

Federal Court



Cour fédérale

Date: 20110216

Docket: IMM-3249-10

Citation: 2011 FC 188

Toronto, Ontario, February 16, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

VICTORIA NYASHA CHIWARA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The issue on this application is whether the Refugee Protection Division erred in failing to join Victoria Chiwara's application for refugee protection with those of her mother and sister.

[2] Ms. Chiwara stated in her Personal Information Form that her mother and sister had refugee claims pending before the Board. Ms. Chiwara was a self-represented 22 year old at the time of her

refugee hearing. She had been abandoned by her mother when she was younger, and had little knowledge of the nature of her mother's refugee claim, although she understood that it was based upon her mother's political opinion.

[3] The refugee claims of Ms. Chiwara's mother and sister were subsequently accepted. Ms. Chiwara's claim was refused.

[4] Under the heading "Claims automatically joined", Rule 49 of the *Refugee Protection Division Rules*, SOR/2002-228, provides that "The Division *must* join the claim of a claimant to a claim made by the claimant's spouse or common-law partner, child, parent, brother, sister, grandchild or grandparent" [emphasis added]. While it is evident from the record that the presiding member was aware of the pending claims of Ms. Chiwara's relatives, the claims were not joined, and no reasons were provided for not doing so.

[5] The Board does have the discretion to change the requirements of a Rule: see Rule 69. However, in the absence of any reasons, it is impossible to ascertain whether this discretion was properly exercised in this case. Moreover, there is nothing on the face of Ms. Chiwara's application that would indicate any basis for deviating from the presumptive rule that the refugee claims of family members are to be joined. As a result, the Board's decision will be set aside and a new hearing will be ordered with respect to Ms. Chiwara's refugee claim.

[6] The question then arises as to how the re-hearing of Ms. Chiwara's claim should be conducted. Given that the refugee claims of Ms. Chiwara's mother and sister have already been

determined, it is no longer possible for the claims to be joined and heard together. In discussing this concern with counsel, it was agreed that the best alternative was for the Court to direct that the record from the refugee hearing of Ms. Chiwara's family members be put into evidence before the member conducting the new hearing into Ms. Chiwara's claim. Ms. Chiwara should be permitted to supplement that record with any additional evidence that she wishes to adduce in support of her claim.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed. The decision of the Board is set aside and Ms. Chiwara's refugee claim is remitted to a differently constituted panel for re-determination in accordance with these reasons. No question arises for certification.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3249-10

STYLE OF CAUSE: VICTORIA NYASHA CHIWARA v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 15, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: February 16, 2011

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