

Federal Court



Cour fédérale

Date: 20170509

Docket: IMM-2903-16

Citation: 2017 FC 471

Ottawa, Ontario, May 9, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MYKALEE ALLANIE BRACKENRIDGE,
STEPHANIE ANNMARIE BRACKENRIDGE,
SAMUEL DWIGHT WAYNE
BRACKENRIDGE, JAYDEN TENDAJI
BRACKRENRIDGE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms Stephanie Brackenridge put her life at risk by testifying in Jamaica at the trial of the man accused of murdering her brother. She alleges that as a result, a bounty was placed on her life, as well as those of the other applicants – her husband, Mr Samuel Brackenridge, and her two children. State authorities offered the family temporary protection, but when those measures

were due to expire, the applicants fled to Canada and claimed refugee status. A panel of the Refugee Protection Division (RPD) denied the applicants' claim on the basis that they failed to rebut the presumption that their home state could adequately protect them. On appeal, the Refugee Appeal Division (RAD) arrived at the same conclusion.

[2] The applicants argue that the RAD unreasonably concluded that the Jamaican authorities were able to protect them. They ask me to quash the RAD's decision and order a re-hearing.

[3] I agree that the RAD's decision was unreasonable. Therefore, I will grant this application for judicial review.

[4] The sole issue is whether the RAD's conclusion on state protection was unreasonable.

I. Was the RAD's conclusion on state protection unreasonable?

[5] The Minister notes that the applicants had been placed in protective custody and provided accommodation in a safe house. The Minister also points out that Jamaica has a reputable witness protection program. Further, the applicants left Jamaica before any alternative arrangements to assure their safety had been put in place. According to the Minister, this evidence shows that Jamaica was willing and able to protect the applicants.

[6] I disagree.

[7] In my view, the RAD ignored evidence that pointed away from state protection being available to the applicants. Specifically, a letter from the Superintendent of the National Intelligence Bureau (NIB) to the Jamaican National Intelligence Bureau stated that “the existing security arrangement for the BRACKENRIDGE family was inadequate...”, and recommended that “...further efforts be made to ensure the security of the BRACKENRIDGE family”. A second letter from the Criminal Investigation Branch of the Jamaican Constabulary to Ms Brackenridge’s employer stated that the employer urgently needed to extend “any assistance that is possible” to enhance Ms Brackenridge’s security. Six months after the date of the NIB letter, the applicants had yet to see any increased protection. In addition, the evidence showed that the applicants, before they fled to Canada, were about to be removed from their safe house and that no alternate arrangements had been made.

[8] In my view, the RAD’s conclusion that the applicants had failed to meet their burden of proof was unreasonable. The question the RAD had to answer was whether, based on the whole of the evidence, including evidence about Jamaica’s capacity to protect them, the applicants faced a reasonable chance of persecution. The RAD appears not to have considered important evidence relevant to that question. Accordingly, I find that its conclusion was unreasonable.

II. Conclusion and Disposition

[9] The RAD unreasonably concluded that applicants had failed to rebut the presumption that state protection was available to them in Jamaica. On that basis, I will allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-2903-16

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and no question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2903-16

STYLE OF CAUSE: MYKALEE ALLANIE BRACKENRIDGE, STEPHANIE
ANNMARIE BRACKENRIDGE, SAMUEL DWIGHT
WAYNE BRACKENRIDGE, JAYDEN TENDAJI
BRACKRENRIDGE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 26, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 9, 2017

APPEARANCES:

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Melissa Mathieu FOR THE RESPONDENT

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