

Date: 20070921

Docket: IMM-4786-06

Citation: 2007 FC 942

Toronto, Ontario, September 21, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DALE EMILE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms Dale Emile (the “Applicant”) seeks judicial Review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dated August 21, 2006. In its decision, the Board determined that the Applicant is not a Convention refugee nor a person in need of protection within the meaning of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended (the “Act”).

[2] The Applicant is a citizen of St. Lucia. She sought protection in Canada on the basis of domestic abuse at the hand of her former common-law partner. The Board rejected her claim on the grounds that she had failed to rebut the presumption of state protection in St. Lucia.

[3] The Applicant argues that in reaching this conclusion, the Board failed to consider relevant evidence, specifically the post-hearing affidavit was submitted on her behalf. She also submits that the Board ignored those parts of the documentary evidence that supported her claim as to the inadequacy of state protection in St. Lucia.

[4] I acknowledge that there is a rebuttable presumption that the Board considered all of the evidence that was submitted. However, in the present case, I am satisfied that the Applicant has rebutted this presumption with respect to the post-hearing affidavit that was filed. The Board made no reference to this document. It is for the Board and not Court to assess the admissibility and weight of the evidence before it.

[5] In my opinion, the Board's failure to consider the additional evidence submitted after the hearing amounts to a reviewable error that justifies intervention by the Court; see *Yuschuk v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1324.

[6] In the result, the application for judicial review is allowed and the matter is remitted to a differently constituted panel of the Board for re-determination. Counsel advised that there is no question for certification arising.

ORDER

THIS COURT ORDERS that the Application for judicial review is allowed and the matter is remitted to a differently constituted panel of the Board for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4786-06

STYLE OF CAUSE: DALE EMILE v. MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 19, 2007

**REASONS FOR ORDER
AND ORDER:** Heneghan J.

DATED: September 20, 2007

APPEARANCES:

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