Federal Court  Cour fédérale

Date: 20100308

Docket: IMM-3189-09

Citation: 2010 FC 265

Ottawa, Ontario, March 8, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

FULTON DORNO
MARIE EVELINE DORNO-MOISE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 3, 2009. The Board determined that the Applicants were neither convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27 (*IRPA*).

[2] Based on the reasons below, the application is allowed.

I. Background

[3] The Applicants are a married couple who are citizens of Haiti. They left Haiti for the United States in 1994. They lived in the United States from 1994 to 2007 where they made an unsuccessful refugee application. In 2007 they left the United States and made a refugee claim in Canada.

[4] In his Personal Information Form (PIF), the husband (the principle Applicant) stated that he feared for his life due to the criminal gangs in Haiti. In her PIF, the female Applicant stated that she relied on her husband's narrative. The principle Applicant worked as the Chief Accountant at a development relief agency in Haiti prior to his departure (the Agency or ADRA). He claimed that, as part of his job, he had to go to the bank and drive in agency vehicles and that this made him a target for criminal gangs. The female Applicant stated that she was at risk based on her husband's claims and due to a fear of rape.

[5] In the decision, the Board found that the principle Applicant was not specifically targeted and that the risks alleged by the Applicants were from generalized criminality.

II. Standard of Review

[6] The issues raised in this matter are those of fact and will be assessed on a reasonableness standard (see *Dunsmuir v. New Brunswick*, 2008 SCC 9; [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339).

[7] As set out in *Dunsmuir* and *Khosa*, above, reasonableness requires the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

III. Issues

[8] The Applicants raised the following issues:

a) Did the panel err by not conducting a section 97 analysis for the female Applicant?

b) Did the panel err by categorizing the risk of rape to the female Applicant as a generalized risk and by not considering the specific gender guidelines as they apply to this specific circumstance?

c) Did the panel err by not finding the female Applicant to be a member of a particular social group under section 96 of the *IRPA* and by not finding her to be a refugee under that section?

d) Did the panel err by finding that there was no evidence supporting the allegation in the principle Applicant's PIF that one of the Agency's inspectors was assassinated?

e) Did the panel err by requiring the principle Applicant to provide evidence that Agency employees are specifically targeted?

f) Did the panel err by making other miscellaneous findings which were either wrong factually or were the basis for other erroneous conclusions?

[9] I will begin by addressing issues d) to f) together. It is the Applicants' position that the Board made several errors. These errors included the finding that there was no evidence supporting the allegation of an attack on an Agency employee; misstating where the principle Applicant had lived; finding that the female Applicant misstated if she had brothers, and the Board's conclusions on the issue of citizens returning from abroad being specifically targeted.

[10] The Applicants argue that some of these errors may have resulted in the Board not finding the principle Applicant credible. Specifically, the Applicants argue that the panel may have overlooked the evidence on the attack on the Agency employee, that this evidence was important to

the Board's findings, and therefore the Board made an erroneous finding in a perverse manner without regard to the evidence. The evidence in question is an article entitled *"Haiti: Adventist Aid Agency Worker Dies in Shooting"* and was identified as Exhibit C-7 in the Applicants' index of documents.

[11] The Respondent argues that the erroneous findings by the Board were wholly immaterial.

[12] If the mistakes were limited to the findings of where the Applicants lived in the United States or if the wife had brothers, I would agree with the Respondent. However, the Board stated at paragraph 52 and 54:

> 52. There is an allegation in the principle claimant's PIF narrative that one of the Agency's inspectors was assassinated. However, there is no indication who that person was who was assassinated, her or his role with the Agency, the date or place of the alleged assassination or who the assassins were or why she or he was killed. I give little or not credence to the allegation.
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> […]
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> 54. I find that there is insufficient credible or trustworthy evidence given by the principle claimant to support his allegations that because of his association with ADRA, he will face a risk which was similarly faced by other persons who allegedly were associated with ADRA.

[13] The article in Exhibit C-7, "*Haiti: Adventist Aid Agency Worker Dies in Shooting"*, answers some of these questions and was before the decision maker. Based on the above stated paragraphs, the Board overlooked this piece of evidence and the decision may have been different if the

evidence was not overlooked. Therefore, the decision of the Board was made without regard for the material before it and is not reasonable.

[14] In this case, the female Applicant's claim relied on that of the principle Applicant and her fear of rape. The decision reflects this reliance and focuses primarily on the principle Applicant's claim to the point that is impossible to separate the decision with regard to the principle and female Applicants. Therefore, the decision is unreasonable for the female Applicant for the same reasons as for the principle Applicant. It is therefore unnecessary to address issues a) to c).

[15] The Applicant proposed the following question for certification: Does a woman need to establish that she was specifically raped or targeted for rape, in addition to country conditions that establish rape as a significant problem in her country of origin, in order to be described under subsection 97(1)(b)(ii) of the *Immigration and Refugee Protection Act*? Based on the facts of this case, I do not find that the question meets the test for certification as set out in subsection 74(d) of the *IRPA* and recently reviewed by the Court of Appeal in *Kunkel v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 347; [2009] F.C.J. No. 1700. Therefore, I decline to certify the question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application for judicial review is allowed. The decision is set aside and the matter is referred back to the Refugee Protection Division for reconsideration by a different panel in accordance with these reasons; and

2. there is no order as to costs.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-3189-09**
STYLE OF CAUSE:	**FULTON DORNO ET AL. v. MCI**
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