

Federal Court



Cour fédérale

Date: 20101108

Docket: IMM-804-10

Citation: 2010 FC 1100

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MANITA FREDERIC
RODERK FREDERIC**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Manita Frederic fled Haiti in 1994 with her son, Roderk, just after her mother, brother and sister were murdered in Port-au-Prince. The perpetrators, she believed, were opponents of President Aristide, whom the family supported. She sought asylum in the United States, but her claim was denied. In 2007, she came to Canada with her U.S.-born son, Roderk, and claimed refugee protection here.

[2] A panel of the Immigration and Refugee Board found Ms. Frederic's account of her experiences in Haiti credible, but denied her claim because the identity of the murderers and the reason for the attack were unknown. Based on the fact that her shop had been destroyed in 1991 by political opponents, Ms. Frederic suspected a political motivation for the murders of her relatives. However, she had no evidence to support her belief.

[3] The Board concluded that any risk that Ms. Frederic would be persecuted on political grounds had now subsided. It went on to consider two other potential grounds for her claim: (1) whether Ms. Frederic was at risk of serious mistreatment based on the fact that women in Haiti are frequently victims of sexual crimes, and (2) whether Ms. Frederic was at risk of extortion or kidnapping on her return to Haiti because she would be perceived to be a person of comparative wealth having lived for many years in the United States and Canada. In respect of these latter grounds, the Board found that crime is rampant in Haiti and any fear Ms. Frederic may have of being a victim of crime would be shared with the entire population. She would not be singled out on the basis of her membership in a social group. Nor would the risk be personal to her.

[4] In her application for judicial review, Ms. Frederic raises only one issue: Did the Board err when it concluded that fear of sexual assault cannot give rise to refugee protection because it amounts to a general fear of crime which affects the entire population of Haiti, not a particular social group?

[5] In my view, in the circumstances of this case, the Board did not err. I must, therefore, dismiss this application for judicial review.

II. The Board's Decision Regarding Risk of Sexual Assault

[6] The Board began by noting that Ms. Frederic had not expressly raised the issue of fear of sexual violence in her claim. Rather, her counsel raised it at the hearing.

[7] The Board referred to documentary evidence confirming that Haitian women and girls face widespread violence. Sexual assaults are common and often unpunished. However, crime in general is rampant in Haiti. Women are not specifically targeted. All Haitians are at risk of becoming victims of criminal acts (citing *Soimin v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 218, and *Lozandier v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 770).

Accordingly, the Board concluded that there was no nexus between Ms. Frederic's fear of sexual assault and a ground of persecution recognized in the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 96.

III. Did the Board Err in Dismissing Ms. Frederic's Claim?

[8] Ms. Frederic argues that the Board erred in law when it concluded that a finding of general criminality in Haiti was sufficient to dismiss her claim. She maintains that the Board was obliged to go on to consider whether she was, in fact, persecuted on the basis of gender.

[9] In support of her position, Ms. Frederic relies on Justice Yvon Pinard's statement that "a finding of generality does not prohibit a finding of persecution on the basis of one of the Convention grounds" (*Dezameau v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 559, at para.

23). She also notes Justice Richard Boivin's observation that the Board must, even where there is evidence of general criminality, determine whether the claimant had a well-founded fear of persecution on a Convention ground (*Luc v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 826, at para. 25).

[10] As I read the Board's decision, it did not stop short of considering whether Ms. Frederic had a well-founded fear of persecution on a Convention ground. It did not conclude that a finding of general criminality was, in itself, an obstacle to her claim. Rather, the Board found that Ms. Frederic's fear was not related to her membership in a particular social group or any other Convention ground. In other words, the Board did not fail to consider whether there was a nexus to a recognized ground of persecution. It specifically concluded that no such nexus existed – her fear was “not for reason of her membership in a particular social group nor for reason of any other ground mentioned in section 96”.

[11] I would also note that, while the issues raised in this case are difficult and merit, in appropriate circumstances, serious scrutiny both by the Board and this Court, this is not an apt case to analyze them thoroughly. As mentioned, the proposition that a woman's fear of sexual violence could form the basis of a refugee claim was not the main thrust of Ms. Frederic's application. Accordingly, the evidence before the Board was not as extensive as one might otherwise have expected, and the submissions on the point were not as detailed as they might have been in a case in which the issue was central to the claim.

IV. Conclusion and Disposition

[12] In light of the evidence before it, the Board did not err in its analysis of the question of whether Ms. Frederic's fear of sexual assault could amount to persecution based on membership in a particular social group. Therefore, I must dismiss this application for judicial review. In the circumstances, no question of general importance will be stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-804-10

STYLE OF CAUSE: FREDERIC v. MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: October 13, 2010

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

DATED: November 8, 2010

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