

**Date: 20090212**

**Docket: IMM-2654-08**

**Citation: 2009 FC 145**

**Ottawa, Ontario, February 12, 2009**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**VLADIMIR YVES DOMERSON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Vladimir Yves Domerson is a citizen of Haïti, whose refugee claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board. The Board found that the risk that Mr. Domerson faced in Haïti arose from generalized criminality. As such, he was neither a Convention refugee nor a person in need of protection.

[2] I am of the view that the reasons provided by the Board for its decision were inadequate, as they did not properly address Mr. Domerson's personal circumstances, specifically his vulnerability

as an individual with a serious mental illness. As a consequence, the application for judicial review will be allowed.

### **Background**

[3] Mr. Domerson is an unmarried 29 year old man. His parents are dead, and none of his siblings still reside in Haïti. He is also mentally ill, with the psychiatric evidence before the Board indicating that he suffers from psychotic depression (“dépression psychotique”), and that he is incoherent.

[4] Mr. Domerson’s last remaining sibling left Haïti in February of 2004. Mr. Domerson remained behind, living on financial support received from family members. Just a few weeks later, Mr. Domerson was attacked and badly beaten in his home by robbers. While it is unclear from the record whether Mr. Domerson suffered from psychological problems prior to this attack, it is evident that his mental health deteriorated significantly after the attack.

[5] In March of 2006, Mr. Domerson came to Canada on a visitor’s visa, which was granted to allow him to obtain medical treatment in this country. He subsequently filed a claim for refugee protection, alleging, amongst other things, that he was at risk of being singled out for both verbal and physical abuse because he would be perceived as mentally ill (“un fou”).

[6] Because of his mental health issues, Mr. Domerson's sister was appointed as his designated representative by the Board. While Mr. Domerson attempted to testify at his hearing, a review of the transcript indicates that he was unable to do so in a coherent fashion.

### **Analysis**

[7] While Mr. Domerson has raised a number of issues in his application for judicial review, it is only necessary to deal with the issue of the sufficiency of the Board's reasons. As this issue involves a question of procedural fairness, it is unnecessary to carry out a standard of review analysis. Rather, it is for the Court to determine whether the Board's reasons were sufficient, in all of the circumstances.

[8] The crux of Mr. Domerson's claim was his vulnerability as a mentally ill person. While Mr. Domerson's refugee claim was originally brought under section 97 of the *Immigration and Refugee Protection Act*, as the matter unfolded before the Board it became apparent that section 96 was also being relied upon in relation to the claim. That is, the question was whether, as a mentally ill Haitian, Mr. Domerson was a member of a particular social group. Indeed, the presiding member specifically acknowledged in his brief reasons that he was obliged to consider the claim under both section 96 and 97 of *IRPA*, should the evidence before the Board require it.

[9] The Board then went on to state that Mr. Domerson had not established that he faced a serious possibility of persecution on a Convention ground. No explanation whatsoever was provided for this conclusion, and no consideration was given as to whether, as a person suffering from a

serious mental illness, Mr. Domerson could in fact be considered to be a member of a particular social group.

[10] The respondent argues that no further analysis was required in this case, as there was no evidence before the Board that mentally ill individuals were particularly marginalized or vulnerable to abuse in Haïti. While it is true that no independent documentary evidence was put before the Board on this point, Mr. Domerson's Personal Information Form specifically states that those perceived to be mentally ill are singled out for abuse in Haïti, particularly by the police.

[11] Insofar as the section 97 claim was concerned, the Board found that what Mr. Domerson faced in Haïti was generalized criminality. There is no discussion whatsoever in the reasons as to whether Mr. Domerson would face a personalized risk in Haïti, one not faced by the general population, as a result of his mental illness.

[12] Reasons for a decision serve a number of beneficial purposes. Amongst other things, they provide the parties with the assurance that their representations have been considered: see *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.).

[13] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada noted that clear reasons for a decision are especially important where, as here, the decision has important ramifications for the individual in question. According to the

Court, “It would be unfair for a person subject to a decision such as this one which is so critical to their future not be told why the result was reached”: at para. 43.

[14] The reasons provided by the Board in this case are clearly inadequate, as they fail to come to grips with the crux of Mr. Domerson’s claim for protection. As a consequence, the application for judicial review is allowed.

### **Certification**

[15] Mr. Domerson proposes the following question for certification:

Est-ce que les « fous » en Haïte subissent le risque généralisé comme toutes catégories sociales?

[16] Given that the insufficiency of the Board’s reasons was the determinative issue on this application, it has not been necessary to address the issue identified in the question proposed by Mr. Domerson. As a result, I decline to certify the question.

## **JUDGMENT**

### **THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2654-08

**STYLE OF CAUSE:** VLADIMIR YVES DOMERSON v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** February 9, 2009

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

**DATED:** February 12, 2009

**APPEARANCES:**

Jean Auberto Juste

FOR THE APPLICANT

Talitha A. Nabbali

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JEAN AUBERTO JUSTE, LLB  
Barristers and Solicitor  
Ottawa, Ontario

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT