

Federal Court



Cour fédérale

Date: 20190521

Docket: IMM-4412-18

Citation: 2019 FC 716

Ottawa, Ontario, May 21, 2019

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

ALIM LOEM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Alim Loem sought refugee protection in Canada based on her fear of abuse from her estranged husband, Mr Antonio Sarno, a Canadian citizen living in China. Ms Loem alleged that if she were removed from Canada to Cambodia, Mr Sarno would seek her out both for retribution for her having reported his abuse to police and to obtain custody of their daughter.

[2] A panel of the Immigration and Refugee Board found that Ms Loem's fears were speculative since Mr Sarno had not made any recent threats or attempts to obtain custody, and because China is a large country and its proximity to Cambodia would not necessarily put Ms Loem at an increased risk. In addition, the Board concluded that it did not have any jurisdiction to determine whether Ms Loem's daughter would remain in Canada or return with her to Cambodia.

[3] Ms Loem argues that the Board's decision was unreasonable because it erred in finding that it did not have jurisdiction to consider where Ms Loem's daughter would live and because it ignored evidence supporting Ms Loem's claim. She asks me to quash the Board's decision and order another panel to reconsider her claim.

[4] I agree with Ms Loem on the issue of jurisdiction. While the Board did not have the power to make an order regarding Ms Loem's daughter's place of residence, it had a responsibility to consider whether Ms Loem might face an increased risk of harm if she took her daughter with her to Cambodia. On that basis, I will allow this application for judicial review. I need not consider the other grounds Ms Loem raised.

II. Did the Board unreasonably conclude that it had no jurisdiction to consider where Ms Loem's daughter would reside?

[5] The Minister argues that the Board had no authority to consider where Ms Loem's Canadian-born daughter would reside. As a Canadian citizen, the daughter was not entitled to a

risk assessment. Any concerns about her best interests should be conducted as part of an application for humanitarian and compassionate relief.

[6] I disagree. The Board had to consider where Ms Loem's daughter would likely reside in order to conduct a proper analysis of the risk facing Ms Loem in Cambodia. The evidence showed that Mr Sarno had made serious efforts and threats in the past to try to obtain custody of Ms Loem's daughter. Accordingly, if Ms Loem returned to Cambodia with her daughter, the risk to Ms Loem would be greater than if she travelled alone. This was a relevant factor for the Board to consider and, in the absence of an analysis of that factor, the Board's conclusion was unreasonable.

III. Conclusion and Disposition

[7] The Board unreasonably failed to consider where Ms Loem's daughter would likely reside, which was relevant to its analysis of the risk to Ms Loem. I must, therefore, allow this application for judicial review and order another panel to consider Ms Loem's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-4412-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

The matter is referred back to another panel for reconsideration. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4412-18

STYLE OF CAUSE: ALIM LOEM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 21, 2019

APPEARANCES:

Luke McRae FOR THE APPLICANT

Alex Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Luke McRae FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENT
Canada
Toronto, Ontario