

Federal Court



Cour fédérale

Date: 20170223

Docket: IMM-2864-16

Citation: 2017 FC 220

Toronto, Ontario, February 23, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MARTIN EUGINE HAYNES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant has applied for judicial review of a decision [the Decision] of the Refugee Appeal Division [RAD] dated June 8, 2016 confirming the Refugee Protection Division's [RPD] finding that he is neither a *Convention* refugee nor a person in need of protection. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. Background

[2] The Applicant is a twenty five year old man from St. Vincent and the Grenadines [St. Vincent]. It is undisputed that he suffers from major mental illnesses, including schizo-affective disorder. He is delusional, hears voices and believes himself cursed. He was designated as a Vulnerable Person and a Designated Representative was appointed by the RPD.

[3] The Applicant says that he was targeted by members of the Hungry Dogs and Pups [HDP] gang. Gang members threatened, robbed and beat him and spread rumours that he is gay. He had particular problems with an HDP member named Kenson.

[4] The Applicant says that HDP members have learned that he is alive in Canada and have made it clear in conversations with his family and in Facebook messages, that they believe he is gay and they will kill him if he returns to St. Vincent. The Applicant says that Kenson threatened to kill him in a Facebook message in April 2014. The Applicant alleges that he is terrified of returning to St. Vincent because he fears the HDP. He also fears violence from members of the general public due to his imputed sexual orientation. He further alleges that he will face risk because he visibly presents as mentally ill. He says that mentally ill people are stigmatized and persecuted in St. Vincent. It is noteworthy that he does not allege that he faces a risk due to a lack of healthcare services in St. Vincent.

II. The RAD Decision and My Conclusions

[5] In my view, the RAD's Decision was unreasonable for the following reasons:

A. The RAD found no nexus to a convention ground under section 96 of the IRPA.

However, it failed to consider his allegation of risk due to the perception that he is

gay and did not make reference to the Facebook page (a portion is attached as Schedule “A”) in which Kenson calls him gay and repeatedly threatens to kill him. The parties agreed that, on Facebook, the Applicant’s name is CHICO.

- B. Further, the RAD failed to consider whether the Applicant’s mental illness placed him in a social group and did not mention the letter from the President of the Human Rights Association in St. Vincent which says that mentally ill people are at risk.
- C. The RAD considered section 97 of the IRPA and found that the Applicant was not at risk because healthcare was adequate. The RAD failed to appreciate that healthcare was not relevant. The Applicant’s risk was based on the public’s reaction to his mental illness, not on his inability to access healthcare.

III. Conclusion

[6] The application will be allowed.

IV. Certification

[7] No questions were posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed. The Applicant's appeal is to be reconsidered by a different member of the RAD.

“Sandra S. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2864-16

STYLE OF CAUSE: HAYNES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 22, 2017

JUDGMENT AND REASON: SIMPSON J.

DATED: FEBRUARY 23, 2017

APPEARANCES:

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FOR THE APPLICANT

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FOR THE RESPONDENT

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FOR THE RESPONDENT

Schedule A

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IE Runtime Environment 7 Update 51' from 'Oracle America, Inc.'. If you trust the website a

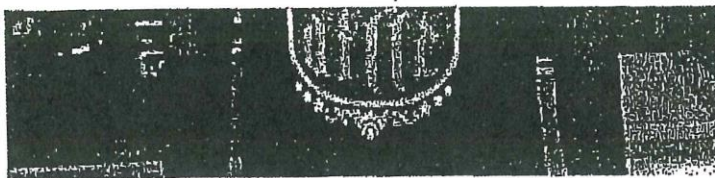


Chico

Quashie Kenson

+ New Message

⚙ Actions



Quashie Kenson
thats me there your braker

4:19 6:18pm

4:24 PM



Quashie Kenson
i heard you trying to sneak back here easy but is all the
government we have in our hand now so theres no way we
wouldnt know pussy hole

4:20 8:27am

you saw that big shot gun we have for you tht name martin
that is for you

4:24 PM



Quashie Kenson
yow mister gay guy your life is on the count down now
because we is going to come for you so its your homework
to find out

4:30 6:2-pm



Quashie Kenson
boy yo mother cunt we dont forget you anuh we still
remember to kill you batty bwoy

5:06 8:29pm