Federal Court  Cour fédérale

Date: 20091029

Docket: IMM-1638-09

Citation: 2009 FC 1105

Montreal, Quebec, October 29, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

MILDREDE SERMOT
LUCROSSE SERMOT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated February 13, 2009, according to which Mildrede Sermot (the applicant) is not a Convention refugee as defined in section 96 of the Act or a person in need of protection under section 97 of the Act.

[2] The applicant is a citizen of Haiti who alleges that she took part in peaceful activities against the government of Jean Bertrand Aristide in November 2003. She left her country to go to the

United States because she was allegedly beaten during the demonstration and members of the Chimera allegedly came to her house. Her refugee claim was denied. In April 2007, she arrived in Canada and claimed refugee protection for herself and her minor daughter.

[3] The panel's negative decision was based on the lack of credibility and contradictions in the applicant's testimony. Having analyzed the documentary evidence, the panel considered that the fear alleged by the applicant arose from a generalized risk.

[4] The standard of review that applies in such circumstances is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[5] The Court must determine whether this decision is justified and based on the evidence adduced. The Court must also ask itself whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[6] The applicant is not challenging the panel's findings with respect to its determination of the identity of her daughter and the rejection of her claim. Nor is she challenging the negative findings concerning her credibility.

[7] The only issue to decide is whether the panel made an unreasonable decision in finding that the applicant was not persecuted by reason of her membership in a particular social group – women – in Haiti.

[8] The Court is satisfied that the panel understood the grounds for persecution alleged by the applicant and proceeded to analyze that fear. Here is what the panel wrote on the subject at paragraph 18:

> [TRANSLATION]
>
> According to the documentary evidence, the political situation in Haiti is considered stable since the elections of 2006, and most political forces accept the new rules of the game and are co-operating with Préval and the prime minister. Only a small percentage of Aristide supporters still call for his return by maintaining insecurity and violence. This is also confirmed by Exhibit P-2 (Amnesty International Report 2008), which states that political violence has remained relatively rare and that social unrest and violence are rather a consequence of high unemployment, mass poverty and drug trafficking. Nothing in the evidence indicates that the applicant could be the target of specific violence or be persecuted by reason of her membership in the particular social group "women". The documentary evidence indicates that the risk of being the victim of violence by armed gangs in Haiti could be described as a generalized risk that is not connected with the two above-mentioned variables. The panel finds, therefore, that the applicant did not objectively demonstrate her fear in connection with her political activities or her membership in a particular social group.

[9] It is for the panel to assess the evidence as a whole and to weigh it. Where the determination is reasonable, as is the case here, the Court must not reassess the evidence in a judicial review proceeding (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 408, [2008]

F.C.J. No. 547 (QL), at paragraph 17; *Malagon v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1068, [2008] F.C.J. No. 1586 (QL), at paragraph 44).

[10] Moreover, this argument was raised recently and Justice Lagacé dealt with it as follows in *Soimin v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 218, [2009] F.C.J. No. 246 (QL), at paragraph 14:

> The violence feared by the applicant arises from general criminal activity in Haiti, and not the discriminatory targeting of women in particular. The harm feared is criminal in nature and has no nexus to the Convention refugee definition. The generalized risk of a situation in a country must be distinguished from the probable risk to a person on the basis of his or her particular circumstances.

[11] The Court believes that this *obiter dictum* applies here.

[12] The applicant proposed the following question for certification:

> [TRANSLATION]
>
> Does the Convention apply for women where there is a context of generalized violence and where they are raped?

[13] The respondent objected to this question. The Court considers that the question is too general.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-1638-09**
STYLE OF CAUSE:	**MILDREDE SERMOT LUCROSSE SERMOT and THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	October 28, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Beaudry J.
DATED:	October 29, 2009

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