Date: 20060501

Docket: IMM-2670-05

Citation: 2006 FC 547

Ottawa, Ontario, May 1, 2006

PRESENT: The Honourable Mr. James Russell

BETWEEN:

ADDIS GEBREMICHAEL and

HIWOTE GEBREMICHAEL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

APPLICATION

[1] This is an application under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA) for judicial review of a decision, dated April 13, 2005 (Decision), of the Refugee Protection Division of the Immigration and Refugee Board (Board), wherein it was determined that Addis Gebremichael (the Principal Applicant) and his sister Hiwote Gebremichael were not Convention refugees or persons in need of protection.

BACKGROUND

[2] The Applicants are citizens of Ethiopia. They claim to have a well-founded fear of persecution in Ethiopia based on political opinion resulting from membership in the All Ethiopia Unity Party (AEUP), and based upon their Amhara ethnicity.

[3] The Principal Applicant, Addis Gebremichael, alleges that, in October 2003, he joined the local AEUP committee in Bahir Dar while at Bahir Dar University. He attended weekly meetings, distributed flyers, and organized rallies. He says that on February 8, 2004, he was warned to cease participating in AEUP activities. Following a demonstration on February 21, 2004, he was arrested and detained at the Bahir Dar police station. He alleges he was beaten and tortured for three weeks before being released on March 24, 2004, on condition that he report weekly to the police station. He says he went to his parent's house in Addis Ababa before going into hiding. On April 17, 2004, Kebele officials allegedly went to the Principal Applicant's house looking for him but, when they could not find him, they rapedhis sister, Hiwote. Hiwote was hospitalized for three days. The Applicants' parents made

arrangement for them to flee Ethiopia. They obtained visitors' visas in July 2004, came to Canada on August 20, 2004, and claimed refugee protection on September 16, 2004.

DECISION UNDER REVIEW

[4] The Board found that the Applicants' claim was not credible and held that they were not Convention refugees or persons in need of protection. The Board found that neither Applicant was a trustworthy or credible witness.

[5] The Board doubted that the Principal Applicant was a member of the AEUP. He provided a letter signed in Addis Ababa stating that he had been a member of the AEUP in Bahir Dar, but the Board gave it no weight. The Board noted that the letter failed to describe any of the alleged activities of the Principal Applicant that had led him to flee Ethiopia. The Board determined that the letter was written specifically to assist the Principal Applicant's claim.

[6] The Board also noted that the Principal Applicant's testimony to the effect that the university administration would have informed the police of his political activities, and that the administration was hostile to him, conflicted with a letter provided to him by Bahir Dar University. The Board thought it highly implausible that the university would issue the letter to a student who had protested against the university and whose activities had been reported to the police. The Board noted that the letter from the university fails to mention any of the Applicant's alleged political activities. So the Board found the absence of such information suggested that the Principal Applicant did not participate in demonstrations and was not targeted by authorities.

[7] Turning to the alleged detention and torture, the Board noted that although the Principal Applicant claimed to have sought medical treatment for injuries sustained from the beatings, no medical report was provided to support this position. The Principal Applicant claimed he could not remember the name of the doctor, that he had lost the paper the doctor had given him, and that he had no way of contacting the medical clinic. The Board concluded that, had the Principal Applicant been beaten, he would have made efforts to obtain the document. The Applicants' parents had made efforts to obtain other documents that were necessary for visitors' visas. A negative inference was drawn from the inaction regarding the medical documents.

[8] The Board also drew an adverse inference with respect to the Applicants' subjective fear because they had held valid visas to the U.S. but had waited before fleeing Ethiopia. The Applicants claimed to have heard that asylum claims in the U.S. were being denied, so they made arrangements to come to Canada instead. The Board held that people truly fearful of their lives would flee as soon as possible.

[9] The Board also did not accept that Hiwote had been sexually abused by Kebele officials. Although the Board took no issue with a medical report that indicated she had been raped, the Board did not believe that the report established she had been raped specifically by Kebele officials. Similarly, although a psychological report determined that Hiwote was suffering from post-traumatic stress disorder (PTSD), the Board was not satisfied that the PTSD symptoms stemmed from sexual assault by Kebele officials because she did not present credible evidence to support her refugee claim.

[10] The Board further noted that Hiwote continued to attend school until June 2004, after the alleged rape. She said that she continued attending school because the authorities were searching for her brother. The Board found this answer unreasonable, holding that a person truly abused would be fearful of her safety and would try to protect herself from future encounters with the Kebele officials. The Board also noted that the chronology did not support Hiwote's claim because her parents had decided in April 2004 that she and her brother should flee Ethiopia.

[11] The Board also drew adverse credibility inferences from omissions in the Applicants' PIFs. The Principal Applicant alleged that his mother was detained for approximately 15 days, yet this information was not contained in his PIF. The Principal Applicant explained that he did not know he had to mention it, but the Board found this explanation lacking. The Principal Applicant also claimed that fellow AEUP members had been detained in similar circumstances. He said this information was not contained in his PIF because he did not think it was important. This explanation was rejected by the Board because the PIF form clearly states that an applicant must provide information regarding similarly situated individuals. The Board also noted that the Principal Applicant had retained experienced counsel. Had the Principal Applicant's peers been detained, the Board found it would have been noted in this PIF. The Board held that this allegation was an exaggeration to bolster his refugee claim.

[12] The Board also gave no weight to a police report produced to show that the Principal Applicant was being sought by Ethiopian authorities. The Board stated that, since it had held that the Principal Applicant was not a member of the AEUP, and therefore would not be targeted as he alleged, the report should be given no weight.

[13] The delay of nearly one month before the Applicants claimed refugee protection also led the Board to draw an adverse inference regarding their subjective fear of persecution. The Applicants claimed they could not consult their uncle for assistance on claiming protection, and that they finally met someone within the Ethiopian community to help them. This explanation for the delay was rejected. The Board found that the uncle had invited the Applicants and that their father had accompanied them to Canada, bringing all of the necessary documents to support their claim, and that truly fearful people would have made efforts to protect their status to avoid removal from Canada.

[14] The success and experiences enjoyed by the Applicants and their parents, as well as the total lack of any reports of persecution of Amhara, led the Board to find that the Applicants had not suffered serious harm because of their Amhara ethnicity. The Board also held there was no more than a mere possibility that the Applicants would suffer persecution on the basis of ethnicity if returned to Ethiopia.

ISSUES

[15] The Applicants raise the following issues:

1. Did the Board err in law or in fact, breach fairness or exceed jurisdiction in determining that the Applicants' evidence was not credible?

APPLICANTS' SUBMISSIONS

[16] The Applicants submit that the Board erred by rejecting the police report because other pieces of evidence had also been rejected. This finding was made without reference to the evidence. The Applicants say that official documents cannot be rejected just because oral or other evidence is rejected (*Ramalingam v. Canada (Minister of Citizenship and Immigration),* [1998] F.C.J. No. 10 (QL) (T.D.)). The Applicants submit that the Board was under an obligation to provide a sufficient basis for rejecting the police report, and that its failure to do so is sufficient grounds to set the Decision aside (*Lin v. Canada(Minister of Employment and Immigration)*(1994), 85 FTR 157, [1994] F.C.J. No. 1567 (QL) (T.D.)).

[17] The Applicants also submit that it was patently unreasonable to reject the letter from the AEUP simply because it came from the Addis Abababranch of the party. The letter was authored by the President of the party and, although the Board explained that the letter should have outlined the Principal Applicant's activities with the AEUP, there was no basis to reject the letter's statement that the Principal Applicant was a member of the AEUP. It is patently unreasonable to impugn for all purposes the credibility of the letter from a political party just because it does not list the persecutory events. (*Owusu-Ansah v. Canada(Minister of Employment and Immigration)*,(1988), 8 Imm. L.R. (2d) 106 (F.C.A.)). Since the Principal Applicant had more than a mere possibility of persecution as a member of AEUP, any error related to the letter was clearly material.

[18] The Applicants further argue that the Board's finding regarding the university letter was speculative and patently unreasonable. The Principal Applicant's main argument is that, even if the university was hostile towards him, it would still have provided him with the routine letter stating that he was a student.

[19] As for the failure to provide a medical report, the Principal Applicant claims that the Board failed to consider his full explanation by neglecting to consider his pain at the time he underwent medical treatment.

[20] The Applicants also claim the Board erred by finding the Principal Applicant learned of his mother's detention from his father, when he testified that he learned of the detention when his mother informed him by telephone.

[21] The Principal Applicant submits that he did not leave Ethiopia immediately because his parents could not arrange a flight, and he remained in hiding until arrangements could be made. The Board erred, he says, by failing to explain why being in hiding was an unsatisfactory explanation for delay in this case, especially when the jurisprudence tends to accept this kind of explanation.

[22] On the issue of Hiwote's credibility, the Applicants say that the Board erred by considering her behaviour from the perspective of an adult. The argument is that the Board erred by failing to consider that she was a minor suffering from PTSD. Given that she was under 18, and had been raped, her judgment and reasoning should have been considered from the perspective of a minor. The Applicants point out that this Court has accepted situations where an applicant continued her daily life for a time before fleeing, even in the face of incidents of persecution (*Anwar v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1434, 2002 FCT 1077 (QL) (T.D.)).

[23] The Applicants contend that, since the Board accepted the diagnosis of the second medical report and Hiwote's psychological circumstances, it was patently unreasonable to find her behaviour implausible.

[24] The Applicants claim that the Board should have considered the *Chairperson's Guideline (Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues)* for the assessment of children's evidence in assessing Hiwote's credibility. Failing to apply the *Guideline* was an error of law (*Narvarez v. Canada (Minister of Citizenship and Immigration),* [1995] 2 F.C. 55 (T.D.)).

[25] The Applicants argue that the Board also made a patently unreasonable finding that unreasonable delay existed in this case. They also refer to cases that confirm that the Board does not have expertise in official documents issued by foreign governments.

[26] The Principal Applicant testified that, since arriving in Canada, he has been involved in political activities with the AEUCRO. The Applicants argue that this raised a separate reason why he would be at risk (as submitted by Applicants' counsel before the Board; see Certified Tribunal Record at pp. 405-406). The Applicants say that the Board was required to deal with this *sur place* element of the claim under section 96 of the IRPA. The Applicants also argue that the Board's failure to consider the *sur place* elements of the claim constitutes a fatal reviewable error (*Ghasemian v. Canada(Minister of Citizenship and Immigration)*, 2003 FC 1266; *Chen v. Canada (Solicitor General)* (1993), 68 FTR 9, [1993] F.C.J. No. 779 (QL) (T.D.); *Moradi v. Canada (Minister of Citizenship and Immigration)* (1998), 155 FTR 269, [1998] F.C.J. No. 1348 (QL) (T.D.) at para. 17).

[27] Finally, the Applicants take the position that the Board erred by failing to conduct a section 97 analysis, which was an absolute obligation in this case because the Principal Applicant's activities were political. This analysis must be conducted even if the Board finds an applicant's story not credible, so long as there is some objective, credible evidence relevant to section 97 (*Asu v. Canada (Minister of Citizenship and Immigration),* 2005 FC 1693; *Soleimanian v. Canada (Minister of Citizenship and Immigration),* 2004 FC 1660; *Anthonimuthu v. Canada (Minister of Citizenship and Immigration),* 2005 FC 141). In the alternative, the Applicants submit that the reasons of the Board with respect to section 97 are inadequate (*Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (F.C.A.)).

RESPONDENT'S SUBMISSIONS

[28] The Respondent submits that the Board did not err in its weighing of the documentary evidence provided by the Applicants.

[29] With respect to the letter from the police, the Respondent says that the Board accorded it no weight after expressing doubts regarding its origins. The Board noted that the letter was provided by the Addis Ababapolice, yet the Principal Applicant's difficulties with the police originated in Bahir Dar. The Board also noted that these findings were not made in isolation but followed several negative credibility findings, including the finding that the Applicants' mother had not been detained as alleged. Contrary to the Applicants' submissions, the jurisprudence is clear that the Board may discount documents without verification if there is a sufficient evidentiary basis for doubting their authenticity or where an applicant is not credible (*Allouche v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No.

339 at para. 4 (QL) (T.D.); *Culinescu v. Canada (Minister of Citizenship and Immigration)* (1997), 136 F.T.R. 241 at paras. 14-15 (T.D.); *Riveros v. Canada (Minister of Citizenship and Immigration),* 2001 FCT 1009 at paras. 53-54). The Decision should not be interfered with unless it was patently unreasonable.

[30] The Respondent contends that the Board provided adequate reasons for according no weight to the letter from the AEUP. Adequate reasons were also given for the Board's findings about the letter from the university. The Board has experience and expertise that extends to documentary evidence, and its findings with respect to these letters were well-founded and reasonable (*Merja v. Canada(Minister of Citizenship and Immigration)*, 2005 FC 73 at paras. 45, 47).

[31] The Respondent submits that it was reasonable for the Board to draw a negative inference from the Principal Applicant's failure to attempt to obtain a medical report regarding his treatment for his injuries sustained from the alleged beatings. This negative inference was reinforced by the fact that the Applicants' parents had successfully obtained other documents.

[32] The Respondent also notes that while the Board may have erred in suggesting that the Principal Applicant learned of his mother's detention from his father, rather than directly from his mother, this isolated misapprehension of the evidence is immaterial, as the real issue regarding the mother's alleged detention was the Principal Applicant's failure to mention it in his PIF. The Respondent submits that the omission of important information from a PIF can reasonably lead the Board to doubt an applicant's credibility (*Kammoun v. Canada (Minister of Citizenship and Immigration)*,2002 FCT 217; *Basseghi v.Canada(Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867 (QL) (T.D.); *Castroman v. Canada(Secretary of State)*(1994), 27 Imm. L.R. (2d) 129 (F.C.T.D.); *Grinevich v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 444 (QL) (T.D.); *Sanchez v. Canada(Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 536 (QL) (T.D.)).

[33] While the Board accepted the Applicants' claim that they were in hiding until arrangements were made for them to leave for Canada, the Respondent suggests that the Board's main concern was that they did not travel to the U.S. when they held valid U.S. visas. It was open to the Board to find the Applicants' explanation unreasonable, and it follows that it was reasonable to find the Applicants' inaction was not indicative of persons possessing a subjective, well-founded fear (*Huerta v. Canada (Minister of Employment and Immigration)*, (1993), 157 N.R. 225 (F.C.A.); *Radulescu v. Canada (Minister of Employment and Immigration),* [1993] F.C.J. No. 589 (QL) (T.D.); *Hristov v. Canada (Minister of Employment and Immigration),* [1995] F.C.J. No. 32 (QL) (T.D.) at paras. 13, 22-24).

[34] With regards to Hiwote's claim, the Respondent submits that it is clear from the Decision that the Board took into account that she was a minor at the time of the hearing. The Decision refers to the female Applicant as the "Minor Claimant."

[35] The Respondent also takes issue with the Applicants' arguments regarding the psychological report, and suggests that the Applicants are really requesting that the Court re-weigh the psychiatric evidence, which it is prohibited from doing *Canada* (*Minister of Citizenship and Immigration) v. Szoradi ,* 2003 FCT 388 at para. 19). The Respondent submits that the diagnosis did not preclude the Board from finding Hiwote's claim implausible. It was reasonable for the Board to find that the psychologist's report supported Hiwote's difficulties with PTSD, but not the particular facts that she alleged gave rise to her

fear of persecution (*Al-Kahtani v. Canada (Minister of Citizenship and Immigration),* [1996] F.C.J. No. 335 (QL) (T.D.) at para. 14).

[36] The Respondent concludes that the Board applied common sense, as it is entitled to do, in finding it strange that Hiwote continued with her schooling after allegedly being raped by officials who were looking for her brother. It was open to the Board to determine that if a person is truly abused or mistreated, she would have made efforts to protect herself from future abuse (*Alizadeh v. Canada (Minister of Employment and Immigration),* [1993] F.C.J. No. 11 (QL) (C.A.)).

ANALYSIS

Credibility

Standard of review

[37] In my view, the appropriate standard of review in this case is that of patent unreasonableness. A helpful summary of many of the principles applicable to the facts of this case can be found in *R.K.L. v. Canada(Minister of Citizenship and Immigration,* [2003] F.C.J. No. 162, 2003 FCT 116 (QL) (T.D.):

7. The determination of an applicant's credibility is the heartland of the Board's jurisdiction. This Court has found that the Board has well-established expertise in the determination of questions of fact, particularly in the evaluation of the credibility and the subjective fear of persecution of an applicant: see *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1800 at para. 38 (QL) (T.D.); and *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at para. 14.

8. Moreover, it has been recognized and confirmed that, with respect to credibility and assessment of evidence, this Court may not substitute its decision for that of the Board when the applicant has failed to prove that the Board's decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it: see *Akinlolu v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 296 at para. 14 (QL) (T.D.) ("Akinlolu"); *Kanyai v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1124 at para. 9 (QL) (T.D.) ("Kanyai"); and the grounds for review set out in paragraph 18.1(4)(d) of the Federal Court Act.

9. Normally, the Board is entitled to conclude that an applicant is not credible because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in "clear and unmistakable terms": see *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236 (F.C.A.); *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.) ("Aguebor"); *Zhou v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1087 (QL) (C.A.); and *Kanyai, supra*, at para. 10.

10. Furthermore, the Board is entitled to make reasonable findings based on implausibilities, common sense and rationality: see *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 at para. 2 (QL) (C.A.); and *Aguebor, supra*, at para. 4. The Board may reject uncontradicted evidence if it is not consistent with the probabilities

affecting the case as a whole, or where inconsistencies are found in the evidence: see *Akinlolu, supra*, at para. 13; and *Kanyai, supra*, at para. 11.

11. However, not every kind of inconsistency or implausibility in the applicant's evidence will reasonably support the Board's negative findings on overall credibility. It would not be proper for the Board to base its findings on extensive "microscopic" examination of issues irrelevant or peripheral to the applicant's claim: see *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168 at para. 9 (F.C.A.) ("Attakora"); and *Owusu-Ansah v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 442 (QL) (C.A.) ("Owusu-Ansah"). In particular, where a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions, it has been held to be peripheral and of very limited value to a determination of general credibility: see *Attakora, supra*; and *Takhar v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 240 at para. 14 (QL) (T.D.) ("Takhar").

12. Furthermore, the Board should not be quick to apply the North American logic and reasoning to the claimant's behaviour: consideration should be given to the claimant's age, cultural background and previous social experiences: see *Rahnema v. Canada(Solicitor General)*, [1993] F.C.J. No. 1431 at para. 20 (QL) (T.D.); and *El-Naem v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 185 (QL) (T.D.). Likewise, a lack of coherency or consistency in the claimant's testimony should be viewed in light of the claimant's psychological condition, especially where it has been medically documented: see *Reyes v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 282 (QL) (C.A.); *Sanghera v. Canada (Minister of Employment and Immigration)* (1994), 73 F.T.R. No. 155; and *Luttra Nievas v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 34 (QL) (T.D.).

13. A person's first story is usually the most genuine and, therefore, the one to be most believed. That being said, although the failure to report a fact can be a cause for concern, it should not always be so. That, again depends on all the circumstances: see *Fajardo v. Canada(Minister of Employment and Immigration)*, [1993] F.C.J. No. 915 at para. 5 (QL) (C.A.); *Owusu-Ansah, supra*; and *Sheikh v. Canada(Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 568 (QL) (T.D.). In evaluating the applicant's first encounters with Canadian immigration authorities or referring to the applicant's Port of Entry Statements, the Board should also be mindful of the fact that "most refugees have lived experiences in their country of origin which give them good reason to distrust persons in authority": see Prof. James C. Hathaway, The Law of Refugee Status, (Toronto: Butterworth, 1991) at 84-85; *Attakora, supra*; and *Takhar, supra*.

14. Finally, the applicant's credibility and the plausibility of testimony should be assessed in the context of her country's conditions and other documentary evidence available to the Board. Minor or peripheral inconsistencies in the applicant's evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of the applicant's story: see *Attakora, supra*; and *Frimpong v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 441 (QL) (C.A.).

[38] While the Board's credibility findings should be given considerable deference, the above overview makes it clear that there will be instances that may require the Court's intervention. In the present case the Board's findings present something of a mixed bag and need to be reviewed in turn to arrive at any overall conclusions about the Decision.

The Principal Applicant's Claim and the Board's Use of Documentary Evidence

[39] The Board's use of the AEUP letter gives rise to two separate concerns. The Board simply states that it did not give the letter any weight (Decision, page 4). It was open to the Board to find that, since the letter from the AEUP's Addis Ababaoffice contained no details of the events that led the Applicant to flee Ethiopia, the letter should be given no weight when attempting to determine whether Ethiopian authorities had targeted the Applicant for his political activities.

[40] However, the Board's conclusion that it "does not give any weight to this letter" suggests that the Board also discounted the letter in considering whether the Principal Applicant was a member of the AEUP. This is suggested by the Board's overall conclusion that it had "valid reasons to doubt the principal claimant's contentions that he was a member of the AEUP." I agree with the Applicants that the Board provided no reasons to justify its rejection of the letter's statement that the Applicant was a member of the AEUP. In concluding that it doubted the Principal Applicant's membership in the AEUP, the Board should have explained why it could not accept the AEUP letter for the purposes of establishing membership in that organization. The Board acknowledges that the AEUP letter was presented by the Principal Applicant "to show that he was an active member." Yet the Board gives no weight to the letter because it is "completely silent with respect to the principal claimant's activities and the problems he allegedly experienced." In my view, the Board erred in making an erroneous finding of fact without regard to material evidence. Since the Principal Applicant's membership in the AEUP was a key fact in his claim, this error was highly material.

[41] Turning to the letter from Bahir Dar University, I believe the Board correctly highlighted the fact that the letter was written on request of the student, which casts doubt on the Principal Applicant's claim that the letter was obtained by his father. However, in my view, the Board improperly relied on this letter for more information than it contains. It is clear that the letter provided by Bahir Dar University is a standard letter confirming the Principal Applicant's student status at the relevant times. The Board states that it "finds it reasonable to believe that if the claimant was truly political activist university would have made mention of the principle claimant's conduct regarding his political involvement in this letter." (Decision, page 6). In my view, this assumption is patently unreasonable and it was a reviewable error for the Board to use the letter to impugn the Principal Applicant's claim in the following way:

[t]he absence of this information from the letter leads the Board to find that the principal claimant did not participate in demonstrations and was not being targeted by the authorities, as alleged.

In my view, the AEUP letter and the Bahir Dar University letter simply attest to the Principal Applicant's participation in a political group and to his being a student at a university. These were the reasons they were produced. Although it was open to the Board to give these letters no weight with respect to the Principal Applicant's allegations of arrest, detention and torture, the fact that these documents do not confirm these allegations should not have led the Board to draw the kind of broad adverse findings that it did.

[42] The Board discounted the police report by stating that "[g]iven the panel's findings that he was not a member of the AEUP and that he was not targeted as alleged, the panel does not give any weight to this document" (Decision, at p. 10). Since I believe that finding the Principal Applicant was not a member in the AEUP on the basis of the AEUP letter was patently unreasonable, it follows that it was patently unreasonable to dismiss the police report in this manner. Although the Board also notes that the report was issued in Addis Ababa, while the Principal Applicant's problems occurred in Bahir Dar, this is not, in my view, a sufficient evidentiary ground to doubt the authenticity of the document.

[43] Despite these errors, there was other documentary and oral evidence to support the Board's finding that the Principal Applicant did not participate in political demonstrations, was not arrested, and was not tortured. It was open to the Board to draw a negative inference from the Principal Applicant's failure to attempt to find documentary evidence of his medical treatment following the alleged incarceration and torture. Also, because an omission of critical facts from a PIF can form the basis for an adverse finding of credibility, it was open to the Board to find that the Applicants' mother had not been detained as alleged, and it was reasonable to impugn the credibility of the Principal Applicant's claim on this basis (*El Masalati v. Canada (Minister of Citizenship and Immigration),* 2005 FC 1311 (CanLII); *Robles v. Canada (Minister of Citizenship and Immigration)*,[2003] F.C.J. No. 520 (QL) (T.D.) at para. 43).

[44] While delay in fleeing a country may normally be justified if the claimant was in hiding at that time, the Board clearly explained why it drew an adverse inference from the delay in this case. It was open to the Board to find that the explanations provided for not leaving the country earlier did not sufficiently explain why the Applicants did not leave when they had valid visas for the United States. The Board concluded that "a person truly fearful of their life would flee the country at the first available opportunity" (Decision at page 7; Applicants' Record at page 13). In my view, this reasonable conclusion provides a clear explanation why the Board drew an adverse inference with respect to the Applicants' subjective fear.

[45] Also, it was not unreasonable for the Board to draw an adverse inference from the Principal Applicant's delay in making a refugee claim upon arrival in Canada. The Board clearly explained that the delay, while not a decisive factor, did show behaviour that was inconsistent with a subjective fear of persecution.

The Minor Applicant's Claim

[46] Turning to Hiwote's claim, the Board held that "a person truly abused and mistreated as alleged would be fearful of her safety [and would] make efforts to protect herself from any such encounters in the future" (Decision at p. 8). The Board drew an adverse inference with respect to Hiwote's subjective fear. In doing so, I believe the Board fell into the trap warned against in *Anwar v. Canada(Minister of Citizenship and Immigration)* 2002 FCT 1077.

[47] In *Anwar*, as the Applicants note, a claimant continued her daily life after being released from detention on four separate occasions. Only after being released from a fifth detention did the claimant go into hiding. The Court in *Anwar* made the following helpful observations:

48. The analysis of the Board with respect to the arrests of the claimant and her subsequent conduct merits our discussion. The Board did not find the conduct of the applicant and her family during the period of the first four arrests plausible. Such a finding was stated and explained throughout the reasons of the Board.

49. In my view, however, the Board considered the plausibility of their conduct during this period with undue hindsight. Looking back at the relevant period, we see four arrests in succession in 1999. That the claimant continued going to school after each of the first four arrests, rather than remaining at home, was a factor that led the Board to conclude that the version of events advanced by the applicant was implausible.

50. However, the record, including the transcript of the hearing, indicates that the applicant was acting on a belief that she did nothing wrong and that, accordingly, she should not have to change the way in which she led her life. In *Samani, supra*, Hugessen J. stated at paragraph 4:

[...] It is never particularly persuasive to say that an action is implausible simple because it may be dangerous for a politically committed person.

51. I am hesitant to adopt entirely the submission of the applicant that her attendance at school should be assimilated to the conduct of a politically committed person. However, I accept the line of reasoning advanced by Hugessen J. that the conduct to which an applicant testifies is not implausible for the simple reason that it was risky from the vantage point of a CRDD Board - or a court undertaking judicial review - with a full record before it. Without engaging in speculation of the same nature which led the Board astray in this case, I cannot imagine that the documentary or other evidence on the record would require a finding that the applicant had no reason to believe, or at least hope, that after the first period of detention, during which she denied knowledge of what was being alleged, that would be the end of her problems with the authorities.

52. The Board noted that her first three detention periods were one week, two days and five days, respectively, and that between May 1999 and March 2000, she had not been arrested. It was not implausible for her to believe, during that period, that the worst for her may have been over; nor was it implausible that, despite such assaults on her physical integrity, such as electric shocks, beatings and being doused with cold water, it took the threat to her sexual integrity to serve as the impetus for her to go into hiding. The conclusions reached by the Board in this regard are unreasonable as they are not justified by the record before me.

[48] In my opinion, the Board in the case at bar considered Hiwote's actions, most notably her return to school, with undue hindsight. It was not implausible for Hiwote to have honestly believed or hoped that she would not be sexually assaulted in the future, and that she would be safe because the authorities were interested in her brother and not her. The Board's conclusions on this point seem to be made in a vacuum, and fail to consider Hiwote's PTSD or any cultural factors that may have affected her decision to continue going to school. The psychologist's report notes that sexual assault is highly stigmatized in Amharic and Ethiopian cultures (Devins Report, Applicants' Record, at page 62). The Board erred by failing to consider this relevant, important evidence. The Respondent points out that the Board does refer to Hiwote as the "Minor Applicant" and thus acknowledges her age. But when the Decision is read as a whole this was clearly an identification tag rather than a way of showing that the Board attempted to look at Hiwote's evidence from the perspective of someone her

age and with her cultural background. This is the aspect of the Decision that concerns me the most. The Board assesses the reasonableness of Hiwote's explanation from its own perspective and not hers.

Conclusion

[49] This is indeed a mixed bag but, taken as a whole, I do not believe the adverse credibility findings can stand. The Board improperly focused in a microscopic manner on Hiwote's answer as to why she continued attending school. It also failed to sufficiently consider Hiwote's age or cultural background. The Board also erred by maintaining patently unreasonable expectations as to the contents of the AEUP and university letters, and by finding the Principal Applicant was not a member of the AEUP without providing sufficient reasons for explaining why it rejected the material before it.

[50] In my view, these errors, considered cumulatively, undermine the entire Decision and it should be set aside. I will go on, however, to examine the remaining issues.

***Sur Place*Claim and the Section 97 Claim**

[51] In providing an overview of section 97, the Applicants refer to the recent case of *Kandiah v. Canada (Minister of Citizenship and Immigration)* 2005 FC 181. In that case, Justice Martineau explained at paragraph 16 that "[s]ubsequent jurisprudence has found the lack of a separate section 97 analysis to be both reviewable and non-reviewable, depending on the circumstances." In this case, since the Board held that the Principal Applicant was not a member of the AEUP, it is understandable that a separate section 97 analysis was not conducted. However, as explained above, the Board erred in drawing this conclusion. The possibility that the Principal Applicant was a member of the AEUP, as well as his subsequent alleged membership in their Toronto branch, raises the question of whether he could be a person in need of protection if returned to Ethiopia.

[52] The Applicants submit that the documentary evidence suggested that anyone known to be an active member of the opposition abroad faces difficulties upon return to Ethiopia, and could be targeted by the authorities (Certified Tribunal Record, at pp. 405-406). While I have some doubt as to whether the documentation demonstrates that the Principal Applicant is a person in need of protection under section 97, it is within the Board's exclusive jurisdiction to make that determination. I agree with the Applicants that the Board ought to have considered the *sur place* elements of the claim. The failure to do so is also a reviewable error. The Applicants provided some evidence and argument on this issue and the Board should have considered it.

ORDER

THIS COURT ORDERS that

1. The application for judicial review is allowed. The Board's Decision dated April 13, 2005 is set aside, and the Applicants' claim is referred back to a differently constituted Board for redetermination.

2. There is no question for certification.

"James Russell"

JUDGE

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2670-05

STYLE OF CAUSE: ADDIS GEBREMICHAEL ET AL

APPLICANTS

and

MINISTER OF CITIZENSHIP & IMMIGRATION

RESPONDENT

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DATED: May 1, 2006

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