

Date: 20080613

Docket: IMM-3677-07

Citation: 2008 FC 738

Ottawa, Ontario, June 13th 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MARIA MBANGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Immigration and Refugee Board (the Board), dated August 17, 2007, that the applicant was neither a Convention refugee nor a person in need of protection.

[2] The applicant is a citizen of Zimbabwe where she was a teacher until she left for the United States in 1999. She alleges that, starting in 1997, teachers were perceived as an enemy of the Zimbabwean state and started experiencing problems.

[3] According to her Personal Information Form (PIF) narrative, she decided to go to the United States “with the hope of improving [her] educational qualifications to help build a better future for [her] country”. She studied and worked in Texas for seven years.

[4] On July 25, 2006, she arrived in Canada and applied for refugee protection based on her political opinion. Although she had never been involved actively in a political party in Zimbabwe, she claims that she would be in danger in the event of a return to her country as she is a teacher, and also because her cousin, Mr. Wilfred Mbanga, is a vocal journalist in exile in the United Kingdom as a result of his intimidation and arrest in 2001. She also stated that her family suffered many problems during the Independence War.

[5] The Board acknowledged that all political opponents suffer human rights violation in Zimbabwe, and also noted that teachers are being targeted by the government because of their real or imputed support to the opposition party. However, the Board member noted an improvement of the teachers’ situation in 2003, and therefore found that documentary evidence written before that date did not reflect the current situation.

[6] The Board also mentioned that, at the time the applicant left the country in 1999, the applicant had never had any problems with the government, and had never been politically active or perceived as such. She therefore adopted the comments contained in the Home Office Operational Guidance Note issued in July 2007, to the effect that “[b]eing a teacher will not itself give rise to a

well-founded fear of persecution – the key issue is whether the claimant has been or is perceived to have been engaged in political activity so as to be of serious adverse interest to the authorities”.

[7] The Board also gave little weight to a friend’s letter stating that the applicant was an active and vocal teacher who suffered intimidation in Zimbabwe, since the applicant herself mentioned that she had never been politically active or harmed by the government. As to that friend’s assertion that the applicant left Zimbabwe when the intimidation became too much, the Board pointed out that it contradicted the applicant’s PIF and testimony at the hearing where she said that she left her country to improve her qualifications as a teacher.

[8] Regarding her fear of persecution based on her name, the Board member acknowledged that the applicant’s cousin is a famous journalist and political opponent in exile. She concluded, however, that not every person bearing the name Mbanga is at risk in Zimbabwe. As a result, her application for refugee protection was rejected.

I. Issues

[9] The applicant raised a number of issues, which can be conveniently summarized as follows:

- a. Did the Board err in concluding that the applicant is not at risk?
- b. Did the Board err in failing to conduct a section 97 analysis?

II. Standard of review

[10] In light of the recent decision by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, 164 A.C.W.S. (3d) 727, issues of fact must be assessed against a standard of reasonableness. Accordingly, this Court must determine whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law. As stated by the Supreme Court, “reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” (at para. 47). This is the standard that I will apply to the first of the two issues.

[11] As to the second issue, it requires the Court to determine whether the Board appropriately applied its obligations under section 97 to the facts of this particular case. That is a question of mixed law and fact, and thus should also be assessed according to the standard of reasonableness.

III. Analysis

a. Did the Board err in concluding that the applicant is not at risk?

[12] The documentary evidence shows that the Zimbabwean government tends to suppress political opponents of all kinds. Regarding the situation of teachers, the 2006 UK Home Office Report is very relevant, as it is (according to the applicant’s own submission) “the most complete, recent and authoritative account” of the situation in Zimbabwe. This report states that teachers have been targeted in the past because of their real or imputed support of the opposition party. It goes on

to report that since 2003, there was a slight improvement in their situation, even if intimidation and assaults were still reported in 2004. It concluded that the mere fact one is a teacher does not give rise to a well-founded fear of persecution:

3.7.8 Conclusion. Each case must be decided on its individual facts. Being a teacher will not of itself give rise to a well-founded fear of persecution – the key issue is whether the claimant has been or is perceived to have been engaged in political activity so as to be of serious adverse interest to the authorities. The level of activity required to bring a teacher to the serious adverse attention of the Zimbabwean authorities is likely to be lower than that for activists in some other walks of life. Teachers are particularly vulnerable because their activities are open to greater scrutiny than those in less public positions, and because the authorities and associated groups are wary of the influence they could have on their students.

[13] Given the facts in this case, and given that there is recent evidence from a respected source in support of her finding, it was open to the Board member to find that the applicant was not at risk upon return to her country. The applicant has not brought forth credible evidence that she was targeted or at risk of being targeted.

[14] During an interview with an immigration officer at the Port of Entry, the applicant declared that she was afraid of returning to Zimbabwe as she had family members who had been persecuted by the present government. She explained that she was traumatised by those past experiences and that she has always been victimized because her name is Mbanga. However, she admits that she was never personally targeted by the Zimbabwean government.

[15] In her PIF, the applicant explained that she left Zimbabwe in order to improve her educational qualifications to help build a better future for her country. When she testified at the Board's hearing, she said that she left Zimbabwe for educational purposes but she intended to go back to her country afterwards to help in the reconstruction process. She did mention in her PIF that she would be in danger in the event of a return because she is a teacher and her family is seen as political opponents of the regime. But it is not entirely clear she also feared political persecution at the time she left the country.

[16] The Board member concluded that there was no evidence to support the applicant's involvement in political activities, except for the letter of her friend, to which she gave little weight because it was not very specific as to how the applicant was active and contradicted the applicant's own statement. She also pointed out that the applicant was a member of the Zimbabwe Teachers' Association, an organization sympathetic to the government according to an article from Africa Reports.

[17] Finally, the Board examined the allegation that the applicant would be targeted for sharing the Mbanga name with Mr. Wilfred Mbanga, a journalist and political opponent who has been in exile in the United Kingdom for close to 40 years. The Board recognized the reputation of Mr. Mbanga and the fact that he is known to the Mugabe regime in Zimbabwe. However, the Board found that this does not signify that all individuals with the Mbanga name are at risk in Zimbabwe. While the situation of a similarly-situated person is clearly relevant in assessing a refugee claim, I do not believe that the applicant's situation can be compared to her cousin's. She has never been

politically active, she has never been targeted as a citizen, teacher or bearer of the Mbanga name in this 40-year period, and she was able to become a teacher in her country.

[18] On the basis of the foregoing, the Board member could reasonably find that the applicant would not be at risk as a teacher in the event of a return in Zimbabwe. The applicant did not provide any evidence that she would be of serious adverse interest for the authorities, on the basis of her political activities or of her imputed support of the opposition party. As for the applicant's argument that the Board failed to consider her fear on "cumulative grounds", it is without merit since none of the grounds raised by the applicant, either considered separately or in conjunction with the others, give rise to a risk of persecution.

b. Did the Board err in failing to conduct a s. 97 analysis?

[19] The applicant asserts that the Board failed to conduct a separate section 97 analysis. She believes that this analysis was required in the absence of any adverse credibility findings and by the fact that the Board acknowledged that she is a Zimbabwean teacher whose cousin and brother are known activists.

[20] There is no doubt the Board needs to make an independent determination under section 97 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27). As this Court repeatedly stated, there may well be cases where a refugee claimant is found not to be credible with respect to his subjective fear of persecution, but where the country conditions are such that the claimant's particular circumstances make him or her a person in need of protection. The elements required to

establish a claim under sections 96 and 97 are not the same, and a negative determination of a refugee claim may therefore not be determinative of a claim for protection: see, *inter alia*, *Nyathi v. Canada (MCI)*, 2003 FC 1119, 125 A.C.W.S. (3d) 873; *Bouaouni v. Canada (MCI)*, 2003 FC 1211, 126 A.C.W.S. (3d) 686; *Ayaichia v. Canada (MCI)*, 2007 FC 239, 309 F.T.R. 251.

[21] That being said, the failure to proceed to a separate section 97 analysis is not fatal in every case. Where, as here, there is no evidence supporting a finding of a person in need of protection, this analysis will not be required: see, for example, *Ndegwa v. Canada (MCI)*, 2006 FC 847, 55 Imm. L.R. (3d) 108; *Soleimanian v. Canada (MCI)*, 2004 FC 1660, 135 A.C.W.S. (3d) 474; *Brovina v. Canada (MCI)*, 2004 FC 635, 130 A.C.W.S. (3d) 1002.

[22] For all these reasons, Mrs. Mbanga has failed to demonstrate that the Board committed any reviewable error and consequently, the application for judicial review is dismissed. No question for certification has been submitted, and none will be certified.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed. No question of general importance is certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3677-07

STYLE OF CAUSE: Maria Mbanga
v.
MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** de MONTIGNY J.

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