

**Date: 20090422**

**Docket: IMM-3930-08**

**Citation: 2009 FC 403**

**Toronto, Ontario, April 22, 2009**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**ESDRAS OCTAVE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] **BORN TOO SOON**; that is Mr. Octave's sad refrain. Had he but been born a few months later he could have taken advantage of a Haitian amnesty program which would have allowed him to join his father in the United States. He arrived in the United States from Haiti just prior to his twenty-first birthday but, by the time his application was processed, he was too old to benefit from

the program. He came to Canada and filed a claim for refugee status which he admitted at his hearing was completely bogus. He had never been persecuted in Haiti.

[2] However, the alternate approach he took from the outset, and at his hearing before the Refugee Protection Division of the Immigration and Refugee Board, was that since he had lived abroad for many years and had become “Americanized”, he was part of the Haitian diaspora. As such, and as indeed set out in the Board’s own Response to Information Request issued in October 2007, the diaspora was a group apart and more likely to be targeted by kidnappers.

[3] The RPD erred, he says, by not focussing on his particular situation.

[4] The essence of the RPD’s decision dismissing his claim is as follows:

[12] The panel does accept the fact that the situation in Haiti has deteriorated since his departure in 2004. The claimant cannot identify any particular group or particular individual that would cause him harm. Thus, the claimant’s fear is of a generalized violence in his country. This is a risk that all Haitians face in the current situation in their country, as a victim of a generalized violence the claimant cannot take the benefit of refugee protection.

[5] This is the judicial review of that decision.

[6] Mr. Octave submits that the RPD erred in law by focussing on his inability to identify any particular criminal element which would search him out. Rather, the question which should have

been asked is whether Mr. Octave possesses certain attributes which put him at risk over and above the population at large. I cannot agree.

[7] The instances Mr. Octave gave during his hearing, apart from credibility issues, all pertain to Haitian nationals who had not left Haiti.

[8] The authorities are thoroughly reviewed by Mr. Justice Beaudry in *Cius v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1, [2008] F.C.J No. 9 (QL). He rejected the argument that people returning to Haiti formed part of a “particular social group” as defined by the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R 689, 20 Imm. L.R. (2d) 85. Thus, Mr. Octave cannot be considered a refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act*.

[9] He is at best a potential victim of violence. The RPD’s decision that he had not made out a case under s. 97 was within the range of reasonable outcomes (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[10] In *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 70 Imm. L.R. (3d) 128, Madam Justice Tremblay-Lamer dealt with a businessman returning to Haiti. He argued that, as such, he was especially at risk because of an appearance of wealth. However, it was held that his risk was also faced by the general Haitian population and therefore was not personalized. Although declining to answer a certified question, the Court of Appeal maintained that

decision (2009 FCA 31, 2009 F.C.J No. 143 (QL)). See also the decision of Mr. Justice Martineau in *Charles v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 233, 2009 F.C.J. No. 277 (QL).

**ORDER**

**THIS COURT ORDERS that** for reasons given, the application for judicial review is dismissed. There is no question to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-3930-08

**STYLE OF CAUSE:** Esdras Octave v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 21, 2009

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** April 22, 2009

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