

Date: 20080502

Docket: IMM-4128-07

Citation: 2008 FC 546

Ottawa, Ontario, May 2, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

IRENE MUCHIRAHONDO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Refugee Protection Division of the Immigration and Refugee Board (the Board), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), in which the Board found that the applicant is neither a Convention refugee nor a person in need of protection.

ISSUES

[2] Only one question is raised before this Court: did the Board make an unreasonable error in its assessment of the applicant's refugee claim by relying on perverse considerations or unsound reasoning?

[3] For the reasons that follow, it is my opinion that the Board's decision is reasonable and therefore, the application for judicial review shall be dismissed.

FACTS

[4] The applicant is a citizen of Zimbabwe, born on July 7, 1963. She claims protection in Canada pursuant to sections 96 and 97 of the Act on the grounds of political opinion, namely her support for the Movement for Democratic Change (MDC). The applicant has a husband and three children who remain in Zimbabwe.

[5] The applicant alleges that she attended an MDC meeting in Bulawayo in March 2006, which was broken up by the police before it began. The applicant and other members of MDC boarded a bus to leave the meeting. The bus was also boarded by Zimbabwe African National Union – Patriotic Front (ZANU-PF) youth who verbally abused and taunted the MDC supporters.

[6] At her destination, the applicant and some of her friends and fellow MDC supporters got off the bus, but were pursued by the ZANU-PF youth who ripped their clothes and threw stones at them. The ZANU-PF youth followed the applicant as far as her home and only left when they

reached her gate and were confronted by her dogs. Following the incident, the ZANU-PF youth continued to come by her house where they threw fruit peels and stones at her dogs and her house, and chased the applicant's children.

[7] The applicant alleges that she was visited by Central Intelligence Office (CIO) agents at her place of employment on April 8, 2006. They questioned her about her political activities and her financial support of the MDC and threatened to stop her. The applicant claims that she was followed by CIO agents until approximately June 1, 2006.

[8] The applicant left Zimbabwe for the United States on June 29, 2006 and stayed with a friend in Virginia until she could make arrangements to come to Canada. She entered Canada on July 26, 2006 and sought refugee protection the same day.

DECISION UNDER REVIEW

[9] The Board dismissed the applicant's claim on the basis of her credibility. It gave the following reasons for determining that the applicant did not provide credible or trustworthy evidence in support of her demand:

- a) First, the Board accepted that the applicant's identity and nationality were established, as was her membership in the MDC party.
- b) The Board found that the applicant provided no evidence that she attended an MDC meeting in March 2006 or that she was harassed by ZANU-PF youth, other than her oral testimony. The Board found it reasonable that the applicant could not provide an

article from a local paper confirming that the incident occurred, but found it unreasonable that she did not provide letters from other MDC members attesting to her attendance at the meeting or the harassment that ensued. The Board also found it unreasonable that the applicant did not provide any letters, photos or other evidence supporting the damage to her home.

- c) The Board noted that neither the applicant nor her children were ever harmed by the ZANU-PF youth, and that the harassment ended a few weeks following the meeting. The Board found that taunts from youth did not amount to persecution, and that the applicant failed to demonstrate that she was persecuted by ZANU-PF youth.
- d) The Board determined that the applicant could not provide credible or trustworthy evidence that she was interviewed and threatened by CIO agents in April 2006 at her place of employment. These allegations were not recorded in her Port of Entry (POE) notes. The Board found the explanation, that she did not have enough time at the boarder to give her full story, to be unreasonable because the claimant had time to prepare her documents while staying in Virginia. The Board drew a negative inference from the discrepancies between the information provided at the POE, the Personal Information Form (PIF) on one hand, and at the time of the hearing before the Board.
- e) The Board drew a negative inference from the applicant's failure to provide any evidence from her employer attesting to the visit from CIO agents, given that the agents came to her workplace and that she informed her boss of the visit. The Board noted that the applicant had two months to gather such evidence prior to her

departure from Zimbabwe. The Board also drew a negative inference from the applicant's failure to report the incident and the fact that she was followed. The applicant offered no explanation for this omission.

[10] The Board determined that there was no serious possibility that the applicant would be persecuted if returned to Zimbabwe:

- a) The Board noted that the applicant held no official position with the MDC party; she merely distributed flyers, attended meetings, and at least one rally. The Board also noted that the applicant had not become involved with the MDC party in Canada.
- b) The Board drew a negative inference from the applicant's failure to provide any evidence of her involvement with the MDC other than a membership card. The Board found that her modest activities would not raise her profile to government authorities.
- c) The Board gave little weight to the applicant's allegation that three women had been jailed for distributing flyers, because the information was communicated to the applicant by her husband, and was therefore not reliable.

ANALYSIS

Standard of Review

[11] The standard of review applicable to a decision of the Board on questions of fact is reasonableness. The jurisprudence of this Court has consistently found that findings of fact, and more particularly credibility, made in the context of a refugee claim, are subject to the highest level

of deference (*Aguebor v. (Canada) Minister of Employment and Immigration*, [1993] F.C.J. No. 732 (F.C.A)). Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, determinations regarding the credibility of a refugee claimant made by the Board, should continue be subject to deference by the Court, and are reviewable on the standard of reasonableness (*Dunsmuir*, above at paragraphs 47, 55, 57, 62, and 64).

[12] For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above at paragraph 47).

Assessment of credibility

[13] The applicant submits that the Board erred in impugning her credibility in several respects. I will address them each in turn.

[14] The applicant submits that the Board erred by drawing a negative inference from the lack of evidence corroborating her attendance at the MDC meeting and the damage to her house. The applicant argues that the MDC party has a policy not to provide letters of support to members who seek asylum.

[15] Similarly, the applicant argues that it was unreasonable for the Board to draw a negative inference from her failure to provide an affidavit or other evidence from her employer attesting to the fact that CIO agents visited her at her officer.

[16] The applicant's first argument does not consider that the Board did not require that she submit an official letter from the MDC. The decision refers to "letter from other MDC members ... attending the rally". Since the applicant stated in her PIF that she attended the meeting with friends, I agree with the respondent's submission that it was reasonable to expect that the applicant could have provided a letter from one of these friends or members in support of her allegation. Further, the policy of the MDC indicates that branches of the MDC located abroad are not authorized to provide letters in support of asylum claims. Instead they direct such requests to an email address. The MDC indicates an avenue by which requests for support of refugee claims can be made; the applicant did not pursue this avenue.

[17] In relation to the applicant's failure to provide a letter from her employer, she claims that this would have exposed her employer to a dangerous risk; however, the applicant does not indicate how the CIO would have come to know about corroborating evidence given by the employer to the applicant for use in a proceeding in Canada.

[18] Further, the onus to present credible evidence in order to establish the well-foundedness of the fear and need for protection falls upon the applicant. The Board is entitled to conclude that evidence is not credible or trustworthy, if the applicant fails to corroborate her claims (*Ortiz Juarez*

v. Canada (Minister of Citizenship and Immigration), 2006 FC 288, [2006] F.C.J. No. 365 at paragraph 7).

[19] The applicant argues that the Board perversely minimized her experience as well as that of her family at the hands of the ZANU-PF youth. The Board concluded that the treatment of the applicant by ZANU-PF youth amounted only to harassment, which ended a few weeks following the meeting. The Board noted that the family continues to live without harassment today.

[20] It is my opinion that the Board did not make an unreasonable error in concluding that the treatment of the applicant did not amount to persecution, and does not thereby attract international protection.

[21] Persecution has been defined by the Courts as an affliction of repeated acts of cruelty or a particular course or period of systematic infliction of punishment. Mere harassment or discrimination is insufficient (*Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.), *Olearczyk v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 18 (F.C.A.), *Murugiah v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 230 (F.C.T.D.) and *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). It was open to the Board to assess the facts alleged by the applicants and determined that they did not amount to repeated acts of cruelty or systematic infliction of punishment, amounting to persecution.

[22] Finally, the applicant submits that the Board erred by impugning the applicant's credibility on account of her failure to mention the alleged actions of the CIO in the POE notes. The applicant contends that there was little room for a narrative in the forms provided.

[23] The respondent admits that there is limited space on the forms provided as part of the POE materials, but it would nevertheless have been reasonable for the applicant to note that she feared the CIO as well as ZANU-PF, particularly since she claimed that it was the actions of the CIO agents that led to her decision to leave Zimbabwe.

[24] It is open to the Board to draw a negative inference with respect to the applicant's credibility on the basis of inconsistencies between different versions of the applicant's story. The omission of the fact that CIO agents visited the applicant at work, threatened her, and subsequently followed her is central to the applicant's claim, and as such the Board's reliance on them was reasonable.

[25] The fact that the applicant recounted only the visit and threats of the CIO agents in her PIF, and omitted the fact that they followed her, further supports the negative inference drawn by the Board.

Risk Assessment Based on MDC Membership

[26] The applicant submits that mere membership or support for an opposition party in Zimbabwe constitutes sufficient reason to have a well-founded fear of persecution. The applicant submits that the Board erred in not coming to this conclusion, and refusing her claim. By so doing,

the Board either ignored or perversely assessed the documentary evidence. In support of this allegation, she cites several documentary sources.

[27] Notably the U.S. Department of State's Country Reports on Human Rights Practices (2006), released in early 2007 states the following:

Zimbabwe, with a population of approximately 11.6 million, is constitutionally a republic, but the government, dominated by President Robert Mugabe and his Zimbabwe African National Union Patriotic Front (ZANU PF) since independence, was not freely elected and is authoritarian. The last two national elections, the presidential election in 2002 and the parliamentary elections in March 2005, were not free and fair. Although the constitution allows for multiple parties, the ruling party and security forces intimidated and committed abuses against opposition parties and their supporters and obstructed their activities. The divided Movement for Democratic Change (MDC) is the country's principal opposition; despite the fraudulent elections, the MDC factions held 41 of 120 elected seats in the House of Assembly and seven of 50 elected seats in the Senate at year's end. The civilian authorities generally maintained control of the security forces, but often used them to control opposition to the ruling party.

...

Although the constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, security forces continued to engage in such practices. Police reportedly used excessive force in apprehending and detaining criminal suspects, as well as ordinary citizens, for holding meetings or participating in demonstrations. Government supporters continued to assault suspected opposition members. Violent confrontations between various youth groups aligned with either the government or the opposition continued.

Human rights groups reported that physical and psychological torture perpetrated by security agents and government supporters increased during the year. The Zimbabwe Human Rights NGO Forum recorded 337 cases of torture during the first nine months of the year. Youth militia forces, trained by ZANU-PF, were deployed to harass

and intimidate suspected supporters of the MDC and Zimbabwe Congress of Trade Unions (ZCTU).

[28] Other sources cited by the applicant relate particular accounts of violence and assault perpetrated by ZANU-PF militia against opposition supporters, as well as general statements indicating that supporters of MDC have been attacked and tortured. The Court also notes that Zimbabwe is currently the subject of a temporary stay of removals, pursuant to ministerial policy.

[29] The respondent counters the applicant's submissions by submitting that the applicant does not match the profile of the people referred to in the documents cited. The respondent argues that the documentary evidence does not demonstrate that all members of MDC face a well founded fear of persecution in Zimbabwe regardless of profile or intent, and notes that the Board considered the applicant to have only a modest involvement with the MDC party.

[30] The applicant has not demonstrated that the documentary evidence raises a particularized fear in her particular circumstances. The passage from the DOS Reports cited above indicates that the youth militia are deployed to harass and intimidate, and that violent confrontations occurred between youth groups of opposing parties. I therefore conclude that it was open to the Board to find that the applicant did not face an objective risk of persecution. Though Zimbabwe currently faces significant political upheaval and violence by ZANU-PF supporters is widespread, a risk of generalized violence is insufficient to trigger the automatic success of a refugee claim.

[31] For the foregoing reasons, I find that the Board's decision was reasonable, and there are no grounds upon which this Court should intervene.

[32] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed and no question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4128-07

STYLE OF CAUSE: **IRENE MUCHIRAHONDO
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 24, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: May 2, 2008

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