

Federal Court



Cour fédérale

Date: 20100826

Docket: IMM-6657-09

Citation: 2010 FC 848

Ottawa, Ontario, August 26, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JEAN GUIBERT CLERMONT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Jean Guibert Clermont sought refugee protection in Canada, claiming to have a well-founded fear of persecution in Haïti, based upon his status as a member of Haïti's middle class. He also claimed to be at risk in that country because of his perceived political opinion, which resulted from his past work with two powerful and high-profile entrepreneurs who were members of the Duvalier-era elite. According to M. Clermont, his work with these individuals gave rise to the perception that he shared their right-wing political views.

[2] The Refugee Protection Division of the Immigration and Refugee Board dismissed M. Clermont's claim. The Board only considered the claim from the perspective of M. Clermont's membership in a particular social group, namely the Haitian middle class. The Board found that the claim had no nexus to a Convention ground for the purposes of section 96 of the *Immigration and Refugee Protection Act*. The section 97 aspect of the claim was also dismissed on the basis that the risk that M. Clermont faced in Haiti was generalized in nature.

[3] At no time did the Board identify or analyze the aspect of M. Clermont's claim based upon his perceived political opinion. In addition to M. Clermont's own evidence in this regard, documentary evidence was also put before the Board as to the allegedly politically-based imprisonment of one of M. Clermont's previous employers. None of this is mentioned or considered by the Board.

[4] The failure of the Board to understand or address a material aspect of M. Clermont's claim is a fundamental error, the result of which is that the decision cannot stand.

[5] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6657-09

STYLE OF CAUSE: JEAN GUIBERT CLERMONT v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 25, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: August 26, 2010

APPEARANCES:

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Jamie Todd FOR THE RESPONDENT

SOLICITORS OF RECORD:

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