Date: 20000726 Docket: IMM-5564-99

BETWEEN:

HAIMANOT ZEWEDU

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER (Delivered from the Bench in Toronto, Ontario on Tuesday, July 18, 2000)

HUGESSEN J.

[1] This is an application for judicial review of 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 four points.

[2] First, she says that the Refugee Board erred in making an unfavourable assessment of her credibility. The Board catalogued a number of contradictions, inconsistencies and

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implausibilities which it said it had found in the applicant's evidence. The applicant has correctly drawn my attention to at least a couple of examples where the Board's findings appear to be questionable. That, however, is not enough. It remains there was a substantial number ofweaknesses in the applicant's evidence which the Board mentions and which fully justify on their own the Board's finding with respect to credibility. It would take far more than has been demonstrated to me here for me to overturn a finding of credibility made by a Board which had the advantage of seeing and hearing the applicant before it during the course of the hearing.

[3] The second point taken is with regards to the Board's finding that the applicant did not have an objectively well-founded fear of persecution in the event that she would have to return to her country of nationality, Ethiopia. In reaching its conclusion, the Board based itself on certain documentary evidence which it chose to accept and to believe. In particular, part of that evidence emanated from an agency of the Government of the United States. The applicant says that that evidence comes from a tainted source and is outweighed by other documentary evidence which the Board should have accepted which might have let it to an opposite conclusion. In my view, it is no error of law for the Board not to catalogue and document all the evidence before it and to run through it piece by piece to say why it accepts or rej ects any given piece of evidence. There was evidence upon which the Board could rely to reach the conclusion it did. There was also evidence which arguably might have led the

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Board to another conclusion, but it was the Board's job to look at and assess that evidence and I cannot say that it erred in law in the way that it carried out its function.

[4] The applicant's third point is one of some interest and I dealt with it in another case only yesterday, but it has also been dealt with by this Court on an earlier occasion in the case of *Herrera'*. **The Board made a finding that the applicant who had joined a political organization opposed as she said to the Government of Ethiopia, the AAPO, only after she arrived here in Canada had participated in a demonstration organized by the AAPO outside the Ethiopian Embassy in Ottawa. The Board also found that the applicant's participation and membership in that organization and in the demonstration were not genuine, that she had in fact done what she did for the purposes of bolstering up her refugee claim and that she had in some way contrived to have herself photographed while at the demonstration and in fact, such photographs were used to support her evidence of critical activity here in Canada which might lead to her persecution if returned in Ethiopia.**

[5] The argument is that it was irrelevant for the Board to examine the applicant's motives in acting as she did. In the view which I and other members of this Court have previously expressed, it is not irrelevant. The matter of motive goes to

the genuineness or otherwise of the applicant's expressed subjective fear of persecution. That said, however, there is and must always be an intimate interplay between the subjective and objective

Herrera v. M.E.I. (1993), 70 F.T.R. *253 (F.C.T.D.)*

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elements of the fear of persecution which is central to the definition of convention refugee and, I have previously expressed the view that it would be an error for a Board to rely exclusively on its view that a claimant did not have a subjective fear of persecution without also examining the objective basis for that fear. The Board in this case, however, did not commit an error of that sort.

[6] The applicant also argues that for the Board to allow itself to get into an examination of an applicant's motives puts at risk the Charger guaranteed freedom of expression enjoyed by everybody in Canada and in particular in this case enjoyed by refugee claimants in Canada. I think this mis-characterizes the situation. Freedom of expression protects expressions which are after all intended to be heard. One expresses ideas and thoughts with the expectation that they will be heard and assessed and judged by others. Expression in a vacuum is no expression at all. It is no breach of a person's freedom of expression if another person examines that expression for the purposes of assessing whether or not it is genuine, whether or not the ideas expressed are good or bad. That is what the Board has to do when it assesses the motive of expressed political opinions in Canada with the purpose of determining whether or not they are genuine.

[7] I take, however, counsel's point, and it is a serious one, that there may be a risk of a chilling effect on freedom of expression if the Board were to rely exclusively upon an examination of motive on the part of refugee claimants. I do not detect any evidence of that

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in the present case and, I would think that the Board would be wise not to embark on that kind of examination as a mater of course.

[8] It is, however, in my view, a perfectly proper exercise for the Board to examine a refugee claimant's expression of political opinion in this country with a view to ensuring itself that that expression is made as a genuine result of the person's views of the political situation in his or her country of origin and not for the purpose of creating what is in effect a bogus refugee claim.

[9] The final point taken by the applicant has to do with the j oinder of the hearing of her claim with that of another claimant. This is a matter which is specifically left by the Rules of the CRDD to the discretion of the presiding member. The test, as I previously expressed it, is whether or not the fact that the claims were joined has caused an injustice to either of the joined claims.

[10] In the present case, I am satisfied that the Board took considerable care to deal with the claimants separately. Only one example was given to me where arguably the one claimant was not considered separately from the other and it was with regard to a relatively minor aspect of the case. I am not satisfied that in the circumstances there has been an injustice such that would justify me in interfering with the exercise of a discretion which the applicable legislation gives to the Board.

[11] Accordingly, I propose to dismiss the application.

"James K. Hugessen" Judge

Ottawa, Ontario July 26, 2000

FEDERAL COURT OF CANADA TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

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