Federal Court  Cour fédérale

**Date: 20091030**

**Docket: IMM-1888-09**

**Citation: 2009 FC 1111**

**Ottawa, Ontario, October 30, 2009**

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

**BETWEEN:**

**VANIOLA PIERRE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel) dated March 18, 2009, determining that the applicant, Vaniola Pierre, is not a refugee under section 96 of the Act or a person in need of protection within the meaning of section 97.

[2] The applicant, a student and Haitian citizen, claims she was persecuted for voicing political opinions against the Aristide government in January 2004. In July of that same year, she travelled to the Dominican Republic with other members of her church choir, subsequently returning to her country. She alleges that in September 2004, two students disappeared because they had not ceased their activities after having been warned to do so. With the help of her family, she made her way to the United States, where her claim for asylum was denied in December 2005. She arrived in Canada on May 11, 2007, and claimed refugee protection.

[3] The panel's negative decision is based on the applicant's lack of credibility, as well as the numerous inconsistencies between her oral testimony and her Personal Information Form (PIF).

[4] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 R.C.S. 190, the applicable standard of review in cases such as this is reasonableness.

[5] The applicant maintains that the panel failed to analyze her claim under section 97 of the Act. Since it is a question of mixed law and fact, the same standard of review is applicable (*Dunsmuir*, at paragraph 53; *Mbanga v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 738, [2008] F.C.J. No. 949 (QL)).

[6] Consequently, the Court will intervene only if the decision falls outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[7] The applicant cited *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.) and *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.) to support her claims that the panel had erred with regard to her credibility.

[8] While it is true that *Maldonado* creates a presumption that an applicant's testimony is truthful, this presumption is rebuttable. In the case at bar, the panel clearly identified several inconsistencies, on key elements, between the applicant's oral testimony and her PIF.

[9] As for the panel's lack of assessment regarding section 97 of the Act, Justice de Montigny, writing in *Mbanga*, above, stated the following at paragraphs 20 and 21:

> 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.
>
> 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.

[10] In the case at bar, it is clear that the applicant's lack of credibility is determinative regarding her allegations of persecution.

[11] It is not always necessary to proceed to a separate section 97 analysis when an applicant is found not to be credible (*Gonulcan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 392, [2004] F.C.J. No. 486 (QL)).

[12] In this case, it cannot be said that there was no analysis by the panel under section 97. Paragraphs 2 and 24 refer to this, as does the transcript (pages 110 to 116, Tribunal Record).

[13] The intervention of the Court is not warranted.

[14] No question for certification has been proposed and none arises from this case.

## JUDGMENT

**THE COURT ORDERS that** the application for judicial review be dismissed. No question is certified.

''Michel Beaudry''
Judge

Certified true translation

Sebastian Desbarats, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | **IMM-1888-09** |
| **STYLE OF CAUSE:** | **VANIOLA PIERRE and THE MINISTER OF CITIZENSHIP AND IMMIGRATION** |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | October 29, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | BEAUDRY J. |
| **DATED:** | October 30, 2009 |

**APPEARANCES :**

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| Isabelle Brochu | FOR THE RESPONDENT |

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