

BETWEEN:

NAPOLEON ASFAW

Applicant

- and -

THE MINISTER OF

CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

HUGESSEN J.

[1] This is an application to review and set aside a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board which determined that the applicant was not a Convention refugee. The applicant takes two points. The first is that the Refugee Board erred both in fact and in law in its determination that the applicant is not a refugee sur place. The second is that the Board erred in joining the applicant's claim with that of another claimant. I shall deal with the two quite separately.

[2] First, with regard to the refugee sur place issue, the applicant's argument is twofold. The Board made a finding of fact that the applicant's participation in demonstrations outside the Ethiopia Embassy in Ottawa by an organization to which he had after he came to Canada namely, the All in Power of People's Organization (APPO) was opportunistic. It found that he had in effect organized matters so as to be a member of that demonstration and to be photographed as a member of that demonstration, so as to support his claim to refugee status. The applicant says first of all that, that finding was wrong in fact and was not supported by the evidence. All I can say in respect to that submission is that the evidence was such that in my view the Board was entitled to infer. From these surrounding circumstances, all of them, that the applicant had indeed created the occasion and the opportunity for the purposes of supporting his refugee claim.

[3] The second part of the applicant's submission in this respect is more serious. He asserts that the Board in any event had no business looking into his motives for taking part in the demonstration outside the Ethiopian Embassy. He says that his motive is irrelevant. What is important is the fact that he did participate and that, that participation had the effect of exposing him to possible danger if he were returned to Ethiopia.

[4] In my view, it has been the law for a very long time that a Convention refugee claimant must demonstrate both an objective and a subjective basis for his claimed fear of persecution. It is my view that the cases will be rare where there is an objective fear but not a subjective fear, but, such cases may exist. In my view, it is certainly relevant to examine the motives underlying a claimant's participation in demonstrations such as this one in order to determine whether or not that claimant does have a subjective fear. The Board's examination of the motives was therefore not an irrelevant matter and the determination which they reached on that subject was one which was open to them on the evidence. It would I agree have been an error if the Board had stopped its examination at that point and had not also looked at whether or not the claimant had an objective fear but, they did not commit that error. The Board looked at the evidence with respect to the objective basis for the applicant's fear of return and found it not to be well-founded. That was a determination which was equally open to the Board on the evidence before it and I can take no issue with it.

[5] With respect to the second argument made by the applicant, the question of the joinder of refugee claims is one which the CRDD Rules leave to the discretion of the Board itself. The test as it seems to be, must be, whether or not the joinder is likely to, or when dealing with it after the fact as we are here today, whether it has caused serious injustice to any of the parties whose claims have thus been joined. Counsel for the applicant takes the point that the claimants, the two of them, whose claims were joined were not related, and that the joinder of non-family members should be discouraged. He may be right but it seems to me that the test must always be as I have stated it and I have not been satisfied that there has been any injustice caused to either of these two claimants or at any rate, to this claimant because it is the only case I have before me, by the joinder. The Claimants were both young people. They were at school together in the same town in Ethiopia. They left the country together and travelled together to this country. Their stories were at least superficially very similar. The Board took care in dealing with the two cases, to deal with them separately, render separate reasons in each case and I can see no basis upon which it can be said that any injustice was caused to this claimant by the joinder.

[6] Accordingly, I shall enter an Order dismissing the application.

"James K. Hugessen"

J.F.C.C.

Toronto, Ontario

July 18, 2000

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-5552-99
STYLE OF CAUSE: NAPOLEON ASFAW

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DATE OF HEARING: MONDAY, JULY 17, 2000

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: HUGESSEN J.

DATED: TUESDAY, JULY 18, 2000

APPEARANCES BY: Mr. Richard Addinall
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FEDERAL COURT OF CANADA

Date: 20000718

Docket: IMM-5552-99

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