

Federal Court



Cour fédérale

**Date: 20101117**

**Docket: IMM-2140-10**

**Citation: 2010 FC 1155**

**Toronto, Ontario, November 17, 2010**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**VUSUMUZI NGUBENI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**AND BETWEEN:**

**Docket: IMM-2228-10**

**Citation: 2010 FC 1156**

**VUSUMUZI NGUBENI**

**Applicant**

**and**

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

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is an adult male citizen of Swaziland. He claimed refugee protection in Canada which claim was rejected by a final decision of the Refugee Protection Board. The Applicant applied for a Pre-Removal Risk Assessment (PRRA). By a decision dated January 11, 2010 a PRRA Officer rejected that application. That rejection is the subject of the first of these two applications for judicial review (IMM-2140-10). The Applicant received a notice to report for removal from Canada. He applied for a deferral of that removal and was refused by a decision of a removals officer dated 22 April 2010. This refusal is the subject of the second of the two Applications now before the Court (IMM-2228-10). This Court gave an Order staying the removal of the Applicant from Canada until final disposition of these Applications.

[2] Both Applications for judicial review, the one dealing with the rejection by the PRRA Officer, the other dealing with the refusal to defer by the removals officer came before me and were heard at the same time.

[3] I will deal first with the rejection of the PRRA application. Three grounds submitted by the Applicant were considered by the PRRA Officer. The first was the Applicant's own narrative as to his fears should he be returned to Swaziland. The PRRA Officer considered this narrative and found that it was materially the same as that considered by the RPD thus would not lead to any different result. The second was the Applicant's submission that he had received a telephone call from an unidentified cousin indicating that the police in Swaziland were looking for him and may cause harm including death. The PRRA Officer determined that no weight should be given to this assertion given the lack of specifics and the interest that such a cousin may have in the outcome of the application. The third submission rested on an Amnesty International updated country condition

report which the Officer found did not demonstrate any material changes to the conditions considered by the RPD. I have reviewed the evidence and entirely agree with the findings and conclusions of the PRRA Officer, they were reasonable and correct. On this basis there is no reason to set aside the conclusion to reject the PRRA decision.

[4] Turning to the refusal of the removals officer to defer removal the records shows that, at the time that deferral was requested the Applicant had, a few days earlier, filed an application for leave for judicial review of the PRRA Officer's decision and, the record shows, the removals officer was aware of that application. The reasons given by the removals officer not to defer removal, however, make no reference to the fact that an application for judicial review of the PRRA decision had been filed. This, argues Applicant's Counsel, constitutes a reviewable error.

[5] Applicant's Counsel places great reliance on the decision of Harrington J. of this Court in *Shpati v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 1046. That decision however was issued several months after the decision of the Removals Officer at issue here. I was informed by Respondent's Counsel at the hearing of the present Applications that, given that questions were certified by the Court in *Shpati*, the Minister will be appealing that decision.

[6] I am not satisfied that *Shpati* can be read so broadly as to state that, whenever a failed PRRA applicant files an application for judicial review, a removals officer must defer removal at least until final disposition of that application. The Federal Court of Appeal may provide further assistance in this regard.

[7] In any event the present circumstances can be distinguished from *Shpati*. Here I am dealing at the same time with the application for judicial review of the PRRA decision, which I will dismiss and the application for judicial review of the deferral of the removal decision which I will dismiss as being moot as a result of my decision in respect of the PRRA matter.

[8] Given that *Shpati* will be before the Court of Appeal, there is no point in certifying a question in the present Application. Counsel for both parties have so agreed.

**JUDGMENT**

For the reasons provided:

**THIS COURT'S JUDGMENT is that:**

1. Each of Applications IMM-2140-10 and IMM-2228-10 is dismissed;
2. No question is to be certified;
3. No Order as to costs.

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"Roger T. Hughes"

Judge

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

**DOCKET:** IMM-2140-10

**STYLE OF CAUSE:** VUSUMUZI NGUBENI v. THE  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**DOCKET:** IMM-2228-10

**STYLE OF CAUSE:** VUSUMUZI NGUBENI v. THE  
MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 17, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** HUGHES J.

**DATED:** NOVEMBER 17, 2010

**APPEARANCES:**

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