

Federal Court



Cour fédérale

Date: 20100525

Docket: IMM-3301-09

Citation: 2010 FC 563

Ottawa, Ontario, May 25, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**PRESNICK LORMILSAINT,
ELMITA CLEOPHARD,
KATIANA LORMILSAINT**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Presnick Lormilsaint, his wife Elmita Cleophard, and their daughter Katiana, claimed refugee protection in Canada on the basis of political persecution in Haiti. Mr. Lormilsaint and Ms. Cleophard alleged that they were mistreated there because of their opposition to the Lavalas movement. Mr. Lormilsaint left Haiti in 2000; Ms. Cleophard left in 2003. The couple lived in the United States for a number of years, which is where Katiana was born. The family came to Canada in 2007.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' claim for protection. In respect of Mr. Lormilsaint's application, the Board found his evidence to be inconsistent and unreliable. The applicants do not challenge this part of the Board's decision. Rather, they question the treatment of Ms. Cleophard's claim. The Board found that she feared the general climate of criminality in Haiti, particularly the high rate of crime against women, which did not entitle her to refugee protection.

[3] Ms. Cleophard argues that the Board's decision was unreasonable because the Board failed to appreciate that her risk is heightened by her past political activities and, therefore, that her fear went beyond concern about the overall treatment of women in Haiti. She asks for a new hearing before a different panel of the Board.

[4] As I read the Board's decision, it did not seem to doubt Ms. Cleophard's description of the mistreatment she endured for making what were perceived to be political statements. Yet, the Board concluded that her fear was confined to the overall level of crime in Haiti. In my view, the Board erred by not taking account of the evidence supporting Ms. Cleophard's claim of political persecution. Accordingly, I must grant this application for judicial review.

[5] The sole issue is whether the Board's decision was unreasonable.

II. Analysis

(1) The Board's decision

[6] Ms. Cleophard testified that she was a schoolteacher in Haiti. She explained that she had been beaten by Lavalas supporters after telling her students that the government of Haiti was wasting money and neglecting the education system. After that, she feared for her life. She also feared rape, given that women are sometimes sexually assaulted as punishment for their political beliefs in Haiti. The state apparatus there is unable to protect women at risk, Ms. Cleophard argued.

[7] The Board found that there was no nexus between the basis for Ms. Cleophard's fear and the grounds for protection under the Refugee Convention, *i.e.*, political persecution. The Board agreed that women in Haiti are poorly treated. However, it concluded that the risk facing Ms. Cleophard is no different from that facing other women in Haiti.

(2) Was the Board's decision unreasonable?

[8] The Board appears to have accepted Ms. Cleophard's account of the treatment she received for criticizing the government. It did not point to any inconsistencies or discrepancies in her evidence. In addition, documentary evidence before the Board suggested that citizens returning to Haiti are more likely to be targeted for mistreatment if they had previously been involved in political activities.

[9] The Board appears not to have considered the possibility that Ms. Cleophard's risk transcended the treatment that other returning citizens to Haiti might face. In doing so, it failed to

address evidence supporting Ms. Cleophard's claim to be at greater risk of mistreatment than the general population.

[10] In my view, the Board's conclusion that Ms. Cleophard's circumstances were indistinguishable from those of other women in Haiti was unreasonable because it failed to take account of the evidence before it to the contrary. As such, the decision does not fall within the range of acceptable outcomes based on the facts and the applicable law.

III. Conclusion and Disposition

[11] Having failed to address an important element in Ms. Cleophard's claim for protection, the Board's conclusion was unreasonable. I must, therefore, allow this application for judicial review and order a new hearing. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. A new hearing is ordered before a different panel of the Board.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3301-09

STYLE OF CAUSE: LORMILSAINT, ET AL v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: February 4, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 25, 2010

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