

Date: 20080305

Docket: IMM-5506-06

Citation: 2008 FC 283

Ottawa, Ontario, March 5, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

LENFORD RICHARDS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Lenford Richards came to Canada from Jamaica in 1990. After he was ordered to be deported, he requested a pre-removal risk assessment based on his fear of reprisals from gangs in Jamaica. He witnessed a murder when he visited Jamaica in 1992 and later received death threats. Another witness was killed during the trial of the alleged murderers. The Jamaican Constabulary confirmed that Mr. Richards is still in danger.

[2] Nevertheless, the officer conducting the risk assessment found that Mr. Richards could obtain state protection in Jamaica and, therefore, was not at risk of serious harm. In particular, Mr. Richards could be placed in a witness protection program.

[3] Mr. Richards argues that the officer erred in his treatment of the evidence. I agree that the officer erred and, therefore, will grant this application for judicial review.

I. Issue

[4] Did the officer err by overlooking important evidence supporting Mr. Richards' allegations?

II. Analysis

[5] The officer found that the documentary evidence on which Mr. Richards relied showed a general risk of being a victim of crime in Jamaica. None of the documents addressed his particular circumstances. Further, the documents showed that police were trying to deal with the country's difficult crime situation.

[6] The officer also looked at reports describing Jamaica as a constitutional democracy with a professional police force and an independent judiciary. In addition, he cited an article emanating from the Jamaica Information Service describing the witness protection program. The officer noted that the letter Mr. Richards had provided from the Jamaican Constabulary did not make reference to

the possibility of taking advantage of that program. Therefore, the officer concluded that, while crime was clearly a serious problem in Jamaica, Mr. Richards had failed to provide sufficient evidence to rebut the presumption that he could obtain state protection on his return.

[7] However, the officer did not refer to documentary evidence showing that reprisals account for 39% of the murders in Jamaica, that the killing of witnesses is a serious problem especially in proceedings related to violent crimes or gangs, and that protecting witnesses is a difficult problem in a small country like Jamaica.

[8] Nor did the officer cite documents showing that the administration of the witness protection program is seriously understaffed and that many observers have commented on the program's inadequacy. Even the Department of State document, on which the officer relied heavily, stated that there "was a general lack of confidence in the police's witness protection program."

[9] In my view, the officer was obliged to refer to the cogent evidence contradicting his conclusion that Mr. Richards could obtain state protection in Jamaica: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No 1425. I must, therefore, allow this application for judicial review and order a new assessment by a different officer. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and a new assessment by a different officer is ordered;
2. No question of general importance has been stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5506-06

STYLE OF CAUSE: RICHARDS v. MCI & MPSEP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: November 1, 2007

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

DATED: March 5, 2008

APPEARANCES:

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