Federal Court

Cour fédérale

Date: 20090710

Docket: IMM-162-09

Citation: 2009 FC 718

Toronto, Ontario, July 10, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MAYELIN ABREU BELEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

[1] Ms. Mayelin Abreu Belen (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "Board") dated September 23, 2008. In its decision, the Board determined that the Applicant was not a Convention refugee nor a

person in need of protection within the meaning of sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Cuba. Trained as a lawyer, she worked as a judge in Cuba from 1993 until 1998 when she went on a leave of absence for health reasons. She was relieved of her duties as a judge in 2000.

[3] In September 2000, the Applicant married a Mexican citizen as a means of leaving Cuba. This marriage of convenience lasted until 2004 when the Applicant divorced her husband. Beginning in 2003, she began co-habiting with another Mexican citizen.

[4] The Applicant returned to Cuba in 2001 in order to obtain a Permit to Reside Abroad ("PRE"). She returned again in January 2007 to visit her mother who was ill. The Applicant experienced no difficulties in leaving Cuba in 2001 and 2007.

[5] In March 2007, the Applicant travelled to Canada with her partner, on vacation. She claims that he decided to end their relationship after arriving in Canada. She remained in Canada and several months later, she claimed refugee protection. She asserted a claim that she would be at risk in Cuba due to her political opinion and the fact that she had married a foreigner.

[6] The Board dismissed the Applicant's fear of persecution at the hands of the Cuban government for having overstayed her exit visa, concluding that she had failed to establish a valid

sur place ground for her claim. It also dismissed her claim of fear of persecution by a former supervisor or the authorities on the grounds that in light of the passage of time, neither the supervisor nor the authorities would have any further interest in the Applicant. The Board considered these issues within its section 96 analysis.

[7] In addressing the Applicant's claim for protection pursuant to section 97 of the Act, the Board concluded that the Applicant had failed to adduce sufficient objective evidence to show that she could be personally subjected to a risk to life or a risk of cruel or unusual punishment or to a danger of torture if returned to Cuba.

[8] Following the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, decisions of administrative decision-makers are subject to review upon one of two standards, that is correctness or reasonableness. Prior jurisprudence may assist in determining the appropriate standard of review, having regard to the nature of the question in issue; see *Dunsmuir* at para. 54.

[9] In this case, the question in issue requires an assessment of evidence in the context of the statutory scheme of the Act. It is fact-intensive and formerly such a question was reviewable on the standard of patent unreasonableness; *Moreb v. Canada (Minister of Citizenship and Immigration)* (2005), 48 Imm. L.R. (3d) 37 at para. 11. Subsequent to the decision in *Dunsmuir*, that standard has been subsumed in the standard of reasonableness; see *Dunsmuir* at para. 45.

[10] I am satisfied that the Board committed a reviewable error by failing to deal with the Applicant's claim that as a Cuban woman who had married a foreigner, she would be at risk of persecution in Cuba. The Board clearly ignored or misunderstood this part of the Applicant's claim and ignored the objective evidence that was presented in support. On the basis of the decision in *Meneses v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 179 at para. 22, when the Board ignores relevant evidence central to an applicant's claim, which contradicts the Board's findings, an error is made. Such an error justifies judicial intervention.

[11] In light of this conclusion, it is not necessary for me to comment upon the other arguments raised by the Applicant.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed, the decision of the Board is quashed and the matter is remitted to a differently constituted Board for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

SOLICITORS OF RECORD

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PLACE OF HEARING:	Toronto, ON
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