

Federal Court



Cour fédérale

Date: 20150326

Docket: IMM-408-14

Citation: 2015 FC 383

Toronto, Ontario, March 26, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

VERONIKA PENOUW NAMWEYA

Applicant

and

**THE MINSITER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Member of the Refugee Protection Division dated December 19, 2013 wherein the Applicant's claim for refugee protection in Canada was rejected.

[2] The Applicant is an adult female citizen of Namibia. In September 2011, she left Namibia and, transferring planes in Germany, entered Canada on September 16, 2011 and made

a claim for refugee protection the next day. She claimed years of abuse while living with her sister and a niece and nephew. It was not physical abuse but emotional abuse. Her sister died in a car accident; the niece and nephew continued to abuse her. She reported the abuse to the local police and ran away to the Namibian capital, Windhoek, where she stayed for a period of time with a friend. The friend could not afford to keep her so she came to Canada. In her PIF, she did not mention that she was HIV positive although later she claimed to be HIV positive since 2007, a matter which she says caused family rejection and loss of customers in her retail clothing business.

[3] The Member rejected her claim for refugee protection finding her failure to disclose her HIV condition in her original PIF created a negative inference. Most importantly, the Member found that the Applicant failed to take reasonable steps to avail herself of state protection and failed to satisfy the Board that state protection was inadequate.

[4] The Applicant, in her initial materials, raised a number of issues including the absence of a transcript of the December 4th hearing. That transcript since has been provided. As to the allegation that an inadequate section 97 analysis was conducted, that point has been dropped.

[5] Applicant's Counsel raised three remaining points in oral argument:

1. Was there a breach of procedural fairness from the Board's failure to reference the transcript from the first hearing?
2. Did the Officer fail to conduct an individualized section 97 assessment?
3. Are the Member's credibility findings reasonable?

[6] Respondent's Counsel raised two issues:

1. Credibility;
2. Adequacy of state protection.

[7] I will address credibility first. Counsel for each of the parties took me to numerous documents signed by the Applicant such as a PIF and revised PIF, as well as various places in the transcript of the hearings where the Applicant clearly gave contradictory and inconsistent evidence. The Member afforded her several opportunities to explain or clarify but nothing satisfactory was provided. I am satisfied that the finding that the Applicant was not credible was reasonable. This finding permeates all the other issues.

[8] The Member found that the Applicant did not adequately rebut the presumption of state protection in Namibia. Her evidence as to her encounters with the police was contradictory. Clearly, she did not seek protection, whether from the police or any other state or private agency, in Windhoek during her stay there. The decision of Chief Justice Crampton of this Court in *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at paragraph 32 is important:

32 An applicant for refugee protection is required to demonstrate that he or she took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection abroad. ...

[9] Clearly, the Applicant has failed to do so in this case. On this ground alone, this application must fail.

[10] No party requested a certified question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-408-14

STYLE OF CAUSE: VERONIKA PENOUW NAMWEYA v THE MINSITER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 25, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: MARCH 26, 2015

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