Date: 20080702

Docket: IMM-5200-07

Citation: 2008 FC 826

Ottawa, Ontario, July 2, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

KAMUNDU PIERRIN MASKINI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This case turns on the Internal Flight Alternative. A person is not a United Nations Convention Refugee or otherwise in need of international protection if she is in danger of persecution in one part of the country, but not in another.

[2] Ms. Maskini is a citizen of the Democratic Republic of the Congo. She hails from Goma in North Kivu province and is a member of the Nande tribe. The Refugee Protection Division of the Immigration and Refugee Board found her credible and at serious risk of persecution in North Kivu,

which is in the eastern part of the country. However, it concluded that there was an internal flight alternative available to her further west, in the capital of Kinshasa. This is the judicial review of that decision.

[3] Both at the hearing before the Board, and in this Court, Ms. Maskini asserted that Kinshasa was not a viable alternative for her. Although she has one brother and two sisters living there, she, unlike them, does not speak the local language, Lingala (although she speaks French which is used throughout the country) and unlike them, she has the appearance of a Tutsi. This connotes a connection with Rwanda, which has been blamed for the internal strife which plagued the country in the late 1990s and earlier this decade.

[4] Two prime arguments have been advanced in favour of the granting of judicial review. The first is that the Board erred in law by not subjecting Ms. Maskini's internal flight alternative to the correct legal test. The second is that its finding that she would not be at serious risk of persecution in Kinshasa was unreasonable.

[5] The legal test in determining if there is an internal flight alternative is two-pronged. The first is that the claimant must show, on the balance of probabilities, that there is a serious risk of persecution throughout the country, including the area which is alleged to afford an alternative. The second is that this alternative must not be unreasonable in the circumstances of the individual claimant (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C.

589, 22 Imm. L.R. (2d) 241). It is alleged that the Board failed to consider the second part of the test.

[6] In my opinion, the Board did apply the correct legal test. Its analysis of Ms. Maskini's situation considered her particular situation in detail. Her background, her morphology and the situation of her siblings were considered, as was the general situation throughout the country. I cannot accept the proposition that there must be two separate findings, the first being that a particular place, i.e. Kinshasa, is safe and the second whether it would be unduly harsh to expect Ms. Maskini who was being persecuted in one part of the country, to move to Kinshasa before seeking refugee status abroad. The Board's overall analysis was well-reasoned. To hold that the second test was not analyzed would be to emphasise form over substance. In this case, they were analyzed together.

[7] As to the submission that it was unreasonable for the Board to find that Kinshasa was a safe alternative, that is a finding of fact. In the past, deference was shown to such findings unless they were patently unreasonable (*Balakumar v. Canada (MCI)*, 2008 FC 20, [2008] F.C.J. No. 30 (QL) and cases cited therein). However, in light of the recent decision of the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, that finding is now assessed against the standard of reasonableness *simpliciter*.

[8] The applicant submits that she was at danger because she did not speak the local language, Lingala, which the Board accepted notwithstanding that in her Personal Information Form she said

she did; that she gave the appearance of a Tutsi; that her brother cautioned her not to speak Swahili; and on a more general note that, at best, Tutsis could only be considered reasonably safe in Kinshasa when the country was at peace. The record was alleged to show violence had broken out again. More specifically, it was submitted that the Board failed to consider its own 2006 Response to Information Request, relying only on the 2005 report. There were more recent reports from other agencies as well.

[9] Although the presumption is that the Board considered all the material in the record, it is well established that the more relevant the information is the more important the need to specifically refer to it in its reasons. Reference was made to the oft cited decision of Mr. Justice Evans in *Cepeda-Gutierrez v. Canada (MCI)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL), as well as *Rojas Renteria v. Canada (MCI)*, 2006 FC 160, [2006] F.C.J. No. 284 (QL), in which Mr. Justice Shore, at paragraphs 31 and 32, emphasized that the Board should consider the country conditions which it itself issued.

[10] The alleged failure to refer to the Board's 2006 Response to Information Request, as opposed to its 2005 Report, is misplaced. The 2005 Report, issued on 12 December, indicated that although other ethnic groups were distrustful of Congolese citizens of Rwandan origins, particularly Tutsis, there was no evidence of recent instances of such citizens being targeted by other ethnic groups. The 2006 report, issued barely a month later, on 20 January, is actually more supportive of the internal flight alternative. Although it was said that Kivutians were the first in Kinshasa to be suspected of conspiring with rebel groups; "…the present situation of Kivutians living in Kinshasa

is no different from the situation of other citizens there." There was no evidence of discrimination although they may be looked down upon. There was also an indication that only exceptional cases of persecution based on a person's Tutsi appearance remained.

[11] As to the other reports, one was clearly referred to in a footnote. The most that can be said is that there was some violence in Kinshasa at the beginning 2007 and that threats of war in North and South Kivu were reoccurring.

[12] There can be more than one reasonable decision. As *Dunsmuir*, above, teaches, the question is whether the decision falls within an acceptable range. I conclude that it does.

[13] The Board also noted that there were compassionate circumstances in Ms. Maskini's case, but they would have to form part of a separate and distinct application to permit her to apply for permanent resident status from within Canada on humanitarian and passionate grounds. The Board was correct. Compassion, beyond what may be inherent in the Internal Flight Alternative, is not at issue in a refugee claim.

ORDER

UPON the application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada, dated 20 November 2007, in its file MA7-00512, refusing the applicant's refuge claim;

FOR THE REASONS GIVEN ABOVE;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5200-07
STYLE OF CAUSE:	KAMANDU PIERRIN MASKINI v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 18, 2008
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	July 2, 2008

APPEARANCES:

Jared Will	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will Barrister & Solicitor Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT