

Federal Court



Cour fédérale

Date: 20091028

Docket: IMM-71-09

Citation: 2009 FC 1099

Montréal, Quebec, October 28, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

CLERNELIA-MARIE AUGUSTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel) rendered by Member Michael Hamelin on March 12, 2009, determining that the applicant, Clernelia-Marie Auguste, is not a Convention refugee within the meaning of section 96 of the Act or a person in need of protection under section 97 of the Act.

[2] The panel's dismissal of the claim is essentially based on the absence of a subjective fear, on a lack of credibility and on the generalized risk faced by all citizens of Haiti.

[3] The applicant arrived in Canada on November 5, 2003, armed with a visa valid until 2004. She did not claim refugee protection until August 14, 2007.

[4] The panel found a number of inconsistencies in the evidence provided by the applicant in her written testimony (statement at port of entry, personal information form) and in that provided at the hearing, in particular, the absence of any link between her persecution and the murder of her brother-in-law in 2003. Furthermore, the panel noted the lack of documents confirming this murder. Also taken into account was the nearly four-year time period it took the applicant to file her claim.

[5] In conclusion, the panel found that the applicant was not at a greater risk than other Haitian citizens with regard to crimes such as robbery or kidnapping.

[6] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the panel's findings as to the credibility of a refugee claimant continue to be subject to deference by the Court and are reviewable on the standard of reasonableness (*Dunsmuir*, at paragraphs 55, 57, 62 and 64; see also *Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, [2008] F.C.J. No. 888 (QL) at paragraph 11). Consequently, the Court will only intervene if the decision does not fall within the range of possible and acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[7] After analyzing the panel's decision as well as the parties' written submissions, the Court cannot find that the panel's decision is unreasonable. In fact, the inconsistencies raised are

supported by the evidence. It was entirely reasonable for the panel to take into account the considerable length of time between the applicant's arrival in Canada and her application for refugee protection.

[8] The reasons set out in the decision regarding the lack of credibility are clear and precise. The Court's intervention is not warranted in any way.

[9] No question was proposed for certification and none arises from this case.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-71-09

STYLE OF CAUSE: CLERNELIA-MARIE AUGUSTE
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 27, 2009

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

DATED: October 28, 2009

APPEARANCES:

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