

Date: 20080424

Docket: IMM-4058-07

Citation: 2008 FC 535

Ottawa, Ontario, the 24th day of April 2008

Present: The Honourable Mr. Justice Harrington

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

BETY PLAISIR

Respondent

REASONS FOR ORDER AND ORDER

[1] When Bety Plaisir first claimed refugee protection before the Refugee Protection Division (RPD) of the Immigration and Refugee Board, the panel found her to be inadmissible because there were reasonable grounds to believe that she was complicit by association in crimes against humanity and acts contrary to the purposes and principles of the United Nations. She was, therefore, excluded from the protection provided for Convention refugees under articles 1F(a) and (c) of the Convention. When she applied to this Court for a judicial review of that decision, Madam Justice Tremblay-Lamer allowed the application and referred the matter to the RPD for redetermination by a differently constituted panel.

[2] When the case was before the RPD for the second time, the panel found that Ms. Plaisir was a Convention refugee and not excluded under articles 1F(a) and 1F(c) of the Convention. The Minister is now applying for a judicial review of that decision. The Court will allow the application and refer the matter to the RPD for redetermination by a differently constituted panel once again.

[3] Bety Plaisir is a citizen of Haiti who was part of a special unit of the Haitian National Police known as the Corps d'intervention et de maintien de l'ordre (CIMO) [public order and intervention force]. She was part of this unit from September 2002 to July 2005, including a year of training. She arrived in Canada in August 2005 and claimed refugee protection, alleging a well-founded fear of persecution because of her social group, the family. She alleged that she feared the supporters of former president Aristide, who were responsible for torturing and raping her and murdering her father. According to her, these acts were committed because she was thought to be an active member of a group that opposes former president Aristide called group "184".

[4] In *Plaisir v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 264, [2007] F.C.J. No. 391, Tremblay-Lamer J. reviewed case law regarding the circumstances in which a person could be guilty of complicity by association. Among other things, she wrote the following at paragraphs 20 and 21:

[20] Mere membership in an organization that commits international crimes is an insufficient basis on which to invoke the exclusion clause against the applicant, . . . unless the very existence of this organization is primarily directed to a limited, brutal purpose. . . .

[21] However, association with an organization responsible for international crimes may constitute complicity if there is personal and knowing participation or toleration of the crimes. . . .

I have dealt with this issue more recently in *Varela v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 436.

[5] After examining the case in detail, Tremblay-Lamer J. allowed the application for judicial review. She indicated the following at paragraph 34 of her decision:

[34] Basically, the RPD's analysis of CIMO's activities was deficient and was not sufficient in demonstrating that the organization regularly and continuously committed crimes against humanity. In addition, the reasons for the decision did not establish that the panel considered the required factors in determining whether the applicant was complicit by association.

[6] That time, the panel found that (a) Ms. Plaisir joined the police freely; (b) she could not have been unaware of police violence; and (c) she had knowledge of the human rights violations committed by the police, even though they were less serious than the media portrayed.

[7] The panel was of the opinion that Ms. Plaisir could not have been unaware of the atmosphere of oppression and that she did not try to distance herself from the CIMO. In fact, she chose a position with the CIMO specifically to balance her studies and her work. For that reason,

“the panel conclude[d] that the claimant had the required knowledge of the existence of crimes committed by the police and by the CIMO in particular”.

[8] The Minister claims that, in light of these remarks, it should have been found that Ms. Plaisir met the criteria of being complicit by association in crimes against humanity. After all, she was part of the CIMO’s staff, and even though she knew what the organization was doing, she did not resign. Instead, the panel found that the Minister did not establish that Ms. Plaisir had personally committed crimes against humanity or had actively supported them, or that the CIMO was an organization primarily directed to a limited and brutal purpose.

[9] The panel’s analysis is completely unsatisfactory. First, the reasons for such an about-turn are not given in the decision. The duty to give reasons for a decision is a requirement of procedural fairness, *R. v. Sheppard*, [2002] S.C.J. No. 30, [2002] 1 S.C.R. 869, *North v. West Region Child and Family Services Inc.*, 2007 FCA 96, [2007] F.C.J. No. 400. The Minister had a right to an explanation of the panel’s reasoning.

[10] Second, since the case before the panel clearly showed that some members of the CIMO abused human rights, the organization’s development – if it took place – was not taken into consideration. For example, the panel relied on reports that preceded Ms. Plaisir’s period of employment with the CIMO. In addition, when she became involved with the CIMO, President Aristide was in power, and he left Haiti when she was about halfway through her employment

period. The importance of this fact and its impact on the CIMO and on Ms. Plaisir's situation were not discussed.

[11] The application for judicial review will be allowed.

ORDER

For the reasons above,

THE COURT ORDERS that:

1. The application for leave and for judicial review be allowed.
2. The matter be referred to the RPD for redetermination by a differently constituted panel.
3. There is no serious question of general importance to be certified.

“Sean Harrington”

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4058-07

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
and

BETY PLAISIR

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 15, 2008

**REASONS FOR ORDER
AND ORDER BY:** The Honourable Mr. Justice Sean J. Harrington

DATED: April 24, 2008

APPEARANCES:

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