

Federal Court



Cour fédérale

**Date: 20140604**

**Docket: IMM-2081-13**

**Citation: 2014 FC 541**

**Ottawa, Ontario, June 4, 2014**

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

**BETWEEN:**

**ENKHTUYA OSOR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of the decision by the Refugee Protection Division [RPD] which concluded that the Applicant, a citizen of Mongolia, was neither a refugee nor a person in need of protection. The RPD accepted her allegation that she suffered spousal abuse but rejected her refugee/protection claim on the basis of state protection.

[2] There are several grounds on which this decision must be quashed and the matter remitted back. The following is a brief summary of those grounds.

[3] The RPD erred in its s 96 consideration by holding that the Applicant had to show that she “would face persecution” as opposed to the proper legal test of “facing a serious possibility of persecution”.

While the error of law was not determinative, it is a serious matter and colours the state protection analysis because it begins the whole matter of persecution and risk from the wrong perspective. On its own, this error might not have been sufficient to overturn the decision but in combination with other concerns, it undermines the validity of the RPD decision.

[4] The decision contained an error of fact which was relevant to the determinative issue of state protection. The RPD found that the Applicant’s husband was convicted of a criminal offence when in fact he had not been. While her husband had been taken away by police on three occasions, there is no evidence to support the RPD’s conclusion that he received criminal convictions as opposed to administrative detentions. The RPD’s conclusion is contradicted by a letter from the police indicating that the Applicant’s husband “was sentenced according to Administrative Law”, the Applicant’s testimony and documentary evidence that a recently enacted domestic violence law has been rarely if ever used.

[5] The RPD referred to the test for state protection as being whether the Mongolian government was taking steps to address domestic violence. That articulation of the legal test is an error in law.

[6] The RPD's actual analysis of state protection focused on the processes in place to deal with domestic violence. The RPD did not consider, as it was required to do, the efficacy or operational reality of those processes. In particular, the RPD should have confronted the fact that the Applicant had accessed all the resources which the RPD found were available to protect her and was still experiencing serious violence.

[7] Therefore, this decision cannot be sustained. The decision will be quashed and the matter remitted back for a new determination by a different panel.

[8] There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted, the decision is quashed and the matter is remitted back for a new determination by a different panel.

"Michael L. Phelan"

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Judge

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

**DOCKET:** IMM-2081-13

**STYLE OF CAUSE:** ENKHTUYA OSOR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 26, 2014

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JUNE 4, 2014

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