Federal Court  Cour fédérale

Date: 20101116

Docket: IMM-1116-10

Citation: 2010 FC 1140

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 16, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

M. C. E.,
SHAWNLEY,
JEHOVANY

Applicants

and

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 IRPA), of a negative decision of the Immigration and Refugee Board (the IRB) dated December 9, 2009, determining that M.C.E. (the applicant) and her two children, Shawnley and Jehovany (minor children) are not refugees under section 96 or persons in need of protection under subsection 97(1) of the IRPA.

[2] At the hearing, the applicant made a verbal request that she and her children be identified according to the style of cause above. Given the respondent's consent, the Court granted the request.

[3] After having analyzed the documents submitted by the parties, the Court finds that the application for judicial review will be dismissed for the following reasons.

[4] The applicant is a citizen of Haiti, and her minor children are citizens of the United States.

[5] The applicant submits that she left her country of origin in 1998 at the age of 16. Her parents sent her to live with her aunt and uncle, since they were unable to provide for her because of the large number of children that they had had together.

[6] According to the applicant, she became a *restavek* (a Creole word meaning "stay-with", a term used for child slaves in Haiti) when she was five years old. She had to do chores such as cleaning the house, fetching water, washing the dishes, making the beds, doing the laundry, etc. Her living conditions were deplorable. She was beaten, touched inappropriately and not allowed to play with the other children.

[7] Eventually, her mother sent her to live with one of her cousins in the United States. However, her living conditions remained the same, and she was still treated as a *restavek*. When she was in New York, she met a man whom she married, and they had two children.

[8] The applicant fears that if she were to return to Haiti, she would be persecuted as a *restavek* woman by her aunt, her cousins and her husband's family.

[9] The IRB concluded that there was no connection to the Convention because, instead, this is a case of discrimination. It also concluded that the applicant's childhood fears are no longer pertinent. In addition, the IRB noted that if the applicant had to return to Haiti, she has no obligation to live with her aunt or cousins and does not need help from anyone to take care of herself.

[10] After consulting the documentary evidence, the IRB also found that the risks that the applicant would face would not be different from those faced by the Haitian population.

[11] The standard of review in such cases is the reasonableness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[12] Although it is very sympathetic to victims who endured the plight of *restaveks*, the Court must agree with the IRB's conclusion that now that the applicant has become an adult, the fears she had as a child are no longer relevant.

[13] With regard to the objective fear, the applicant herself admits that there is no documentary evidence concerning children forced to live as *restaveks* who have returned to Haiti as adults.

[14] It was therefore reasonable for the IRB to determine, referring to *Soimin v. Canada (Citizenship and Immigration)*, 2009 FC 218, [2009] F.C.J. No. 246 (QL), that the risk faced by the

applicant if she were to return to her country would not be different from that faced by the entire Haitian population in a dramatic situation (Tribunal's Record, page 9, paragraph 4).

[15] The applicant proposes the following question for certification:

> [TRANSLATION]
> Are individuals who are victims of the *restavek* system (modern slavery) members of a particular social group under the Convention?

[16] The respondent objects to that question, submitting that it does not meet the requirements well established in the case law of the Federal Court because it is neither determinative nor a serious question of general importance.

[17] The Court agrees with that submission. In fact, even if that question were to be accepted, it would not have the effect of setting aside the IRB's decision.

JUDGMENT

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

"Michel Beaudry"
Judge

Certified true translation
Sarah Burns

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1116-10
STYLE OF CAUSE:	M. C. E., SHAWNLEY, JEHOVANY AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 3, 2010
REASONS FOR JUDGMENT:	BEAUDRY J.
DATED:	November 16, 2010

APPEARANCES:

Marie Saintil	FOR THE APPLICANTS
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Saintil Law Office Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT