Federal Court | Cour fédérale

**Date: 20110505**

**Docket: IMM-6009-09**

**Citation: 2011 FC 521**



**Ottawa, Ontario, May 5, 2011**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**TSEGAY KIFLAY WELDESILASSIE**
**(A.K.A. TSEGAY FIKLAY WELDESILASSIE)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP**
**AND IMMIGRATION**

**Respondent**

# REASONS FOR JUDGMENT AND JUDGMENT

## I. Introduction

[1] The Applicant, Mr. Tsegay Kiflay Weldesilassie, is a citizen of Eritrea. In February 2007, he paid a broker to arrange for him to travel by plane to Egypt. In 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 September 21, 2009, a visa officer (the Officer) with the Canadian Embassy in

Cairo, Egypt refused his application. The Applicant seeks to overturn this decision. For the reasons which follow, I will allow this application for judicial review.

## II. Issues

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

1. Did the Officer err by failing to have regard to the Applicant's status as a UNHCR refugee or 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 as a military service evader?

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

[3] 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-6010-09 (Selam Petros WOLDESELLASIE). 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.

[4] 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”.

[5] 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.



[6] 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*, above.

## IV. The Affidavits

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

[8] The affidavits presented in this case by the Applicant (besides that of the Applicant himself) 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.



[9] 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

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

[11] The Applicant, Mr. Tsegay Kiflay Weldesilassie, was born on January 9, 1986 in Ararib, Eritrea. The Applicant was raised a Catholic but converted to Pentecostalism as a teenager in 2001. In May 2002, the government of Eritrea banned minority churches, including Pentecostal churches, and began a concerted effort to target adherents of such religions and to shut down their churches.

[12] In 2004, the Applicant was to report to the Sawa Defence Training Centre to begin compulsory National Military Service. In October 2004, the Applicant was arrested for failing to report for service and taken to the Adi Abeto prison. The Applicant was interrogated and tortured, denied food for three days and forced to sleep outside without blankets or shoes. The Applicant escaped in November 2004 and went into hiding. On March 6, 2005, the Applicant was discovered and rearrested during a worship service. He was taken to another prison where he was punished severely.



[13] In April 2006, the Applicant was transferred by truck to Sawa with 170 other prisoners. While in traffic, the Applicant and 22 other people were able to jump from the truck; two prisoners were killed by the guards in the process. The Applicant had some money which he used to take a taxi to Embagliona. The Applicant stayed with a relative because he was afraid to return home.

[14] The Applicant paid $2000 to smugglers to help him to cross the border illegally into Sudan.

[15] In February 2007, the Applicant was arrested by Sudanese police but was released on payment of a bribe. The Applicant then paid a broker to arrange for him to travel by plane to Cairo, Egypt.

[16] On March 23, 2007, the Applicant entered Egypt and, in July 2007, registered as a UNHCR asylum seeker. On September 15, 2009, the Applicant was recognized as a UNHCR refugee.

## VI. The Interview

[17] On September 16, 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 the notes into CAIPS, apparently on September 17, 2009.



[18] Further descriptions of what went on during the interview are contained in the affidavits of the Officer (sworn on September 5, 2010) and the Applicant (sworn on February 23, 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.

[19] 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.

[20] The Applicant was interviewed by a representative of AMERA on November 1, 2009, during which interview he provided further details of his interview with the Officer. The notes are attached to 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. 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

[21] In her rejection letter dated September 21, 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 am not satisfied that you were indeed a follower of the Pentecostal faith. You were unable to provide specific details concerning the Pentecostal religion. Further, the story of your escape is not credible. I find it unreasonable that 170 prisoners are guarded by only six guards. In addition, I am satisfied that you left Eritrea in order to evade national service. Evading national service obligations does not constitute persecution or violation of human rights. As I do not find you credible, I am not satisfied that you meet the country of asylum definition; that you have not been and do not continue to be seriously and personally affected by massive violation of your civil rights or that you meet the convention refugee definition of having a well-founded fear of persecution or the source country definition nor that you are not inadmissible.

[22] 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. he was not forthcoming;

2. he was unable to provide “specific details” about the Pentecostal religion;

3. the Officer did not believe the Applicant's story of escape because it is "unreasonable" that only six guards would be in charge of 170 prisoners; and

4. he had left Eritrea to evade mandatory military service, which – in the Officer's view – does not constitute persecution.



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

[24] 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 the 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: Nothing whatsoever is contained in the CAIPS notes to explain what the Officer meant by "not forthcoming".

2. Six guards: The CAIPS notes show that the Applicant provided details of his escape which took place during the transportation of prisoners from one camp to another. As set out in the notes, the Applicant described the escape as follows: "AROUND 6AM THE CAR SLOWED DOWN, THE PRISONERS STARTING ESCAPING, TWO WERE KILLED, I WAS [LUCKY] TO ESCAPE". The Officer then asked:

"HOW MANY GUARDS", to which the Applicant replied "170 PRISONERS, 6 GUARDS".

3. Pentecostal Faith: The complete portion of the CAIPS notes dealing with the Applicant's knowledge of the Pentecostal faith is as follows:

> WILL NOW ASK ABOUT PENTECOSTAL REL.WHAT REL WERE YOU BEFORE PENTE? CATHOLIC.
> WHAT IS THE DIFFERENCE BETWEEN THE TWO RELS? BAPISTIZED [SIC] OLDER, INSTEAD OF YOUNGER,
> DON'T PRAY FOR ANGELS
> DON'T USE PHOTOS
> WHAT OTHER DIFFERENCES? PRAY IN DIFFERENT LANGUAGES.

As the interview was ending, the Officer apparently expressed her concerns:

> "I ASKED SPECIFIC QUESTIONS RELATED TO THE PENTECOSTAL RELIGION AND YOU HAVE NO IDEA WHAT I WAS TALKING ABOUT . . . YOUR KNOWLEDGE IS VERY BASIC FOR SOMEONE WHO HAS BEEN STUDYING FOR 8 YEARS."

4. Draft Evasion: In her closing comments in the CAIPS notes, the Officer wrote:

> BELIEVE PA WAS EVADING MILITARY SERVICE SINCE HE DID NOT AGREE TO GO TO SAWA WHEN HE WAS INSTRUCTED TO DO SO IN 2004.

[25] In short, the CAIPS notes do not provide us with very much in the way of additional reasons for the refusal.

## VIII. Statutory Framework

[26] 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.



[27] 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 to another country.

## IX. Standard of Review

[28] Overall, the decision of a visa officer is reviewable on a 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).

[29] 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 certain factors or evidence

### A. *UNHCR Status*

[30] The Applicant has been recognized as a Convention refugee by the United Nations High Commission for Refugees (UNHCR), as evidenced by a “blue card” issued on September 15, 2009, following an interview with the UNHCR. As I understand it, the blue identity card shows that the bearer has been individually assessed and is officially acknowledged by this UN body as a refugee. The Applicant submits that the Officer erred by failing to give any consideration to the UNHCR

status as a factor relevant to her determination. The Officer listed the “blue UNHCR card” as a document establishing the Applicant’s identity but made no further reference to this document.

[31] The importance of the UNHCR designation is discussed in some detail in *Ghirmatsion*, above, and is not repeated here. I restate that 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) teaches the Officer the importance of the UNHCR refugee recognition. At section 13.3 of OP 5, visa officers are instructed that a decision by the UNHCR with regard to an applicant’s refugee status is a factor to consider in determining eligibility for refugee status.

[32] Beyond the bare reference to the UNHCR card as an identity document, there is no further reference in the CAIPS notes or the decision to the Applicant’s status with the UNHCR. I recognize that UNHCR status as a refugee is not determinative; the Officer’s mandate is to assess the Applicant’s credibility and to determine the merits of his claim under applicable Canadian laws. Nevertheless, OP 5 recognizes the importance and relevance of the UNHCR in the processing of applications under the Refugee Abroad Class. In my view, the Applicant’s status as a UNHCR refugee was a personal and relevant consideration.

[33] The evidence of the UNHCR designation was so important to the Applicant's case that it can be inferred from the Officer’s failure to mention it in her reasons that the decision of the Officer was made without regard to it (*Cepeda-Gutierrez v Canada (The Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 (QL)(FCTD), at para 17). This is a central

element to the context of the decision. The Officer, faced with a UNHCR refugee, should have explained why her assessment did not concur with that of the UNHCR. She was not under any obligation to blindly follow the UNHCR designation; however, she was obliged to have regard to it. Unless a visa officer explains why a UNHCR designation is not being followed, we have no way of knowing whether regard was had to that highly relevant evidence.



[34] This error by the Officer is a sufficient basis on which to overturn the decision. I wish, however, to repeat that the UNHCR determination is not determinative; the Officer must still carry out her own assessment of the evidence, including the evidence of the UNHCR Refugee status.

B. *Failure to Assess Eligibility as set out in OP 5*

[35] As noted above, the Officer rejected the claim of the Applicant on the grounds that she did not find the Applicant to be credible. The Applicant argues that the Officer failed to carry out an assessment as to whether he met the definition of a Convention refugee. In particular, the Applicant faults the Officer for not explicitly following the steps outlined in OP 5, section 13.3.

[36] This argument was raised and rejected by me 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. 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 of OP 5.



## XI. Reasonableness of Credibility Findings

[38] As noted above, the Officer's negative credibility determination contained two elements; specifically, the Officer did not believe that the Applicant had ever been detained or that he was of the Pentecostal faith. I will examine each of these findings.

### A. *Detention*

[39] The reason expressed by the Officer for disbelieving the Applicant's story of his detention related to his escape from detention in April 2006. According to the Applicant's testimony (as recorded in the CAIPS notes) the Applicant escaped detention during the transportation of 170 prisoners by truck. In response to the only question asked about his escape, the Applicant told the Officer that there were about six guards with the trucks. The Officer, in the rejection letter, stated that, "I find it unreasonable that 170 prisoners are guarded by only six guards". That is the only reason provided by the Officer for rejecting the Applicant's story of detention. If there were other reasons for her disbelief, the Officer did not provide the Applicant (or this Court) with such additional reasons.

[40] 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 questioned about the basis for her determination that a prisoner-to-guard ratio of 170:6 was not credible or plausible. Her response was simply that “it just seems a bit low”. She also admitted that she had no evidence to ground this conclusion (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q784, Q788, and Q791).



[41] 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 transport 170 prisoners from one camp to another in Eritrea. Was the second camp a long distance away? How were the guards armed? Were any of the prisoners shackled or otherwise restrained? A conclusion that the Applicant was never detained is simply not supportable on the basis of the Officer’s belief that the ratio “seems a bit low”.

[42] The Applicant’s treatment during detention is a key component of his 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 her decision.

B. *Pentecostal Faith*

[43] The other credibility finding was that Officer did not believe that the Applicant was a follower of the Pentecostal faith. The only reason provided in the rejection letter was that the

Applicant was unable to provide “specific details concerning the Pentecostal religion”. The CAIPS notes add little to this:

> I ASKED SPECIFIC QUESTIONS RELATED TO THE PENTECOSTAL RELIGION AND YOU HAVE NO IDEA WHAT I WAS TALKING ABOUT . . . YOUR KNOWLEDGE IS VERY BASIC FOR SOMEONE WHO HAS BEEN STUDYING FOR 8 YEARS.



[44] The CAIPS notes set out a few questions that were asked. As recorded, the Applicant provided very basic answers to the questions about the difference between his previous religion, Roman Catholicism, and the Pentecostal faith.

[45] This is not a case where the Officer posed questions that did not accord with the fundamental beliefs of the Pentecostal religion. Moreover, the record shows that the Officer asked a number of questions and follow-up questions in an attempt to elicit more information from the Applicant about his conversion and his beliefs.

[46] In general, it is reasonable to expect a claimant who has undertaken a life-changing religious conversion to have considerable knowledge of his newly-acquired faith. The CAIPS notes do not reflect that the Applicant had such knowledge.

[47] In the notes from his AMERA interview, the Applicant told the interviewer that, when asked by the Officer why he converted, he provided a scripture reference. He also said that the Officer was asking for “one word that most Pentecostal people use”. When he asked what that word was, the Officer would not tell him. In cross-examination on her affidavit, the Officer stated that she did not recall asking about “one word”. I have difficulty accepting the Applicant’s AMERA interview

responses for the truth of what was said at the interview. The AMERA interview was held after the Applicant was aware of his rejection and after he had some time to reflect on the answers that he could have given in the interview. In particular, I doubt that the Applicant provided a specific scripture reference to the Officer, without the Officer's contemporaneous notes including this reference. This gives rise to a doubt about the accuracy of the Applicant's memory of his interview with the Officer. In this case, I give little weight to the AMERA interview notes.



[48] On a standard of reasonableness, I cannot conclude that the finding of the Officer on the Applicant's adherence to the Pentecostal faith to be outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above, para 47).

[49] I highlight that this is not a finding that the Applicant is not Pentecostal. Rather, it means that, based on the Applicant's responses to the questions, the Officer's determination was not unreasonable.

C. *Conclusion on Credibility*

[50] Although I would conclude that the finding with respect to the Applicant's faith is supported by the record, as a whole the credibility finding made by the Officer is unreasonable. This is based on two findings. First, the Officer based her decision that the Applicant's detention was not credible on speculation. Secondly, there is no justification provided for the Officer's statement that the Applicant was not "forthcoming".

## XII. Other Grounds of Persecution

[51] In this case, the Officer considered only one ground of persecution. Specifically, she examined whether the Applicant was at risk on grounds of religious persecution.

[52] The Applicant submits that, as reflected in his narrative, he also fears persecution on the basis of being a military service evader. He argues that the Officer erred by not considering this additional grounds of persecution. Further, the Applicant asserts that his illegal departure from Eritrea would also expose him to risk if he were to return. Documentary evidence, in his view, strongly suggests that persons who depart the country illegally, including draft evaders, are subject to harsh treatment by Eritrean authorities upon their return to Eritrea.

[53] In the rejection letter, the Officer states that, “I am satisfied that you left Eritrea in order to evade national service”. The Officer continued on to state that: “Evading national service does not constitute persecution or violation of human rights”. In other words, the Officer did not doubt the Applicant’s claim that, by leaving Eritrea, he had escaped mandatory military service.

[54] During cross-examination on her affidavit, the Officer continued to assert that the only basis of the Applicant’s claim was religious persecution. However, she also acknowledged that she found, as a fact, that the Applicant was a draft evader (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q801). With respect to the potential risk to the Applicant, the following exchange took

place during cross-examination (Cross-Examination of AnnMarie McNeil, March 22-23, 2011, Q 819-821):

> Q. Would you agree that objective evidence indicates that draft evaders are at risk?
>
> A. I agree.
>
> Q. Did you believe you had any obligation to consider that, in the context of this case?
>
> A. I have no answer for that.
>
> Q. But in fact, you did not consider that risk, is that correct, in this case?
>
> A. That's correct.



[55] With the clear acknowledgement by the Officer that the Applicant was a draft evader, and that documentary evidence put such a claimant at risk, the Officer had a duty to assess that risk (see *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689, 20 Imm LR (2d) 85 [*Ward*] at para 89). Failure to do so was a reviewable error and sufficient grounds to overturn this decision.

[56] In addition, the Officer did not find whether the Applicant had (as he described in his narrative and oral testimony) or had not left Eritrea illegally. The Officer could have considered this aspect of the Applicant's story and concluded that it was not credible. However, she could not simply ignore it. Once again, I conclude that the Officer's failure to consider this part of the Applicant's claim was a reviewable error.

[57] It would have been open to the Officer to consider the additional ground of persecution and reject it; however, this is not what the Officer did. The Officer had no explanation for why she did

not assess this risk. The Respondent would like this Court to accept that the Officer was under no obligation to consider this additional risk because she did not find the Applicant's story to be credible. However, that was not the reason why the Officer did not consider this additional ground of persecution. She had no explanation. This is a reviewable error.



## XIII. Adequacy of Reasons

[58] The Applicant asserts that the reasons of the Officer are inadequate. For the reasons set out in *Ghirmatsion*, above, 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.

## XIV. Reasonable Apprehension of Bias

[59] 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*

[60] Returning to the issues raised near the beginning of these reasons, I would conclude that the decision as a whole is unreasonable and should be overturned. Specifically, the Officer made the following reviewable errors:

1. the Officer erred by failing to have regard to the Applicant's status as a UNHCR refugee;

2. the Officer's finding that the Applicant was not detained in Eritrea was based on mere speculation; and

3. the Officer erred by failing to consider the risk to the Applicant as a military service evader.

[61] 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. the Officer's finding that the Applicant was not a follower of the Pentecostal faith was reasonably open to her on the evidence;

3. the Officer's reasons (the CAIPS notes and the rejection letter) satisfy the Officer's duty to give reasons;

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



B. *Remedies*

[62] 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.

[63] 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 he feels is necessary to support his 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 to 122.

C. *Costs*

[64] 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 provide reply to the Applicant's submissions on costs.

D. *Next Steps*

[65] 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 Mr. Tsegay Kiflay Weldesilassie. 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.

[66] At the close of the hearing, the parties expressed some 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*

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

**JUDGMENT**

**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 he believes are relevant to the determination of his 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**

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| **DOCKET:** | IMM-6009-09 |
| **STYLE OF CAUSE:** | TSEGAY KIFLAY WELDESILASSIE<br>v. THE MINISTER OF CITIZENSHIP<br>AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | APRIL 6, 2011 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | SNIDER J. |
| **DATED:** | MAY 5, 2011 |

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| | |
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| Andrew Brouwer<br>Timothy Wichert | FOR THE APPLICANT |
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