

Federal Court



Cour fédérale

Date: 20100330

Docket: IMM-5109-08

Citation: 2010 FC 341

Ottawa, Ontario, March 30, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DENEIVA OLIVIA RIGG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Deneiva Rigg arrived in Canada from Jamaica in 1977 when she was 12 years old. Due to criminal convictions in Canada, she was ordered to be deported in 2005. She applied for a pre-removal risk assessment on grounds that she feared persecution in Jamaica due to her sexual orientation and drug addiction. The officer who carried out the assessment found that Ms. Rigg was probably not at risk of persecution, but that decision was overturned on judicial review. Another officer reconsidered Ms. Rigg's circumstances and, again, turned her down.

[2] Ms. Rigg argues that the officer erred in his treatment of the evidence and failed to provide adequate reasons for his decision. She asks me to overturn the decision and order another officer to carry out a reassessment. I agree that the officer erred and, therefore, will grant this application for judicial review.

II. Issues

[3] There are two issues:

1. Did the officer err in his treatment of the evidence?
2. Were of the officer's reasons adequate?

[4] I find that the officer erred in his treatment of the evidence. Therefore, it is unnecessary to consider the second issue.

III. Analysis

(1) The Officer's Decision

[5] Regarding Ms. Rigg's sexual orientation, the officer was satisfied on the evidence that Ms. Rigg was bisexual. He found, however, she would not be targeted for persecution in Jamaica "if she wishes to conceal her sexual orientation as she had done in the past in Canada". The officer considered letters of support from Amnesty International which described violence in Jamaica

against gay men and women. But the officer went on to find that violence is localized in urban areas and that Ms. Rigg could readily find a place to live in safer parts of Jamaica.

[6] As for Ms. Rigg's problems with drugs, the officer noted that the evidence showed that she was now drug-free. Ms. Rigg had also suggested that she was likely to be homeless on return to Jamaica because she no longer had any family living there. The officer discounted her concerns after reviewing the various programs available in Jamaica for the homeless.

A. *Did the officer err in his treatment of the evidence?*

[7] I can overturn the officer's decision only if I find that his treatment of the evidence was unreasonable.

[8] The principal basis for Ms. Rigg's claim to be at risk was her sexual orientation. The officer referred to the following evidence on this issue:

- Ms. Rigg's affidavit;
- letters from Amnesty International;
- research from the Immigration and Refugee Board; and
- an Operational Guidance Note from the U.K. Border and Immigration Agency.

[9] Based on this evidence, the officer found that, outside a circle of close friends, Ms. Rigg kept her sexual orientation private. If she continued to do so, she would not be targeted for persecution in Jamaica. The officer appears to have overlooked the evidence showing that Ms. Rigg

is now in an open lesbian relationship.

[10] The officer stated that he would give the Amnesty International letters considerable weight and noted the authors' concern that homosexual women in general, and Ms. Rigg in particular, are at risk of grave human rights violations in Jamaica. The officer also noted that Jamaican law targets homosexual conduct by men, not women. Finally, he concluded that the risk of homophobic violence was greatest in urban areas, which Ms. Rigg could avoid by moving to a safer area.

[11] There was other documentary evidence before the officer, including reports from Amnesty International, Human Rights Watch and the U.S. Department of State, to which he did not refer. Without cataloguing all of the relevant contents of these reports, I note in particular that there was considerable evidence before the officer showing:

- wide-spread violence in Jamaica against lesbian women, particularly those (like Ms. Rigg) who have a masculine appearance;
- many Jamaicans believe that lesbians can be cured through rape;
- Jamaican police frequently abuse gay men and women; and
- inadequate state protection does not exist for homosexuals at risk of violence.

[12] In my view, the officer's treatment of the evidence was unreasonable. The officer failed to analyze the bulk of the documentary evidence supporting Ms. Rigg's application. While he purported to give considerable weight to the letters from Amnesty International, he did not explain why he found the contrary, and more general, sources more persuasive.

IV. Conclusion and Disposition

[13] While an officer is entitled to weigh the evidence and need not cite all of it in the reasons for decision, he or she cannot base a decision on a selective review of the evidence. Where there is credible evidence supporting the opposite of the officer's conclusion, he or she must refer to it and explain why it can be discounted (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425).

[14] The application for judicial review is allowed. Ms. Rigg sought costs, but I can find no special circumstances warranting them. Counsel requested an opportunity to make submissions regarding a question for certification. I will consider any submissions filed within ten days of this judgment.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration.
2. There is no order as to costs.
3. Submissions regarding a certified question may be filed within ten days of this judgment.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5109-08

STYLE OF CAUSE: RIGG v. MCI & MPSEP

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: October 29, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 30, 2010

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