

Federal Court



Cour fédérale

**Date: 20100419**

**Docket: IMM-2722-09**

**Citation: 2010 FC 423**

**Ottawa, Ontario, April 19, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ALFRED JACQUES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr. Alfred Jacques came to Canada from Haiti in 2006 and claimed refugee protection on two grounds. First, he feared political opponents. Second, he was afraid he would be targeted by criminals who, because he had lived for a number of years in the United States, would perceive him as being wealthy.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Jacques' claim in 2009. Mr. Jacques advances a number of issues surrounding the Board's decision and asks me to order a different panel of the Board to reconsider his claim. I agree that the Board erred and will allow this application for judicial review.

[3] As mentioned, there were two aspects to Mr. Jacques' claim. Because I have concluded that Mr. Jacques' claim of political persecution should be reconsidered by another panel, it is unnecessary for me to address the Board's analysis of his fear of crime. The new panel will have to review the evidence and come to a fresh conclusion on that issue. Therefore, the only issue addressed here is whether the Board's decision regarding Mr. Jacques' claim of political persecution was reasonable.

## II. Analysis

### (a) Factual background

[4] Mr. Jacques claims that his shop was set on fire in 1992 by Lavallas supporters. He was making horns used to warn people when gangs were headed for the villages. He fled to the United States and remained there for ten years.

[5] In 2002, after hearing that things were getting better in Haiti, Mr. Jacques returned and opened a welding shop with a friend. He says he joined a group called the Christian Movement for a

New Haiti (Mochrenha). While he found the situation in Haiti uncomfortable, he was not attacked when he first returned.

[6] In 2003, Mr. Jacques claims he attended a rally that was attacked by the Chimères, a subset of Lavalas supporters, who accused Mochrenha of attempting to overthrow the Aristide government. He was assaulted and threatened. He says he did not go to the police because they were intertwined with the Lavalas movement.

[7] In 2004, he learned that his business partner had colluded with Lavalas supporters to kill him. The Chimères came to the welding shop and attacked him, but friends came to his rescue. The Chimères threatened to return.

[8] Mr. Jacques fled to the United States but was denied asylum there. He met and married his wife, Suzette, in December 2004. She tried to sponsor him to remain in the United States, but that application was also denied. As a result, Mr. Jacques came to Canada in 2006 and claimed refugee status.

(b) The Board's decision

[9] The Board found Mr. Jacques' testimony to be straightforward and spontaneous. Where there were inconsistencies or omissions, he sincerely tried to provide an explanation for them.

[10] Nevertheless, the Board dismissed Mr. Jacques' refugee claim. It concluded that his fear was not based on any of the five enumerated grounds of persecution under the Refugee Convention. Rather, his claim was based on fear of general criminality and insecurity in Haiti.

[11] With respect to his fear of political reprisals, the Board found that Mr. Jacques was not a member of the Mochrenha party. While Mr. Jacques had a corroborating letter on party letterhead, the Board concluded that it was not authentic. The body of the letter was crooked compared to the letterhead, raising the possibility that the text had been pasted onto a blank sheet of party stationery. In addition, Mr. Jacques had acquired the letter through an agent, not directly. Without adequate proof of his political activities, the Board rejected his claim to fear political persecution.

(c) Was the Board's decision unreasonable?

[12] The Minister argues that the Board's conclusion about the absence of evidence supporting Mr. Jacques' fear of political persecution was reasonable. In particular, the Board's rejection of the letter purporting to corroborate Mr. Jacques' membership in the Mochrenha party was sound, in the Minister's view. Further, the Board considered Mr. Jacques' testimony about obtaining the letter through an agent and determined that this evidence raised further doubts about whether the letter was genuine. It is for the Board to decide what weight to give to the evidence before it and, so long as its treatment of the evidence is reasonable and the Board explains its conclusions, the Court should not intervene.

[13] Mr. Jacques submits that the Board's basis for rejecting his evidence about membership in the Mochrenha party was flimsy. The Board simply noticed that the text of the letter did not line up perfectly with the letterhead and, based on that alone, concluded that the letter was probably fake. Mr. Jacques argues that the Board is entitled to challenge the authenticity of foreign documents only when it has before it evidence about what the document should look like. There was no evidence here on that point. Further, the Board did not purport to have any specialized knowledge.

[14] It is clear that the Board does not have an obligation to have documents reviewed by experts before concluding that they are fraudulent (*Culinescu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 73). However, there must be some evidence before the Board on which to base a finding that a document is not genuine, unless the problem is apparent on the document's face (*Kashif v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 179; *Riveros v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1009). For example, the Board erred in the following circumstances:

- the Board erred in finding that a birth certificate was not evidence of the claimant's identity when it was issued under the country name "Ceylon" rather than "Sri Lanka", in the absence of evidence that it ought to say "Sri Lanka" (*Ramalingam v. Canada (MCI)*, [1998] F.C.J. No. 10);
- the Board erred in finding a family certificate not to be authentic because it did not have an identification number on it, when there was no evidence that

it should (*Nika v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 656);

- the Board erred in rejecting the claimant's identification card on the basis that many foreign documents are forged, when there was no evidence before it to that effect (*Halili v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 999; *Cheema v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 224);
- the Board erred in rejecting the claimant's medical report when there was no evidence suggesting it was not valid (*Tsymbalyuk v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1306).

[15] On the other hand, the Board did not err in these circumstances:

- the Board did not err in assigning the claimants' documents no weight when there was documentary evidence before it casting doubt on the core of their claim (*Culinescu*, above);
- the Board did not err in finding that the claimant's service record was not genuine when the photograph on the document was recent, yet the document was dated 28 years earlier (*Riveros*, above).

[16] As I read these cases, they stand for the simple proposition that in deciding whether a document is genuine, the Board must rely on some evidence. In some cases, the evidence will come from other documentary evidence or testimony at the hearing. In others, the necessary evidence will be on the face of the document itself. In either case, the essential question will be whether the Board's conclusion was reasonable in light of whatever evidence was before it. As Justice Yvon Pinard said in *Kashif*, above, where "there is insufficient evidence to call the authenticity of a document into question, it is not open to the Board to conclude that it is not genuine" (at para. 8).

[17] In this case, while I accept the general propositions of law put forward by the Minister, I agree with Mr. Jacques that the Board's conclusion here was unreasonable. The Board did not make any adverse credibility finding against Mr. Jacques. Accordingly, it based its rejection of Mr. Jacques' claim, and of his oral testimony, solely on the imperfections in the appearance of the letter and a concern about its source. The Board did not explain how these concerns should detract from Mr. Jacques' personal credibility.

[18] In addition, the Board did not refer to aspects of the letter that enhanced, rather than detracted from, the letter's trustworthiness. The letter contains the signature of the party's vice-president and the party's stamp. Its contents corroborate Mr. Jacques' testimony about the date of his membership and his involvement in the party.

[19] Regarding the Board's concern that Mr. Jacques had obtained the letter through an agent, I note that Mr. Jacques had explained to the Board his reason for doing so. He was in the United States at the time. The agent made frequent visits to Haiti from the U.S. and Mr. Jacques felt that

asking the agent to obtain the letter on his behalf was a reasonable and secure way to get it. In its reasons, the Board did not make clear why this explanation was implausible.

[20] In my view, the basis on which the Board dismissed Mr. Jacques' claim was not reasonable; it did not fall within the range of acceptable outcomes, based on the facts and the law.

### III. Conclusion and Disposition

[21] The Board's main reason for rejecting Mr. Jacques claim of political persecution was a relatively minor imperfection in a corroborating document. I cannot find its conclusion to be reasonable in light of the evidence before it. Therefore, I must allow this application for judicial review and order a different panel of the Board to reconsider Mr. Jacques' claim. The parties requested an opportunity to make submissions regarding a question of general importance. I will consider any submissions made 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 the Board for a new hearing before a different panel;
2. The parties may make submissions regarding a question of general importance within ten days of this judgment.

“James W. O’Reilly”

---

Judge

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

**DOCKET:** IMM-2722-09

**STYLE OF CAUSE:** JACQUES v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** January 14, 2010

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

**DATED:** April 19, 2010

**APPEARANCES:**

Carole Simone Dahan

FOR THE APPLICANT

Hillary Stephenson

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CAROLE SIMONE DAHAN  
Barrister & Solicitor  
Toronto, ON.

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada  
Toronto, ON.

FOR THE RESPONDENT