Federal Court Cour fédérale

Date: 20130524

Docket: IMM-5920-12

Citation: 2013 FC 542

Ottawa, Ontario, May 24, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

NGARIPUE MUVANGUA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Ngaripue Muvangua, originally from Namibia, claimed refugee protection in Canada based on her fear of mistreatment by an abusive uncle to whom she had been promised in marriage. A panel of the Immigration and Refugee Board dismissed Ms Muvangua's claim, concluding that she could live safely in Walvis Bay, Namibia because she could obtain state protection there.

[2] Ms Muvangua argues that the Board erred by failing to apply the correct test for state protection. She asks me to overturn the Board's decision and order another panel to reconsider her application.

[3] I agree that the Board erred and will allow this application for judicial review on that basis. Ms Muvangua raised a number of other issues arising from the Board's decision, but I need not deal with those.

II. <u>The Board's Decision</u>

[4] The Board concluded that Ms Muvangua could avoid mistreatment by moving from Windhoek to Walvis Bay. In other words, she had a viable internal flight alternative (IFA) in Walvis Bay. There, state authorities would be "reasonably forthcoming with serious efforts" to protect her. Given that Ms Muvangua had failed to approach authorities in Walvis Bay for protection, the Board found that she had failed to rebut the presumption that the state of Namibia could protect her.

[5] Further, the Board concluded that it would be reasonable for Ms Muvangua to relocate to Walvis Bay. She is able-bodied, well-educated, and resourceful. After all, she managed to make her way to Canada and find employment in Fort McMurray, Alberta.

[6] Therefore, the Board found that Ms Muvangua had not made out her refugee claim.

III. Did the Board err?

[7] When issues of state protection or IFA arise, the real question is whether the claimant meets the definition of a refugee. A refugee is a person who has a well-founded fear of persecution in his or her country of origin and who cannot obtain protection there. If state protection is available, the claimant's fear of persecution is not well-founded. Similarly, if the person can move within the country either to avoid persecution or to obtain state protection, his or her fear is not well-founded. In refugee cases, the essential question to be answered, after considering all of the evidence – including the evidence relating to the state's capacity to protect the claimant, whether in the particular location he or she fled or elsewhere in the country – is whether the claimant has shown that he or she likely faces a reasonable chance of persecution in the country of origin. If so, the claimant meets the definition of a refugee.

[8] In my view, the Board made two errors. First, it faulted Ms Muvangua for not seeking state protection in Walvis Bay, even though she had never been there. This was simply not a relevant factor to consider in deciding whether Ms Muvangua faced a reasonable chance of persecution in Walvis Bay.

[9] Second, the Board found that state authorities would respond to Ms Muvangua's circumstances with "serious efforts" to protect her. Whether the authorities might make serious efforts would not directly answer the fundamental question of whether Ms Muvangua's claim was well-founded. Rather, the Board had to decide whether the evidence relating to the state resources

actually available to Ms Muvangua indicated that she would probably not encounter a reasonable chance of persecution in Namibia.

[10] In light of these errors, the Board's conclusion that Ms Muvangua had not made out her refugee claim was unreasonable. I must, therefore, allow this application for judicial review.

IV. Conclusion and Disposition

[11] The Board erred in its treatment of the issues of IFA and state protection. Accordingly, I must allow this application for judicial review and order a new hearing before another panel. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and a new hearing before a different panel is ordered.

2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5920-12
STYLE OF CAUSE:	NGARIPUE MUVANGUA v MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 13, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	O'REILLY J.
DATED:	MAY 24, 2013

APPEARANCES:

Lily Tekle	FOR THE APPLICANT
Ada Mok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Larry Butkowsky Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General Toronto, Ontario	FOR THE RESPONDENT