

Date: 20050415

Docket: IMM-7887-04

Citation: 2005 FC 502

BETWEEN:

SOLANGE ARLETE DA SILVA TANDELA

Applicant

- and -

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

AND BETWEEN:

Docket: IMM-7886-04

**ALEXANDRINA SILVA
SILVIO BARNEER ALVARENGA**

Applicant

- and -

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

AND BETWEEN:

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CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR ORDER

HARRINGTON J.

[1] In order to better understand the four judicial review applications before the Court, it is necessary to begin with the story of a man who is no longer with us. The father of Ms. da Silva Tandela passed information for the MPLA (Popular Movement for the Liberation of Angola) to

the National Union for the Total Independence of Angola (UNITA), a party opposing the Angolan government, and was murdered for political reasons in 1999. Ms. da Silva Tandela, her sister, Ms. da Silva Dias, and the sister's son, as well as her brother, Nelson da Silva Tandela, all came to Canada after witnessing his murder.

[2] They all claimed refugee status on arriving in Canada. The claims were heard together and were dismissed owing to a lack of credibility on the part of the applicants.

[3] The four decisions before the Court at this stage are those rendered by an officer who denied permanent residence, as well as the exemption based on humanitarian considerations (HC) and the pre-removal risk assessment (PRRA), to Ms. da Silva Tandela and Ms. da Silva Dias and her son. The four decisions were rendered by the same officer. The HC application of the brother, Nelson, was granted by a different officer.

ANALYSIS

[4] The PRRAs of Ms. da Silva Tandela and Ms. da Silva Dias and her son are practically identical. For analysis purposes, I will refer to the file of Ms. da Silva Tandela.

[5] The PRRA officer concluded that an arrest warrant issued in the names of Ms. da Silva Tandela, Ms. da Silva Dias and Nelson da Silva Tandela had no evidentiary weight. According to the officer, an arrest warrant issued on November 6, 2002, after the April 2002 amnesty, was

not seriously plausible. The amnesty had been mandated by the government in power in favour of UNITA members.

[6] The officer did not explain whether he believed that the warrant was a forged document or an official document which the authorities would not have enforced.

[7] An officer who gives reasons must ensure that the reasons given are compelling (*R v. Sheppard*, [2002] 1 S.C.R. 869). It is not the Court's responsibility to speculate about what the officer really wanted to say.

[8] Another reason given by the officer for his dismissal of the PRRA application was the fact that several translations of articles dealing with intolerance toward and intimidation of UNITA, published in 2003 and 2004 and submitted by the applicants, had no evidentiary weight. He continued his analysis by indicating that neither the translator's name nor the source of the original document were included.

[9] The Web page URL was clearly indicated on the original Portuguese document. If the officer had doubts as to the documents' veracity, he could have checked.

[10] At the hearing, the applicants argued the existence of institutional bias resulting from the fact that the same officer reviewed their PRRA and HC applications. The Court does not see any merit in this argument.

[11] However, the decisions in both PRRA applications should be rescinded for the reasons cited.

[12] HC applications are specific to each individual. The unique circumstances of the individuals are considered before the decision is rendered.

[13] Since it appears that the officer cut and pasted the conclusions for Ms. da Silva Tandela and Ms. da Silva Dias and her son, attributing a child to Ms. da Silva Tandela and claiming that neither one had worked in Canada, it is difficult for the Court to know which conclusions apply to which individual.

[14] The decisions in the two HC applications should be dismissed for the reasons cited.

[15] Considering that the four decisions are practically identical, and it is impossible to isolate or mitigate the errors which appear in the four files, the only fair decision is to allow the four judicial review applications.

“Sean Harrington”

Judge

Ottawa, Ontario
April 15, 2005

Certified true translation
Magda Hentel

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: IMM-7887-04, IMM-7886-04, IMM-7885-04,
IMM-7883-04

STYLE OF CAUSE: SOLANGE ARLETE DA SILVA TANDELA,
ALEXANDRINA SILVA,
SILVIO BARNEER ALVARENGA
v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 5, 2005

REASONS FOR ORDER BY: THE HONOURABLE MR.
JUSTICE HARRINGTON

DATED: APRIL 15, 2005

APPEARANCES:

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François Joyal FOR THE RESPONDENT

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