

Federal Court



Cour fédérale

Date: 20111114

Docket: IMM-2098-11

Citation: 2011 FC 1304

Toronto, Ontario, November 14, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**DEREJE GEDLU TESSEMA
REBECCA ASRAT BOGALE
SARON DEREJE GEDLU**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a negative decision of the Refugee Protection Division (RPD) with respect to the claim for protection of Dereje Gedlu Tessema, the Principle Applicant, his wife Rebecca Asrat Bogale, the Applicant, and their daughter, Saron Dereje Gedlu. The RPD rejected the claim on the basis of a negative credibility finding with respect to the Applicant's evidence.

[2] The Principal Applicant and the Applicant were both born in Addis Ababa, Ethiopia. Their daughter was born in Paris, France in 2008; all three are citizens of Ethiopia. The Applicant's

father, Colonel Asrat Bogale, was a political leader of an Ethiopian opposition party, the Ethiopian Unity and Patriotic Front. The Applicant moved to France in 2005 as secretary to the deputy permanent delegation of Ethiopia at the United Nations Educational, Scientific and Cultural Organization headquarters. The Principal Applicant joined the Applicant in Paris shortly thereafter. When Ethiopian elections took place in 2005, the Ethiopian Ministry of Foreign Affairs questioned the Applicant's position at her politically sensitive post. In 2009, the Applicant learned that she and her husband were both named on a list compiled by the Ethiopian Embassy in Paris as working in opposition to the government. In July of 2009 the Applicant's employment was terminated and she was instructed to return to Ethiopia and report to the Ministry of Foreign Affairs.

[3] The Applicants travelled to Canada in mid-July, and, according to the Applicant's evidence, were informed that upon return to Ethiopia the government would interrogate the Applicant. On September 1, 2009 the Applicants claimed refugee protection. The information received by the Applicant is contained in an email dated July 24, 2009 and two attached documents. The contents of the email and each of the two attachments are crucial to the Applicant's claim.

[4] The email states as follows:

Eridetnesh

Selam, my dear how are you. When you told me the other day that u you are called to Addis, It seemed to me very strange because I never heard a local staff that is recruited from outside of MFA would be called to the head office. And if i remember correctly u were confused too. Anyway I've got a report that your ambassador copied our office.

When I read the report, this morning, I couldn't believe my eyes. It was sent to the Policy General Directorate. Thanks to God I scanned the part which concerns you, as well as a letter of feedback to that

report. Things do not look good here. Please don't be naive to trust them. Anyways please call me on my cell not at the office nor at my house I'll tell u everything.

Call me please,
chaw, ADI

(Certified Tribunal Record, p. 293)

The first attachment, having no heading, salutation or signature, is an internal performance review that includes the following commentary [TRANSLATION]:

Pertaining to Mrs. Rebecca Asrat Secretary to the Deputy Permanent Delegation of Ethiopia to UNESCO

From the outset, we would like to indicate the reason why we decided to write our assessment on the above mentioned staff as a case that is different and unique and has to come outside the frame box devised for general assessment of all other staffs. In April 2005, Mrs. Rebecca Asrat Bogale joined the Permanent Delegation of Ethiopia to UNESCO. As regards work performance, punctuality and conduct we give her the grade 'Good'. Nevertheless, in our assessment the key point we would like to stress is that intricacies and constant indifference we observed in her when it comes to promoting Ethiopian government political stands at work.

Mrs. Rebecca's father, Colonel Asrat Bogale is living in France and has remained a diehard opposition political group leader against the Ethiopian Government. The group he leads is known as the Ethiopian Unity Patriotic Front. Mrs. Rebecca lives at the same house with her father. We don't know if the people recruiting her for the Secretary position here in Paris initially knew about her father's political stand against the incumbent regime and his residence in France or if they recruited her by sheer mistake. Nevertheless as Mrs. Rebecca was restricted only to work within Permanent Delegation Office the chances that she would come across sensitive political issues were limited. Nevertheless, still we remain seriously worried in case she may access restricted information when and if she is asked to cover the duties of the Chief Secretary at times when the later is absent from duty. Indeed, in this connection, we made closer investigation and we reached the following conclusions.

Mrs. Rebecca has been indirectly participating in what Colonel Asrat Bogale write up and disseminates to the public against the incumbent Ethiopian regime in the form of political notes, leaflets, fliers, and political opposition papers. We have evidence that Mrs. Rebecca has even used email to dispatch secretly some of her father's political opposition messages to the wider public.

We have evidence that Mrs. Rebecca did take part in typing and distributing among Ethiopian origin communities Colonel Asrat's opposition books and different materials published soon after the 2005 election in Ethiopia.

Whenever senior Ethiopian government officials visit France and hold speeches we have observed Mrs. Rebecca frequented to refrain from attending such meetings.

As regards getting release of the initially allotted fund for the 2007-2008 UNESCO's Participation Programme, Mrs. Rebecca was particularly assigned to follow-up this case with the Addis Ababa National UNESCO office and see to it that the fund is granted out in time. But as she was not able to convince the UNESCO concerned office the fund was never released.

Mrs. Rebecca was assigned to do constituency work both among Ethiopians working within the main UNESCO office and among Ethiopian origin community members living in Paris. But she was reluctant on carrying out this task as a result of which it never materialized.

Finally as regards weather (sic) to renew Mrs. Rebecca's contract or not we have made the following decision. As far as we deem it, if we are to suggest the dismissal of Mrs. Rebecca from her position, this will provide her father, Colonel Asrat Bogale, the venue to dispatch political papers, and broadcast interviews over the local radio stations against the government of Ethiopian; he would even aggravate the political milieu against the forthcoming 2010 election, which we try to minimize mishaps as much as possible. Hence Mrs. Rebecca's case must be handled with due focus on the above mentioned considerations; and at the same time in more settled manner for the time being.

(Certified Tribunal Record, pp. 299 - 300)

The second attachment is: written on Ministry of Foreign Affairs letterhead; dated May 20, 2009; headed URGENT FAX MESSAGE; addressed to “Her Excellency Ambassador Tadelech Haile Mikael, Ethiopian Ambassador in France & UNESCO Permanent Delegate”; and signed by “Werkalemahu Desta, Human Resources Management, Assistant Director General, Ministry of Foreign Affairs”. This document reads as follows [TRANSLATION]:

[...]

Regarding Mrs. Rebecca Asrat, we believe that the situation should be highly cautiously handled. We are aware that Colonel Asrat Bogale is a leader of an organized radical opposition group. It is clear that the above mentioned woman can have substantial information about this organized group. Therefore, as we need to interrogate her, a letter of transfer to the Head Office should be handed to her by the diplomatic mission.

[Emphasis added]

(Certified Tribunal Record, p. 306)

[5] In her PIF (Applicants’ Application Record, p. 39) and in her evidence before the RPD (Certified Tribunal Record, p. 381) the Applicant maintained that the second attachment is a critical piece of evidence supporting her claim for protection. However, the only statement in the RPD’s decision that refers to the email and what was attached, is with respect to the first attachment:

[...]

The claimant testified that, after she arrived in Canada, she received a warning e-mail with an attachment from Adi, a friend of a friend in the Ethiopian foreign office in Addis Ababa. The e-mail was sent July 24, 2009. The claimant testified that Adi, while working at the Foreign Affairs office in Addis Ababa, allegedly came across a private document [the attachment] regarding the claimant from the Ethiopian authorities. The claimant alleges that it is the information in the attachment that caused her to apply for refugee status. It is not apparent by whom the attached document is written, or to whom it is sent; it has no heading, salutation or signature; it has no date. Therefore, the panel gives it little weight.

[...]

[Emphasis added]

(Decision, para. 20)

There is no mention of the second attachment. This fact is evidence that the document was not considered in reaching the decision. Indeed, Counsel for the Applicants argues that the failure of the RPD to consider the contents of the second attachment renders the decision as unreasonable because the Applicant's claim, in large part, is based on the second attachment. I agree.

[6] As a result I find that the decision under review was rendered in reviewable error.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2098-11

STYLE OF CAUSE: DEREJE GEDLU TESSEME,
REBECCA ASRAT BOGALE,
SARON DEREJE GEDLU V.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 10, 2011

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: November 14, 2011

APPEARANCES:

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