

Federal Court



Cour fédérale

Date: 20190521

Docket: IMM-4350-18

Citation: 2019 FC 715

Ottawa, Ontario, May 21, 2019

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

TSERING LHAZOM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Tsering Lhazom sought refugee protection in Canada based on her fear of religious persecution in China. A panel of the Immigration and Refugee Board denied Ms Lhazom's claim, finding that she was eligible for citizenship in India, where she would not be persecuted.

[2] Ms Lhazom submits that the Board's decision was unreasonable because it ignored evidence of the difficulties she would face in trying to obtain Indian citizenship. She asks me to quash the Board's decision and order another panel to reconsider her claim. I agree with Ms Lhazom that the Board failed to consider important evidence in her favour, which led it to an unreasonable conclusion.

[3] The sole issue is whether the Board's finding that Ms Lhazom could obtain citizenship in India was unreasonable.

II. Background

[4] Ms Lhazom is ethnically Tibetan, born in India, but a citizen of China. She left India in 2003 and sought asylum in the United States. She feared that if India deported her to China, she would be persecuted by Chinese authorities for being a follower of the Dalai Lama. After her claim failed, she traveled to Canada and applied for refugee protection.

[5] The Board noted that Indian law grants citizenship to persons, like Ms Lhazom, who were born in India between January 26, 1950 and July 1, 1987. The Board then considered whether Ms Lhazom had shown that there was a significant impediment to her obtaining Indian citizenship, and that she had made reasonable but unsuccessful efforts to overcome any impediment (*Tretsetsang v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 175). The Board found that Ms Lhazom had not met either of those criteria and, therefore, treated India as a place of safe refuge for Ms Lhazom.

III. Was the Board's conclusion unreasonable?

[6] The Minister submits that the Board reasonably found that Ms Lhazom could obtain citizenship in India. The Minister argues that the Board properly discounted the value of a legal opinion that had been prepared for another person and that the Board reasonably concluded that Ms Lhazom had not made significant efforts to obtain Indian citizenship.

[7] I disagree.

[8] The opinion letter provided by Ms Lhazom related to a person in circumstances similar to hers. In particular, like Ms Lhazom, that person lacked the kinds of identity documents that must be presented in order to obtain Indian citizenship according to the website of the Indian Ministry of External Affairs. There was no evidence before the Board indicating that any alternative documents would be sufficient. The Board also rejected the opinion because it was not definitive. But the burden on Ms Lhazom was to establish on a balance of probabilities that she faced a significant impediment. She did not have to provide definitive proof.

[9] The Board cited Indian jurisprudence indicating that the Indian government must grant citizenship to qualified Tibetan applicants. However, that case law is of no assistance to Ms Lhazom who, according to official criteria, is not qualified for citizenship because she lacks the required documentation.

[10] With respect to Ms Lhazom's efforts to obtain Indian citizenship, the Board stated that she had failed even to apply. In fact, the evidence before the Board showed that Ms Lhazom, an illiterate woman with a grade 1 education, had asked a friend to assist her in applying for a passport, one of the documents she could use to support her citizenship application. Ms Lhazom testified that her friend looked at the on-line passport application and found that Ms Lhazom lacked the necessary documents. Since Ms Lhazom lacked those documents, and could not obtain them, the Board's conclusion that she had made insufficient efforts to acquire Indian citizenship was unreasonable.

IV. Conclusion and Disposition

[11] The Board's conclusions that Ms Lhazom had not shown any significant impediment to obtain Indian citizenship and had not made reasonable efforts to overcome the impediment she faced were unreasonable. I must, therefore, allow this application for judicial review and order another panel to reconsider Ms Lhazom's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-4350-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

The matter is referred back to another panel for reconsideration. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4350-18

STYLE OF CAUSE: TSERING LHAZOM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 2, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 21, 2019

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