

Federal Court



Cour fédérale

Date: 20150416

Docket: IMM-913-14

Citation: 2015 FC 480

Toronto, Ontario, April 16, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ABDULAH AZIZ SSALI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on April 13, 2015)

[1] The applicant, Abdulah Aziz Ssali, has applied for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated January 21, 2014, wherein the Board determined that the applicant is neither a Convention refugee nor a person in need of protection [the Decision]. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The applicant was born in Kampala on April 11, 1977 and is a citizen of Uganda. He has travelled extensively to international destinations and has a university degree in social work.

[3] From 1991 to 1994 the applicant had sexual experiences with two male classmates, MP and MJ.

[4] In 2001, the applicant entered an arranged marriage with his first wife. They had three children before they divorced in 2008 after his wife learned that, in 2005, the applicant had rekindled his relationship with MP.

[5] In June 2009, the applicant married his second wife. He described this marriage as one entered into for their mutual protection because she was a bisexual woman. She subsequently left Uganda for the United States (USA).

[6] In 2011, the applicant reconnected with his first wife and she had their fourth child.

[7] The applicant testified that on October 26, 2012, he was arrested for printing LGBT t-shirts and t-shirts for the Forum for Democratic Change political party (FDC). The applicant was arrested and was released after the payment of a bribe.

[8] On November 4, 2012, the applicant flew to New York using a visa he had applied for prior to his arrest. He remained in the USA until July 13, 2013 without claiming asylum. He then came to Canada and applied for refugee protection.

I. The Decision

[9] The Board found the determinative issues to be credibility and lack of subjective fear.

[10] In my view the Board reasonably concluded with regard to the applicant's claims for refugee protection based on his sexuality and political opinion that:

- The applicant is not gay or bisexual
- The applicant was never arrested.
- The applicant did not have a profile with the FDC that put him at risk.
- The applicant had no subjective fear based on his failure to claim in the US
- The applicant offered no credible evidence relevant to his claim with exceptions noted below.

[11] The exception to this general conclusion is found in para 17 of the Decision. The Board acknowledged that the applicant:

- participated in conferences
- wrote abstracts; and
- printed LGBT promotional material.

II. The Issue

[12] The issue is whether the Board had a duty to consider whether the applicant would be at risk as an activist on the topics of AIDS prevention and LGBT rights.

III. Discussion

[13] In my view, the applicant's Personal Information Form and his counsel's submissions before the Board show that his fear of persecution by reason of his work as an activist was before the Board. Accordingly, the Decision was unreasonable because the Board failed to consider one of the reasons for the applicant's refugee claim.

[14] Accordingly, an order will be made directing a consideration of the question whether the applicant faces risks under section 97 of the IRPA as an activist in support of the LGBT community and AIDS prevention in Uganda. The applicant may file further material on the reconsideration.

[15] The applicant posed a question for certification for appeal pursuant to section 74(d) of the IRPA but, in view of his success on this application, it need not be considered.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is allowed;
2. However, the Decision is not set aside;
3. The application for refugee status is to be further considered dealing only with the issue described in paragraph 14 of the above Reasons;
4. The further consideration may be undertaken by the member of the Board who made the Decision or by another member of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-913-14

STYLE OF CAUSE: ABDULAH AZIZ SSALI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 13, 2015

ORDER AND REASONS: SIMPSON J.

DATED: APRIL 16, 2015

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