

Federal Court



Cour fédérale

Date: 20101028

Docket: IMM-910-10

Citation: 2010 FC 1061

Toronto, Ontario, October 28, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

PHILOMENE HITIMANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Upon coming to Canada in 2003, the Applicant, a citizen of Rwanda, claimed refugee protection based on her evidence that her husband and three children were murdered by Hutu extremists during the 1994 genocide and she has subjective and objective fear of a murderer. Nevertheless, the Applicant's refugee claim and her Pre-Removal Risk application were both denied

resulting in a plea for humanitarian and compassionate (H & C) relief. The decision presently under review is the rejection of that plea.

[2] The most critical feature of the Applicant's humanitarian and compassionate plea relates to her extremely poor health. The Applicant suffers from diabetes, hypertension, gastric pain from peptic ulcer disease, hepatitis C, ophthalmologic diseases, and arthritis. She takes eight to ten medications a day and is under the care of a cadre of doctors for her various health problems. In the decision under review the Applicant's plea was denied and includes a finding that her medical needs can be met in Rwanda.

[3] The Applicant's principal argument on judicial review is one of due process. The Applicant's Application for relief was filed in 2005, an update to the Application was requested in 2007, the update was provided by Counsel for the Applicant in June 2009, and the decision under review was made on June 20, 2010. The update of June 2009 contained strong evidence that the Applicant would not receive the medical care she needs in Rwanda. However, the Decision under review is based on research conducted by the H & C Officer which post-dates the Applicant's 2009 update. The research goes to support the conclusion that a significant improvement in health care in Rwanda has occurred since the update. Counsel for the Applicant's due process argument is that, in fairness, the research should have been supplied for comment and possible rebuttal prior to the decision under review being made. I completely agree.

[4] The Applicant is 62 years old and has suffered horrifically in her life, and continues to suffer. Providing her with the courtesy of an opportunity to test the new medical evidence which

will have a direct effect, literally, on her life is only acknowledging the respect which she deserves.

The denial of this respect in the present circumstances is a denial of natural justice.

ORDER

Accordingly, the Decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-910-10

STYLE OF CAUSE: PHILOMENE HITIMANA v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 27, 2010

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

DATED: OCTOBER 28, 2010

APPEARANCES:

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Martin Anderson FOR THE RESPONDENT

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