

IMM-2303-96

OTTAWA, ONTARIO, FRIDAY, THIS 2nd DAY OF MAY 1997

PRESENT: THE HONOURABLE MR. JUSTICE NOËL

BETWEEN:

NELLY NYEMBO OYAYA,

Applicant,

and

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

ORDER

The application for judicial review is dismissed.

Marc Noël
Judge

Certified true translation

C. Delon, LL.L.

BETWEEN:

NELLY NYEMBO OYAYA,

Applicant,

and

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

NOËL J.

This is an application for judicial review of two decisions of the Refugee Determination Division of the Immigration and Refugee Board (the tribunal). The first decision, dated June 17, 1996, found that the applicant had abandoned her refugee claim. The second, dated August 1, 1996, dismissed the applicant's application to reopen the claim.

The history of the proceedings in the instant case is set out in the reasons of the tribunal that gave the decision on the application to reopen and I feel no need to reproduce it.

With respect to the decision finding that the applicant's claim had been abandoned, she contends that she never received the notice of hearing and that there was no negligence on her part. I note that counsel for the applicant, who had herself had no news from her client, attended before the tribunal on May 1, 1996. She indicated that she had had no contact with her client and that her client had not responded to her own letters. The applicant submits that she never changed her address and that she always checked her mail. To all appearances, if that were the case, she would have received the correspondence sent to her.

With respect to the decision refusing to reopen the claim, the tribunal was entitled to conclude that the applicant bore full responsibility for the abandonment of her claim, and it was therefore open to the tribunal to exercise its discretion in a manner unfavourable to her.

Counsel for the applicant asked that a question be certified in order to clarify the address to which subsection 35(1) of the Convention Refugee Determination

Division Rules¹ refers for purposes of service. I do not believe that any clarification is required on this point since the address in question must necessarily be the address designated by a claimant under section 36 of those Regulations.

¹SOR/93-45.

The application for judicial review is dismissed.

Marc Noël
Judge

Ottawa, Ontario
May 2, 1997

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-2303-96 and IMM-2926-96

STYLE OF CAUSE: NELLY NYEMBO OYAYA v. M.E.I.

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: May 1, 1997

REASONS FOR ORDER OF NOËL J.

DATED: May 2, 1997

APPEARANCES:

Johanne Doyon FOR THE APPLICANT

Pascale-Catherine Guay FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Montréal, Quebec

George Thomson FOR THE RESPONDENT
Deputy Attorney General of Canada