

Federal Court



Cour fédérale

Date: 20160222

Docket: IMM-4064-15

Citation: 2016 FC 233

Toronto, Ontario, February 22, 2016

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

LODOE SANGPO

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The present Application concerns the August 19, 2015 decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board determining that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] Mr. Sangpo was born in India to Tibetan parents; he has never lived in Tibet. Mr. Sangpo only made his claim for protection against China. He claimed that he could not return to India

because India would not recognize him as a citizen and that he would be at risk of being deported to China where he would face persecution on the basis of his Tibetan ethnicity.

[3] The RPD found that India was the appropriate country of reference, and given that he did not claim against India there was not a reasonable chance he would face persecution or harm by any authority in India. In reaching this conclusion, a key question of law was whether the Applicant possessed power, within his control, to acquire Indian citizenship.

[4] The RPD rejected the Applicant's claim on the basis of a finding that "on a balance of probabilities the claimant is entitled to Indian citizenship" (Decision, para 11) [Emphasis added]. In reaching the finding, the RPD relied on its understanding of Justice Tremblay-Lamer's decision in the similar case of *Dolma v Canada (Minister of Citizenship and Immigration)*, 2015 FC 703 (Dolma):

The determinative issue before the panel is the claimant's country of reference. For the following reasons, the panel finds that the claimant is entitled to Indian citizenship by birth, Indian law and Indian jurisprudence. As an Indian citizen, the panel finds that the claimant could return to India without fear of persecution or harm. In making this determination, the panel has considered the findings of The Honorable Madam Justice Tremblay-Lamer (citation) and the question of whether the issue of Indian citizenship was within the control of the claimant.

[...]

In the words of the Honorable Madam Justice Tremblay-Lamer, the acquisition of Indian Citizenship was within the control of the claimant (*Ibid*). Further, he took no action to secure that citizenship. [...]

(Decision, paras 9 and 12) [Emphasis added]

[5] I find that the RPD misunderstood Justice Tremblay-Lamer's findings in *Dolma* at paragraphs 32 to 34, as emphasized:

The claimant did not provide any evidence or argument as to why he would be refused Indian citizenship and testified that he made no efforts to obtain Indian citizenship.

In my view, an obligation on refugee claimants to show that they applied for and were refused citizenship in a particular country would constitute a narrowing of the refugee definition in the 1951 Convention relating to the Status of Refugees [Refugee Convention] and section 96 of IRPA. The proper question is whether, on the evidence before the Board, there is sufficient doubt as to the law, practice, jurisprudence and politics of the potential country of nationality such that the acquisition of citizenship in that country cannot be considered automatic or fully within the control of the applicant, not whether they have tried and been refused. This would exclude from refugee protection all individuals that did not apply for citizenship prior to their time of need for any number of reasons, including the financial inability to pay for a citizenship application or litigation in respect thereof.

As suggested by James Hathaway and Michelle Foster, a country will be considered a country of reference for the assessment of refugee status where the claimant's citizenship in that country "actually exists in embryonic form and needs simply to be activated by means of a request that will clearly be acceded to" (*The Law of Refugee Status*, 2d ed (University Printing House: Cambridge, 2014) at 59).

In the present case, the evidence in the record unequivocally established that if the applicant, as an ethnic Tibetan, applied for an Indian passport, it was by no means clear that her request would be acceded to. Recognition of her citizenship was thus not automatic or within her control.

[Emphasis added]

[6] As a result, I find that the RPD's decision is made in fundamental error of law.

JUDGMENT

THIS COURT'S JUDGMENT is 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-4064-15

STYLE OF CAUSE: LODOE SANGPO v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 19, 2016

REASONS FOR JUDGMENT AND JUDGMENT: CAMPBELL J.

DATED: FEBRUARY 22, 2016

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