

Date: 20091110

Docket: IMM-1784-09

Citation: 2009 FC 1144

Ottawa, Ontario, November 10, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GEROME ESTILUS CHERENFANT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Gerome Cherenfant arrived in Canada in 2006. He claimed refugee protection on the grounds that he feared political persecution in his native Haiti, which he had fled in 2001. He spent the intervening years in the U.S. where he tried unsuccessfully to obtain asylum.

[2] A panel of the Immigration and Refugee Board denied Mr. Cherenfant's claim primarily on credibility grounds. Mr. Cherenfant argues that the Board's conclusions were unreasonable and asks me to order a new hearing before a different panel.

[3] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] Three issues arise:

1. Were the Board's credibility findings unreasonable?
2. Did the Board fail to consider relevant documentary evidence?
3. Did the Board apply the wrong standard of proof?

II. Analysis

1. *Were the Board's credibility findings unreasonable?*

[5] Mr. Cherenfant explained to the Board that he had been involved with a community political organization in Haiti when he was a teenager. However, in 1999, he decided to leave the group when it started to advocate violence. Members of the group were angry with his withdrawal and came looking for him. To avoid them, he fled and hid for a period of time in another neighbourhood before leaving Haiti in 2001.

[6] The Board found a number of problems with Mr. Cherenfant's account of events. In his written narrative, Mr. Cherenfant had stated that he was in hiding from March 1999 to December

2001. However, he was able to work installing telephones. At the hearing, he said that he was doing nothing during that time period, just sitting around. When the discrepancy was pointed out, he revised his evidence, stating that he was in hiding only for a few weeks. He could not account for the remainder of the time period.

[7] The Board noted two additional inconsistencies. These were fairly minor. First, in his narrative, Mr. Cherenfant had said that he was Catholic. In his interview at the port of entry to Canada, he told an officer that he was Baptist. Second, Mr. Cherenfant said that his father was murdered in 1986. However, in his application for refugee protection, he gave birth dates for his siblings as 1988 and 1993. In respect of the first of these discrepancies, Mr. Cherenfant says that he was Catholic in Haiti but attended a Baptist church when he was in the United States. Regarding the second, he says that he was in a hurry when he was filling out his application and did not have time to check his siblings' birth dates.

[8] Mr. Cherenfant submits that the Board's conclusion about his lack of credibility was based on facts at the periphery of his claim. It did not particularly matter what his religion was or when his brothers and sisters were born. Further, he may have been mistaken about the time frame when he was in hiding and when he had left Haiti. Those problems in his evidence, he says, should not have caused the Board to doubt the essence of his claim.

[9] I can overturn the Board's findings of fact only if they are unreasonable. While some of the discrepancies in Mr. Cherenfant's evidence related to relatively minor or peripheral matters, others

were at the core of his allegation that he had been threatened, pursued, forced into hiding, and compelled to flee Haiti altogether. I cannot find that the Board's conclusion that Mr. Cherenfant had failed to give a credible account of his experiences was unreasonable.

2. *Did the Board fail to consider relevant documentary evidence?*

[10] Mr. Cherenfant argues that the Board did not adequately address the risk he would face on his return to Haiti as a person who had previously been politically active. The Board merely considered whether Mr. Cherenfant would be regarded as a person of means who might be the target of criminal elements in Haiti. The Board relied on documentary evidence and case law (*Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331), suggesting that the risk of being a victim of crime in Haiti is a general one, not particular to Mr. Cherenfant. Therefore, this allegation could neither support a claim for refugee protection based on membership in a particular social group, nor an application for protection based on a personal risk of cruel and unusual treatment.

[11] In the circumstances, I cannot find an error in the Board's analysis or its treatment of the evidence. The Board had already rejected completely Mr. Cherenfant's claim of political persecution prior to his departure from Haiti. It did not have to go on to analyze whether his political background would expose him to risk on his return.

3. *Did the Board apply the wrong standard of proof?*

[12] Mr. Cherenfant maintains that the Board did not apply the correct standard of proof for determining refugee status. He submits that the Board's credibility findings suggest that it was looking for proof of persecution on a balance of probabilities instead of proof of a reasonable chance of persecution, the latter being the proper test.

[13] I cannot find any basis for Mr. Cherenfant's submissions on this point. The Board expressly found that there was not a "serious possibility" that Mr. Cherenfant would be persecuted – the correct test under s. 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. It went on to state that Mr. Cherenfant "on a balance of probabilities" was not "a person in need of protection" – the correct test under s. 97 of the Act.

III. Conclusion and Disposition

[14] The Board's findings of fact and were not unreasonable given the evidence before it. It did not err its treatment of the documentary evidence and applied the proper test to determine whether Mr. Cherenfant should be afforded refugee protection. Accordingly, I must dismiss this application for judicial review. No question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1784-09

STYLE OF CAUSE: CHERENFANT v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 3, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 10, 2009

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