

Date: 20080207

Docket: IMM-420-06

Citation: 2008 FC 163

Toronto, Ontario, February 7, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

AMELIA NASRUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a claim for protection by a citizen of Indonesia who is a Pentecostal Christian of Chinese ethnicity. In rendering its decision rejecting the Applicant's claim, the Refugee Protection Division (RPD) found that:

On a balance of probabilities, the claimant was able to practice her Christian faith in Indonesia and would be able to continue to do so should she return to Indonesia.

(RPD's Decision, p. 7)

In challenging this statement, Counsel for the Applicant argues that the RPD failed to accurately and clearly identify the persecution and risk grounds advanced in the Applicant's claim. I agree.

[2] The Applicant's written argument placed before the RPD identifies that, given the nature and frequency of the Applicant's activities related to her Christian faith, she is at serious risk of persecution in Indonesia because "persons, such as Pentecostals, who speak to others, including non-Christians, about their faith are at greater risk during times of inter-religious tensions than are Christians of other demonstrations" (Tribunal Record, p.312). Indeed, the RPD found that Indonesia is included in a Watch List of nations where violations of religious freedoms is serious (Decision, p.11), and there is religious and ethnic unrest in the country (Decision, p.13). However, the RPD did not provide any analysis of the argument placed before it with respect to enhanced risk to evangelistic and proselytizing Christians.

[3] It is important to note that on the record before the RPD is a statement of the fact that the Government of Indonesia prohibits proselytizing by a recognized religion on the grounds that such activity, especially in areas heavily dominated by another recognized religion, potentially is disruptive (Tribunal Record, p. 89). Indeed, the RPD found that Christians who have attempted to convert Muslims have suffered state sanction for this conduct. However, the RPD dismissed the relevance of this evidence because the Applicant did not try to convert Muslims while in Indonesia. In my opinion, this finding seriously misses the point being advanced in the Applicant's argument. The point is that the criminalization of the type of religious conduct which is at the heart of the Applicant's religion makes her subject to state sanctioned persecution and risk in Indonesia. I find

that the RPD's failure to clearly understand this, and deal with it in the decision, constitutes a reviewable error.

[4] As a result, I find that the RPD's decision is patently unreasonable.

ORDER

Accordingly, I set aside the RPD's decision and refer the matter back for re-determination before a differently constituted panel.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-420-06

STYLE OF CAUSE: AMELIA NASRUN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 5, 2008

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

DATED: FEBRUARY 7, 2008

APPEARANCES:

GERALDINE MACDONALD FOR THE APPLICANT

DAVID JOSEPH FOR THE RESPONDENT

SOLICITORS OF RECORD:

Geraldine MacDonald
Barrister and Solicitor
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Toronto, Ontario FOR THE RESPONDENT