clearly set out that the Officer did not find the Applicant to be credible, providing at least four reasons for that conclusion. Briefly stated, on the narrow question of whether the reasons are adequate to meet the Officer's duty to provide reasons, I would conclude that the Officer's reasons are adequate. Whether the Officer's decision meets the test for reasonableness is a different question.

XIV. Reasonable Apprehension of Bias

[62] The Applicant asserts that the decision of the Officer raises a reasonable apprehension of bias. For the reasons set out in *Ghirmatsion*, above, I do not agree with the Applicant.

XV. Conclusion

A. *Summary of decision*

[63] Returning to the issues raised near the beginning of these reasons, I would conclude that the Officer made the following reviewable errors:

1. the central elements of the Officer's finding of lack of credibility do not reflect justification, transparency and intelligibility; this critical finding by the Officer is unreasonable; and

2. the Officer erred by failing to consider the gender-related risks to the Applicant

[64] These conclusions are sufficient to warrant the intervention of the Court. However, to complete this summary, my other conclusions are as follows:

1. the Officer did not err by failing to refer to or follow explicitly the steps outlined in OP 5, section 13.3;

2. although there are some problems with the reasons, I believe that the Officer's reasons (the CAIPS notes and the rejection letter) satisfy the Officer's duty to give adequate reasons; and

3. the Applicant has not met her burden of demonstrating that the Officer's decision gives rise to a reasonable apprehension of bias.

B. *Remedies*

[65] The Applicant seeks a number of remedies that extend beyond a re-determination of the application by a different decision maker. As stated in the "Applicants' Further Memorandum of Argument" (a submission common to all four of these judicial reviews), the Applicant seeks the following:

> The Applicants request that this Court quash the decisions of the visa officer in each of the four "lead cases", and remit the matters to a senior decision maker not based at the Cairo visa post for redetermination of eligibility within 60 days; in the event of a

> positive eligibility decision the applicants request further that background checks be completed within a further 30 days and visas issued within 7 days thereafter.

[66] I am prepared to quash the decisions and have the matter remitted to a different visa officer for re-determination. I am also prepared to order that the Applicant be able to submit such further material as she feels is necessary to support her claim. However, I am not prepared to issue the detailed order that the Applicant would like to see in this case. In respect of the balance of the request, I refer to my reasons in *Ghirmatsion*, above, at paragraphs [118]- [122].

C. *Costs*

[67] The Applicant seeks costs in this and the related three files. The Applicant will have until May 27, 2011 to make further submissions on costs. The submission is to be a joint submission for all four related files and must not exceed ten pages in length. Further, the submission should identify the total amount of costs sought, either for each file or for the four files together. The Respondent will have until June 9, 2011 to reply to the Applicant's submissions on costs.

D. *Next Steps*

[68] As noted at the beginning of these Reasons, the Applicant is one of almost forty claimants in similar circumstances. In Reasons for Judgment and Judgment released at the same time as this, I have concluded that the judicial review applications for the other three files heard at the same time as this one will also be allowed. As I did early in these Reasons, I wish to stress that this decision is addressed to this particular application by Ms. Selam Petros Woldesellasie. I make no finding or

order that binds the disposition of any of the remaining files. Each file presents a unique set of facts and requires separate review and determination. However, I am hopeful that these Reasons will permit counsel for the Applicant and the Respondent to reach an agreement on the proper disposition of some or all of the remaining applications in the group.

[69] At the close of the hearing, the parties expressed interest in convening a conference with me to discuss the next steps. If the parties continue to believe that such a conference would be helpful, they are invited to make such a request through the Court Registry.

E. *Certified Question*

[70] Neither party proposes a question of general importance for certification. I agree that there is no question for certification.

JUDGMENT

NOW THIS COURT ORDERS AND ADJUDGES that :

1. The application for judicial review is allowed, the decision of the Officer is quashed and the matter remitted to a different officer for reconsideration.

2. The Applicant will be permitted to provide any additional materials to the newly-designated visa officer that she believes are relevant to the determination of her claim.

3. The Applicant will have until May 27, 2011 to make further submissions on costs. The submission is to be a joint submission for all four related files and must not exceed ten pages in length. Further, the submission should identify the total amount of costs sought. The Respondent will have until June 9, 2011 to provide reply to the Applicant's submissions on costs.

4. No question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6010-09
STYLE OF CAUSE:	SELAM PETROS WOLDESELLASIE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 6, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	SNIDER J.
DATED:	MAY 5, 2011

APPEARANCES:

Andrew Brouwer Timothy Wichert	FOR THE APPLICANT
Stephen H. Gold Alex Kam	FOR THE RESPONDENT

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