

Federal Court



Cour fédérale

Date: 20140919

Docket: IMM-3510-13

Citation: 2014 FC 901

Ottawa, Ontario, September 19, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**JKWON JAHEIM CORNEILLE
(BY HIS LITIGATION GUARDIAN,
JEANNETTE CORNEILLE)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jkwon Jaheim Corneille was 8 years old when a panel of the Immigration and Refugee Board heard his claim for refugee protection. Jkwon maintained that he was verbally and

physically assaulted in St Lucia because his mother is a lesbian. The Board dismissed Jkwon's claim mainly because it did not believe his mother's evidence about her sexual orientation.

[2] Jkwon argues that the Board's conclusion was unreasonable because the Board failed to assess his testimony on its own merit; rather, it discounted his evidence on the basis that his mother's testimony lacked credibility. He asks me to quash the Board's decision and order another panel of the Board to reconsider his claim.

[3] I agree with Jkwon that the Board erred in its treatment of his testimony. In my view, the Board failed to treat Jkwon's claim independently from his mother's. Accordingly, I find that the Board's conclusion was unreasonable, and must allow this application for judicial review.

[4] The sole issue is whether the Board's decision was unreasonable.

II. The Board's Decision

[5] Jkwon's mother acted as his designated representative at the hearing before the Board. Both Jkwon and his mother testified.

[6] The Board did not believe Jkwon's mother's claim that she was a lesbian or bisexual. Accordingly, Jkwon would not be taunted or abused in St Lucia on the basis of his mother's sexual orientation.

[7] In his own testimony, Jkwon described the domestic violence his mother endured, his own nightmares, and the taunting to which he had been subjected at school due to his mother's sexuality. However, based on Jkwon's age and his lack of understanding of the proceedings, the Board did not give his evidence much weight. The Board also discounted the significance of a letter, which described beatings he had received at school in St Lucia, on the basis that his mother had not mentioned the letter in her narrative. The Board dismissed Jkwon's claim.

III. Was the Board's decision unreasonable?

[8] The Minister argues that the Board's findings merit deference. The Board considered Jkwon's testimony and found that he did not appear to appreciate the nature of the proceedings, and that he gave simplistic and innocent answers. Further, the Board looked at Jkwon's testimony in the context of the totality of the evidence, as it was required to do.

[9] I disagree. The Board had a duty to assess Jkwon's testimony "with regard to criteria appropriate to [his] mental development, understanding, and ability to communicate" (*R v JJB*, 2013 ONCA 268, at para 71). Here, the Board discounted Jkwon's testimony mainly because it doubted his mother's credibility, which was not an appropriate criterion.

[10] The Board reasoned that, if his mother is not a lesbian (or bisexual), then Jkwon could not be subjected to any mistreatment arising from his mother's sexual orientation. However, the Board's approach did not involve consideration of Jkwon's testimony on its own terms. In addition, that approach precluded addressing the possibility that Jkwon's mother may be perceived to be a lesbian (or bisexual) and that, in an overtly homophobic country such as St

Lucia, Jkwon may suffer adverse consequences as a result. There was some evidence supporting that possibility which, in my view, the Board dismissed without adequate explanation. Its conclusion, therefore, was not a defensible outcome based on the evidence.

IV. Conclusion and Disposition

[11] The Board failed to consider the value of Jkwon's evidence independently from that of his mother. Accordingly, the Board's dismissal of Jkwon's claim was not defensible on the evidence before it. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider Jkwon's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;
2. The matter is returned to another panel of the Board for reconsideration; and
3. No question is certified.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3510-13

STYLE OF CAUSE: JKWON JAHEIM CORNEILLE (BY HIS LITIGATION
GUARDIAN, JEANNETTE CORNEILLE) v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 23, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: SEPTEMBER 19, 2014

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