

Federal Court



Cour fédérale

**Date: 20191104**

**Docket: IMM-5507-18**

**Citation: 2019 FC 1380**

**Ottawa, Ontario, November 4, 2019**

**PRESENT: Mr. Justice James W. O'Reilly**

**BETWEEN:**

**MIGUEL MAHLON NUGENT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 1986, Mr Miguel Mahlon Nugent arrived in Canada from Jamaica as a permanent resident. More than 30 years later, after receiving convictions for drug possession and trafficking, Mr Nugent was found inadmissible to Canada.

[2] Mr Nugent's removal from Canada was temporarily stayed by the Immigration Appeal Division (IAD). However, the IAD eventually cancelled Mr Nugent's stay after he failed to respond to its efforts to communicate with him. Mr Nugent then requested a pre-removal risk assessment (PRRA) alleging that, as a bisexual male, he would be at risk of serious harm if he returned to Jamaica.

[3] The officer who considered Mr Nugent's PRRA application dismissed it because, in his view, Mr Nugent had provided insufficient supporting evidence. In particular, the officer found that Mr Nugent failed to present evidence from previous same-sex partners or any LGBTQ organizations. The officer gave little weight to letters from Mr Nugent's friends and relatives because the authors had a vested interest in the outcome of Mr Nugent's application. The officer also considered Mr Nugent's psychological evaluations, but found that they did not show that Mr Nugent could not obtain appropriate medical services in Jamaica. The officer did not provide Mr Nugent an oral hearing, even though he requested one.

[4] Mr Nugent argues that the officer treated him unfairly by not convening an oral hearing and rendered an unreasonable decision. He asks me to quash the decision and order another officer to reconsider his PRRA application.

[5] I agree with Mr Nugent. The officer erred by not granting him an oral hearing. In addition, I find that the officer's conclusion that Mr Nugent failed to provide sufficient evidence supporting his claim was unreasonable. The officer unreasonably discounted the supporting evidence that Mr Nugent had provided. I therefore allow this application for judicial review.

[6] The issues are:

1. Should the PRRA officer have convened an oral hearing?
2. Was the officer's conclusion unreasonable?

II. Issue one: should the PRRA officer have convened an oral hearing?

[7] The Minister argues that the officer had no obligation to convene an oral hearing because the officer made no adverse credibility finding against Mr Nugent. Rather, says the Minister, the officer simply concluded that the supporting evidence was insufficient.

[8] I disagree.

[9] Mr Nugent specifically requested that the officer provide an oral hearing if his credibility was at issue. The officer's failure to respond to that request could, on its own, justify allowing the application for judicial review (*Plata Vasquez v Canada (Citizenship and Immigration)*, 2019 FC 279 [*Plata*] at para 12).

[10] Further, the officer effectively rendered a negative credibility finding against Mr Nugent by concluding—without explanation—that he tendered insufficient evidence to support his application. Mr Nugent had provided a detailed sworn statement about his sexuality. He also provided evidence from medical professionals who noted that he has trauma from enduring significant physical and emotional abuse from his father and experiencing discrimination, social stigma, and rejection elsewhere, all related to his sexuality. The medical evidence concluded that Mr Nugent's fear of returning to Jamaica as a bisexual would pose a risk that he would

experience increased psychiatric symptoms from his trauma. Finally, Mr Nugent submitted letters from friends and a family member who provided corroborating information. Particularly in light of Mr Nugent's sworn statement, the officer's conclusion about insufficient evidence amounted to a veiled credibility finding (see *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 73 [*Chekroun*] at paras 66-71; and *Plata* at para 11).

[11] Given the serious issue raised about Mr Nugent's credibility on a central issue affecting the outcome of his application—his bisexuality and related risks of harm on returning to Jamaica—the officer was obliged to hold an oral hearing (see s 113(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27; and s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227; both are set out below in an Annex). His failure to do so constitutes a breach of procedural fairness (*Chekroun* at para 72).

III. Issue two: was the officer's conclusion unreasonable?

[12] The Minister submits that the officer gave appropriate consideration to the evidence presented by Mr Nugent and reasonably concluded that it was insufficient to support his application.

[13] I disagree.

[14] The officer discounted the value of Mr Nugent's affidavit because it did not include corroborating evidence from former same-sex partners or an LGBTQ organization. Mr Nugent

had explained that he was no longer in contact with those partners and had not been involved in any organization for 20 years.

[15] It was unreasonable for the officer to give Mr Nugent's evidence less weight on the basis that he was unable to provide the corroborating evidence the officer sought. Often, applicants claiming persecution on the basis of sexual orientation will lack corroborating evidence (see *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression* [SOGIE Guidelines], ss 3.2 and 7.2; and *Ogunride v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 760 at para 42). Even when they have corroborating evidence, it is often of limited assistance (See *eg Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 48; and SOGIE Guidelines, s 7.2.3).

[16] The officer also gave little weight to letters provided by Mr Nugent's friends and family member because the authors had a vested interest in the outcome, and because their statements were unsworn and uncorroborated. These were not valid grounds to discount this evidence. Applicants often present evidence coming from persons who have an interest in the outcome. This is an insufficient basis on which to discount the evidence these persons provide (*Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para 56; and *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at para 6).

[17] Further, the officer unreasonably discounted the letters' contents because they were unsworn. Contact information was provided to the officer who could have followed up with

questions for the letters' authors, if the reliability of the evidence was an issue (*Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 at para 52).

[18] Finally, the officer unreasonably dismissed the evidence emanating from mental health professionals. The officer found that this evidence did not show that Mr Nugent would be unable to obtain mental health services in Jamaica. However, Mr Nugent did not tender the reports to establish his inability to access mental health services. Rather, their purpose was to illustrate that his mental health challenges are consistent with the trauma endured by a bisexual individual who experienced abuse and stigma from childhood. The officer failed to consider that aspect of the reports when unreasonably concluding that Mr Nugent was not bisexual.

[19] Therefore, I find that the officer's assessment of the evidence supporting Mr Nugent's claim was inadequate and led to an unreasonable conclusion.

#### IV. Conclusion and disposition

[20] The PRRA officer should have afforded Mr Nugent an oral hearing. In addition, the officer's analysis of the evidence resulted in an unreasonable conclusion about the risk Mr Nugent might face if he returned to Jamaica. I must therefore allow this application for judicial review.

[21] Neither party proposed a question of general importance for certification, and none is stated.

**JUDGMENT IN IMM-5507-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed and the matter is returned to the Board for reconsideration by a different officer. No question of general importance is stated.

"James W. O'Reilly"

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Judge

## ANNEX

*Immigration and Refugee Protection Act,*  
SC 2001, c 27

*Loi sur l'immigration et la*  
*protection des réfugiés,* LC 2001,  
ch. 27

Consideration of application

Examen de la demande

**113** Consideration of an application for protection shall be as follows:

**113** Il est dispose de la demande comme suit:

...

[...]

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

*Immigration and Refugee Protection Regulations,* SOR/2002-227

*Règlement sur l'immigration et la*  
*protection des réfugiés,*  
DORS/2002-227

Hearing — prescribed factors

Facteurs pour la tenue d'une audience

**167** For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

(b) whether the evidence is central to the decision with respect to the application for protection; and

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

(c) whether the evidence, if accepted, would justify allowing the application for protection.

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

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

**DOCKET:** IMM-5507-18

**STYLE OF CAUSE:** MIGUEL MAHLON NUGENT v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** MAY 13, 2019

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** NOVEMBER 4, 2019

**APPEARANCES:**

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