

**Date: 20070326**

**Docket: IMM-4863-06**

**Reference: 2007 FC 318**

**Ottawa, Ontario, March 26, 2007**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**KINIQUE KEMIRA WOODS**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 82.3(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of Joel Moss, of the Refugee Protection Division (the panel), dated August 9, 2006. The panel determined that the applicant was not a “Convention refugee” or a “person in need of protection”. The panel’s decision was drafted in English, the evidence is in English, but the parties’ written submissions were in French. Since the oral submissions were in French, this decision will be in French.

## **ISSUE**

[2] Is the panel's decision patently unreasonable?

[3] For the following reasons, the answer to this question is negative. As a result, this application for judicial review will be dismissed.

## **FACTUAL BACKGROUND**

[4] A citizen of St. Vincent, the applicant was born on February 1, 1994. At the July 26, 2006 hearing, the applicant was 12 years old. The applicant's designated representative is her mother, Astrid Lolita Woods, who testified on the applicant's behalf.

[5] The applicant's mother has been living in Canada since 2000. She left the applicant in the care of a friend, as the applicant's father was not available to take custody of her. Ms. Woods decided to have the applicant come live with her in Canada when the woman taking care of her fell ill.

[6] The applicant's mother submits that, if the applicant were to return to St. Vincent, she would be left completely on her own and homeless, since the child welfare system in St. Vincent is inadequate to see to her needs.

[7] Counsel for the applicant recognized that she does not meet the criteria set out in section 96 of the Act to obtain Convention refugee status. The panel therefore reviewed her case under

section 97 of the Act. The negative decision establishing that the applicant is not a person in need of protection is the subject of this application for judicial review.

## **IMPUGNED DECISION**

[8] After considering the entire file and referring to documentary evidence concerning the welfare system in St. Vincent, the panel concluded as follows:

Although the child welfare system is limited and is not up to the standards we have in Canada, nonetheless, the evidence before the tribunal does not suggest that on the balance of probabilities Kinique's life would be in danger should she return to Saint Vincent and be referred to the child welfare authorities as an abandoned child.

[9] The panel also recognized that the applicant's situation could involve humanitarian and compassionate considerations under section 25 of the Act. However, the panel found that she had never been abused and her eventual return to her country would not put her life in danger.

## **ANALYSIS**

### ***1. Is the panel's decision patently unreasonable?***

[10] According to case law, the Court cannot substitute its opinion for that of the panel unless there is an erroneous finding of fact that it made in a capricious manner or without regard for the material before it (*Sheikh v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 8, [2004] F.C.J. No. 64 (F.C.) (QL)).

[11] The applicant claims that the panel erred, because she would be in danger if she returned to St. Vincent, where social services are inadequate.

[12] The respondent argues that the panel took the young applicant's interests into account and that she came to Canada long before her mother supposedly found out that the woman looking after her could not take care of her anymore. In addition, the mother does not have a legal status in Canada and may be removed to her country at any time.

[13] Although the young applicant's situation might warrant compassion, she was unable to convince the panel that her claim was well founded. After reviewing the entire file, I agree with the respondent that the panel took the applicant's best interests into consideration.

[14] The main criticism of the panel is that it ignored the documentary evidence concerning abandoned children in St. Vincent. However, after reading this evidence and the stenographic notes, one can see that the panel did consider this evidence. The panel discussed it with counsel for the applicant but disagreed with his arguments.

[15] This Court's role is not to re-assess documentary evidence, unless there is a patently unreasonable error, which is not the case here.

[16] If it had been called upon to rule on this difficult decision, the Court might have come to a different conclusion, but this is not the test to be applied upon judicial review (*Tawfik v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 835 (F.C.T.D.) (QL)).

[17] The Court notes that the applicant has other recourse, that of applying on humanitarian and compassionate grounds under subsection 25(1) to stay with her mother until the authorities decide what will happen to her.

[18] The parties had an opportunity to submit questions for certification, but they declined to do so. This case does not involve any.

**JUDGMENT**

**THE COURT ORDERS that**

1. The application for judicial review be dismissed;
2. No question is certified.

“Michel Beaudry”

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Judge

Certified true translation  
Jason Oettel

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4863-06

**STYLE OF CAUSE:** KINIQUE KEMIRA WOODS and  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 22, 2007

**REASONS FOR JUDGMENT BY:** The Honourable Mr. Justice Beaudry

**DATED:** March 26, 2007

**APPEARANCES:**

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Gretchen Timmins FOR THE RESPONDENT

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