

Federal Court



Cour fédérale

Date: 20101022

Docket: IMM-368-10

Citation: 2010 FC 1034

Ottawa, Ontario, October 22, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

LORENZO TOUSSAINT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2001, Mr. Lorenzo Toussaint witnessed the murder of his uncle in St. Vincent and the Grenadines. After he testified at the trial, he was assaulted by members of the perpetrator's family. He moved to a neighbouring village to avoid them. In 2007, he was approached by gang members who asked them to join the gang. When he refused, they assaulted him. Mr. Toussaint, who was then 15, then fled to Canada and sought refugee protection.

[2] A panel of the Immigration and Refugee Board found Mr. Toussaint to be a credible witness but dismissed his claim because he had failed to rebut the presumption that state protection was available to him in St. Vincent and the Grenadines. Mr. Toussaint argues that the Board erred in its analysis of state protection and asks me to order a new hearing before a different panel.

[3] I find that the Board's conclusion on state protection was reasonable and must, therefore, dismiss this application for judicial review.

[4] The sole issue is the reasonableness of the Board's conclusion on state protection.

II. Background

[5] When Mr. Toussaint was assaulted for testifying at the trial of his uncle's murderer, his mother did not approach the police. Mr. Toussaint explained that the family was afraid to do so. Again, when he was assaulted by gang members, no one contacted police.

[6] Mr. Toussaint stated that he would be afraid to return home now that the person who killed his uncle is out of prison. He conceded that he would contact police if he felt threatened, but believed that their resources were so strained that they would probably not be able to help him.

[7] The Board reasoned that the police and the state had responded appropriately to the murder of Mr. Toussaint's uncle through investigation, prosecution, conviction and sentencing of the

perpetrator. In light of that response, the Board concluded that Mr. Toussaint did not put forward valid grounds for failing to seek state protection when he needed it.

[8] The Board acknowledged problems in the administration of criminal justice in St. Vincent and the Grenadines, including use of excessive force and abuse of power. However, documentary evidence showed that the state had responded to these problems through a variety of police oversight mechanisms and initiatives aimed at reducing violent crime. Even if the police resources were scant in Mr. Toussaint's home town, this did not amount to a failure of the state as a whole to afford protection.

[9] In short, the Board found that Mr. Toussaint had failed to provide clear and convincing evidence that he would be unable to obtain state protection on his return. Accordingly, his fear of persecution was not well-founded.

III. Was the Board's Conclusion Unreasonable?

[10] Mr. Toussaint argues that the Board failed to take adequate account of the fact that he was a minor at the time of his problems in St. Vincent and the Grenadines. The Board should not have held him to the standard expected of an adult. Further, Mr. Toussaint submits that the Board only addressed his claim under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 and failed to analyze his entitlement to protection under s. 97 (see statutory provisions in Annex A).

[11] In my view, the Board did not hold Mr. Toussaint to an adult standard. The Board considered what would have been reasonable for Mr. Toussaint's family members to do in terms of seeking state protection, not what a boy should have done. However, the Board also took note of the fact that Mr. Toussaint is now 18 and should be held to an adult standard in future.

[12] Given the Board's conclusion that Mr. Toussaint had not rebutted the presumption of state protection, there was no need for it to consider the s. 97 claim separately from the s. 96 claim.

[13] As I see it, the Board gave a fair reading of the relevant evidence relating to state protection. Its conclusion - that Mr. Toussaint had failed to show that there was a serious chance he would be persecuted on return to St. Vincent and the Grenadines – was reasonable.

IV. Conclusion and Disposition

[14] Given the evidence before it, the Board's conclusion that Mr. Toussaint had failed to show that his fear of persecution was well-founded, because of the existence of state protection, fell within the range of acceptable outcomes and, therefore, was reasonable. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
 (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
 (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
 (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
 (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
 (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
 (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
 (iv) the risk is not caused by the inability of that country to provide

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
 a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
 b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
 a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
 b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
 (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
 (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
 (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-368-10

STYLE OF CAUSE: TOUSSAINT v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: October 13, 2010

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

DATED: October 22, 2010

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