

Federal Court



Cour fédérale

**Date: 20100924**

**Docket: IMM-1168-10**

**Citation: 2010 FC 960**

**Vancouver, British Columbia, September 24, 2010**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**NDUVEE GERSON TJAVARA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division (the Board), dated February 3, 2010, whereby Nduvee Gerson Tjavara (the applicant) was found not to be a Convention refugee or a person in need of protection.

[2] The applicant is fleeing his home country of Namibia due to alleged fear of persecution and torture because of his sexual orientation.

[3] The Board accepted that the applicant is bisexual but found that the story which he recounted did not lead to a conclusion that he would, in the future, suffer more than taunts and threats he had experienced in the past.

[4] Reasonableness is the standard of review for the Board' findings of fact. Accordingly, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[5] In *Lewis v. Canada (Citizenship and Immigration)*, [2004] F.C.J. No. 1436 (FC) (QL) at para. 19, the Court stated:

A tribunal will be presumed to have weighed and considered all of the evidence before it, and the fact that some of the evidence is not specifically referred to in the Board's reasons does not mean that the evidence was ignored: *Florea v. Canada (Minister of Employment & Immigration)*, [1993] F.C.J. No. 598 (Fed. C.A.). However, this is a rebuttable presumption. Where the evidence is important to a central issue, the court will be more willing to infer from a Board's silence that the evidence was ignored: *Cepeda-Gutierrez v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 35 (Fed. T.D.).

[6] In the case at bar, I find that it was reasonable for the Board to conclude that the applicant would not face more than a mere possibility of persecution, or a risk to his life, or of cruel and unusual treatment or punishment, or a danger of torture if returned to his country.

[7] This finding is reasonable because the applicant was found not to be credible regarding his alleged arrest by the police and his slow pace in leaving the country. When questioned about this, the applicant justified his leaving the country six months after the central events in his claim by the unavailability and price of airline tickets.

[8] There is no obligation for the Board to mention in detail the evidence submitted. After a careful review of the evidence here, the Court finds that the analysis and conclusions drawn from it by the Board are reasonable.

[9] Therefore, the Court's intervention is not warranted.

[10] No question of general importance was submitted and none arises.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be dismissed.

No question is certified.

“Michel Beaudry”

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Judge

## ANNEX “A”

*Immigration and Refugee Protection Act,*  
S.C. 2001, c. 27

*Loi sur l’immigration et la protection des*  
*réfugiés, L.C. 2001, ch. 27*

**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,

**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) 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

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) 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.

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.

**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

**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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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

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

(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 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.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1168-10

**STYLE OF CAUSE:** NDUVEE GERSON TJAVARA v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** September 22, 2010

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

**DATED:** September 24, 2010

**APPEARANCES:**

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