

Federal Court



Cour fédérale

Date: 20101122

Docket: IMM-217-10

Citation: 2010 FC 1171

Ottawa, Ontario, November 22, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**FABUS DESLANDES
(A.K.A. FABUS DELANDES)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Deslandes Fabus has claimed refugee protection in Canada based on his fear of a powerful landowner, Mr. Lucas, in his native Haiti. Mr. Fabus spoke out against Mr. Lucas for his alleged involvement in a massacre in 1987. When Mr. Fabus was threatened in 1997, he fled to another town and then left Haiti for the U.S. in 1999. He arrived in Canada in 2007.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Fabus' claim on the basis that there was no more than a mere possibility he would be at risk if he returned to Haiti, given the passage of time since the main events underlying his claim. Mr. Fabus argues that the Board ignored the fact that his home was burned down in 2004 and that his wife went into hiding as a result. A neighbour claimed that the landowner, Mr. Lucas, was responsible. Mr. Fabus suggests that the Board erred in thinking that the risk to him had subsided with time.

[3] Mr. Fabus asks me to overturn the Board's decision and order another panel to reconsider his claim. I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] The issue is whether the Board's decision was unreasonable or if its reasons were inadequate.

II. The Board's Decision

[5] The Board found that Mr. Fabus was a schoolteacher in the northwest area of Haiti. In addition, Mr. Fabus helped local peasants keep their land. He also worked as a cashier in a store owned by Mr. Lucas, who owned a lot of property. When Mr. Lucas was arrested in connection with a peasant massacre, Mr. Fabus spoke out against him. Members of the Lucas family warned Mr. Fabus to keep quiet.

[6] The Board also found that, in 1997, a group of five individuals stopped Mr. Fabus and threatened him. As a result, he did not return to his teaching job and started hiding at a friend's house. In 1999, he learned that he was being sought, and so he fled to the United States. He claimed asylum there, but his claim was dismissed.

[7] The Board noted that, in 2004, Mr. Fabus's spouse barely escaped an attack. Then next day, her house was burned down. She went into hiding.

[8] The Board found Mr. Fabus's testimony to be credible. However, it concluded that he had not presented evidence that would support a finding that he was persecuted on political grounds. Mr. Fabus does not contest that finding. He does, however, dispute the Board's conclusion that he would not be at risk of serious mistreatment if he returned to Haiti, given the passage of time.

III. Was the Board's Decision Unreasonable or Inadequately Explained?

[9] Mr. Fabus argues that the Board's conclusion that the passage of time diminished the risk he faced in Haiti was unreasonable and suggests that its conclusion was inadequately explained. His main argument is that the Board's failure, in the context of its analysis of s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), to mention the fact that his spouse's house had been burned down in 2004 indicates that the Board failed to appreciate that the risk to him continues to exist. Therefore, he contends that the Board's conclusion that he would no longer have any interest in the applicant was unreasonable or, at least, inadequately explained.

[10] The Board accepted Mr. Fabus's testimony about the massacre in 1987 and Mr. Lucas's arrest. It noted Mr. Fabus's concern that Mr. Lucas continues to be an influential figure in Haiti and that Mr. Fabus continues to be at risk of reprisals from him. However, the Board went on to find that "[i]t does not seem reasonable or plausible to imagine that such a powerful person would, today, threaten the claimant's life or safety." Mr. Fabus maintains that the Board's conclusion cannot stand given its failure to mention the incident in 2004.

[11] In my view, the Board's decision was not unreasonable. The Board was clearly aware of the 2004 incident having specifically referred to it in its analysis of s. 96 of IRPA. Further, the 2004 incident does not contradict the Board's conclusion that Mr. Fabus was probably no longer at risk from any harm the Lucas family might have wished to cause him. That incident might have helped establish that Mr. Fabus would still have been at risk from the Lucas family in 2004, but it did not show that he still at risk in December 2009, when the Board rendered its decision.

[12] In addition, the Board's failure to mention the 2004 incident in its analysis of s. 97 of IRPA did not render its reasons inadequate. The Board's reasons must be read as a whole and it is clear that it was aware of the 2004 incident. Its failure to mention it in one part of the decision does not necessarily render the reasons deficient when it is mentioned in another. The purposes of written reasons "are fulfilled if the reasons, read in context show why the judge decided as he or she did" (*R v REM*, [2008] 3 SCR 3, at para 17). In this case, the Board's reasons were sufficient.

IV. Conclusion and Disposition

[13] The Board's decision was not unreasonable in light of the evidence before it; nor were its reasons inadequate. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance to be certified, and none is 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

Annex “A”

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
 (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
 (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
 (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
 (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
 (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
 (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
 a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
 b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
 a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;
 b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
 (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
 (ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,
 (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-217-10

STYLE OF CAUSE: FABUS DESLANDES v MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 2, 2010

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

DATED: November 22, 2010

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