

**Date: 20071207**

**Docket: IMM-6125-06**

**Citation: 2007 FC 1283**

**Ottawa, Ontario, December 7, 2007**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**LEONETTE PLANCHER  
NERLANDE PLANCHER**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 8, 2006. The Board concluded that the applicants were neither Convention refugees nor persons in need of protection, pursuant to sections 96 and 97 of the Act.

**ISSUES**

[2] The applicants raise two issues in the present application:

- a) Did the Board err in failing to appoint a designated representative?
- b) Did the Board err by failing to perform a distinct analysis under section 97 of the Act?

[3] The application for judicial review shall be dismissed for the following reasons.

### **FACTUAL BACKGROUND**

[4] The applicants in this case are Leonette Plancher, born May 30, 1972, and her minor daughter Nerlande Plancher, born January 1, 1989. Both are citizens of Haiti. They seek asylum under the Convention on the grounds of membership in a particular social group and political opinion.

[5] In 1988, the principal applicant married a man by the name of Romnel Plancher, who remains in Haiti with the couple's son. Her husband is a member of the "Association des planteurs agricoles du Môle Saint-Nicolas" (APAM), an organization seeking to bring aid to local farmers. This organization supported the political party "Organization du peuple en lutte" (OPL), and opposed the Lavalas government.

[6] On January 28, 2003, while her husband was attending a meeting of the APAM and the principal applicant was working as a merchant in a small business, the "chimères", an armed gang working for the Lavalas government, asked her where her husband was. When she answered that she did not know, she was beaten and sexually assaulted. The "chimères" stole money from the store where the principal applicant worked and broke everything in their path.

[7] On January 30, 2003, the “chimères” went to her mother’s home to try and find Mr. Plancher. They beat the principal applicant’s father and set fire to the house.

[8] The principal applicant left Haiti for the United States where she arrived on March 8, 2003. She filed a claim for asylum in November of the same year. The minor applicant left for the United States on November 28, 2004, claiming that she feared being assaulted by the “chimères” and other armed groups.

#### **DECISION UNDER REVIEW**

[9] The Board rejected the applicants’ claim that they have a well founded fear of persecution. The Board concluded that the applicants were not credible as to the existence of subjective fear. The Board also concluded that because the applicants were not credible, there was no risk to their lives or risk of cruel and unusual treatment or punishment. The following reasons were given in support of these conclusions:

- a) The applicant provided inconsistent information regarding the date in which she decided to leave Haiti. First, she stated that she took the decision on January 28, 2003. Shortly after, she stated that she took the decision on February 28, 2003.
- b) Insufficient documentation was submitted in support of this claim. The only documents before the Board were two documents containing requests to the minister for assistance, and a birth certificate for the principal applicant. No documentation was included regarding the OPL or the principal applicant’s husband’s association

with the organization. No information was provided about the business where the principal applicant worked. The principal applicant submitted no medical documents or police reports regarding her assault. She claimed to have sought medical help once in the United States, but provided no document in support of this allegation.

- c) The Board drew a negative inference from the fact that Mr. Plancher remained in Haiti, despite the fact that it was his alleged political involvement which was the source of the family's problems with the "chimères".
- d) The Board noted the fact that the applicant made a claim for asylum in the United States, but received a negative decision in October 2004. A negative inference was drawn from the fact that she remained in the United States until November 28, 2005, despite the negative decision. She explained that her lawyers advised her to stay until her appeals were exhausted, which they were in September 2005. However, the additional two months of her stay were not explained. Further, the asylum decision from the United States also concluded that the applicant lacked credibility.
- e) The risk faced by the applicants is generalized. There is a serious risk of gang violence faced by all Haitian citizens. The applicants failed to demonstrate the existence of personalized risk.

## **RELEVANT LEGISLATION**

[10] *Immigration and Refugee Protection Act*, 2001, c. 27.

**167.** (2) If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

**167.** (2) Est commis d'office un représentant à l'intéressé qui n'a pas dix-huit ans ou n'est pas, selon la section, en mesure de comprendre la nature de la procédure.

[11] *Refugee Protection Division Rules*, SOR/2002-228.

**15.** (3) To be designated as a representative, a person must

(3) Pour être désignée comme représentant, la personne doit :

(a) be 18 years of age or older;  
(b) understand the nature of the proceedings;  
(c) be willing and able to act in the best interests of the claimant or protected person; and  
(d) not have interests that conflict with those of the claimant or protected person.

a) être âgée de dix-huit ans ou plus;  
b) comprendre la nature de la procédure;  
c) être disposée et apte à agir dans l'intérêt de la personne en cause;  
d) ne pas avoir d'intérêts conflictuels par rapport à ceux de la personne en cause.

## ANALYSIS

### *Standard of Review*

[12] The issues raised by the applicants are pure questions of law, and I find that both are reviewable on the standard of correctness.

### *Did the Board err in failing to appoint a designated representative?*

[13] The applicant submits that the Board failed to appoint a designated representative for the minor applicant, pursuant to section 167(2) of the Act and section 15 of the *Refugee Protection Division Rules*, SOR/2002-228 (the Rules). The applicant cites *Duale v. Canada (Minister of*

*Citizenship and Immigration*), [2004] F.C.J. No. 178 (QL), 2004 FC 150, and *Stumpf v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 590 (QL), 2002 FCA 148, in support of this position.

[14] I find that the Board did not err by failing to appoint a designated representative. The record reveals that the principal applicant was designated as the representative of the minor applicant. On January 20, 2006, a letter was sent to the principal applicant naming her to this role. The letter, which was also sent to her counsel, stated that she could refuse to assume this role if she contacted the Refugee Protection Division within ten days of receiving the letter. There is nothing in the file indicating that this letter was never received by the principal applicant and her counsel. Since no evidence is presented indicating the principal applicant's refusal, I must conclude that she accepted to act as the minor applicant's designated representative.

[15] The principal and minor applicants were represented by the same counsel and both applicants gave evidence at the hearing. The minor applicant was 17 and no issues with respect to the appointment of a designated representative were raised in the proceedings (*Singh v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No 151 (QL), 2006 FC 134).

***Did the Board err by failing to perform a distinct analysis under section 97 of the Act?***

[16] The applicant submits that the Court has an absolute obligation to perform a separate analysis of the applicants' claim under section 97 of the Act in this case. While the Court has indeed

indicated that in cases where there is credible evidence it may constitute an error not to perform a separate analysis, the obligation is not absolute.

[17] In the present case, the Board concluded that there was a lack of credibility on the part of the applicant, and as such, the member did not believe that there was a serious risk of torture, risk to the applicants' lives or a risk of cruel and unusual treatment or punishment if they were to return to Haiti. If a claimant has been found not credible, the Board is not required to perform a separate analysis. This was confirmed in *Kaur v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2112 (QL), 2005 FC 1710, at para.16:

With respect to the lack of a distinct analysis regarding subsection 97(1), the Board was entirely justified not to undertake that exercise from the moment where it determined that the applicant was not credible. If the Board was correct on that point, it is clear that the applicant could not have been considered to be a person in need of protection. Incidentally, that is what this Court has determined on numerous occasions: *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1540; 2003 FC 1211 (QL); *Soleimani v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 2013; 2004 FC 1660 (QL); *Brovina v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 771, 2004 FC 635 (QL).

[18] Here, the Board indicated why the applicants were not eligible to claim under section 97. The reasons are supported by the findings.

[19] I find that the Board did not commit a reviewable error.

[20] No question to be certified was proposed and none arises.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

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Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-6125-06

**STYLE OF CAUSE:** **LEONETTE PLANCHER  
NERLANDE PLANCHER and  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 3, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATED:** December 7, 2007

**APPEARANCES:**

Micheal Crane FOR APPLICANTS

David Tyndale FOR RESPONDENT

**SOLICITORS OF RECORD:**

Micheal Crane FOR APPLICANTS  
Toronto, Ontario

John Sims, Q.C. FOR RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario