

Federal Court



Cour fédérale

Date: 20110708

Docket: IMM-6089-10

Citation: 2011 FC 847

Ottawa, Ontario, July 8, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**SHAMDAI MOHAN
RUPAN MOHAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Although I am not convinced that the Immigration and Refugee Board unreasonably rejected the applicants' application for refugee protection, I cannot find that its section 96 analysis addressed the whole of the application or constituted adequate reasons. As such, I will allow this application.

[2] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“IRPA”) of the decision rendered orally on July 28, 2010 with written reasons to follow on September 10, 2010, of the Refugee Protection Division of the Immigration and Refugee Board in Toronto, rejecting the applicants’ claim for protection as a Convention Refugee.

BACKGROUND

[3] The principal applicant, Ms. Shamdai Mohan and her former common-law spouse, Rupan Mohan are citizens of Guyana. They owned 110 acres of land, 51 of which bordered the Buxton, a predominantly Afro-Guyanese village. The applicants are Indo-Guyanese and allege fear of persecution at the hands of the Afro-Guyanese community. They claim that their livestock were stolen, mistreated and killed due to their Indian ethnicity and in 2005, their house was set afire. In 2006, the principal applicant’s husband was robbed at gunpoint by two Afro-Guyanese men. The principal applicant was robbed and threatened while on a bus with other individuals of Indo-Guyanese descent.

[4] The principal applicant came to Canada on a number of different occasions for vacations: August to September 2000, August to September 2003 and March to April 2005. In 2003, the principal applicant applied for permanent residence as an economic class immigrant but the application was refused. The applicants then arrived in Canada on July 11, 2007 and filed claims for refugee protection on September 9, 2007.

DECISION UNDER REVIEW

[5] The Board made a negative finding relating to the applicants' subjective fear. This was because their lives had been threatened and their property damaged for 10 years yet they returned to Guyana after each visit to Canada. The Board also found that there was no nexus between the harm feared by the applicants and the Convention grounds. It determined that the risk they faced was generalized crime faced by other citizens in Guyana. As such, the Board held that the applicants did not meet the criteria for refugee protection as set out under sections 96 and 97 of the IRPA.

ISSUES

[6] This application turns on whether the Board erred in failing to provide adequate reasons for determining that there was no nexus to one of the Convention grounds.

ANALYSIS

Did the Member err in failing to provide adequate reasons for determining that there was no nexus to one of the Convention grounds?

[7] It is well established that "adequate reasons are those that serve the functions for which the duty to provide them was imposed": *Via Rail Canada Inc. v. National Transportation Agency* (C.A.), [2001] 2 F.C. 25, [2000] F.C.J. No. 1685 (QL) at para. 21. In the administrative law context,

the purpose for providing reasons includes: fairness to the parties, justification, transparency and intelligibility: *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, 9 Admin. L.R. (5th) 79 at para. 13, citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 43 and *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47. With that said, there is no obligation on the part of an administrative decision-maker to “write reasons on arguments that, in light of the record and the governing law, have no hope of success”: *Ralph v. Canada (Attorney General)*, 2010 FCA 256, 410 N.R. 175 at para. 19. Failure to provide adequate reasons is an error of law and thus no deference is afforded by this Court when reviewing decisions of boards or tribunals for this purpose: *Via Rail*, above, at para. 33.

[8] The applicants allege that the Board’s section 96 analysis provided insufficient reasons for determining that there was no nexus to one of the Convention grounds. Section 96 reads as follows:

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

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

unable or, by reason of that
fear, unwilling to return to
that country.

peut ni, du fait de cette
crainte, ne veut y retourner.

[9] The Board’s analysis on nexus is located at paragraphs 9-11 of its decision:

[9] The determinative issue in this section 96 analysis is nexus. That is, whether the harm feared by yourself has any connection to one of the Convention grounds. I find that it does not.

[10] The activity which you fear is a criminal activity. The Federal Court has held that victims of crime, corruption or vendettas generally fail to establish a link between their fear of persecution and one of the Convention grounds and the Board has been upheld in its finding of lack of nexus, where the claimant was a target of a personal vendetta or where the claimant was a victim of crime.

[11] You fear criminals and criminal acts. Your fear in this case is not linked to race, religion, nationality, political opinion, or membership in a particular social group. Therefore, I find that you are victims of crime which does not provide you with a link to a Convention ground. As a result, your claims must fail under section 96 of the *IRPA*. However, a separate analysis under section 97 of the *IRPA* follows. [References omitted.]

[10] I agree with the applicants that this analysis is neither substantiated nor a reflection of the evidence submitted. In particular, it does not discuss the principal applicant’s Personal Information Form (“PIF”) wherein she explicitly refers to the ethnic divide in Guyana between Indo and Afro Guyanese communities:

Regrettably, the Guyanese population remains extremely divided on ethnic-racial grounds, involving both the Indo-Guyanese or those of east-Indian/Hindu ethnic background and the Afro-Guyanese or those of the African/Christian background. This particular set of circumstances has caused our family and I, including our children, serious difficulties and conflicts such as various incidents of targeting, mistreatment, abuse and a kidnapping threat against my daughter.

[...]

While residing in Guyana, where we operated a 51-acre dairy farm, we were often targeted by members of the Afro-Guyanese community and, as a result, we faced multiple attacks and incidents of robbery, abuse and damage to our property. [Underlining in original.]

[11] It also fails to address why the incidents of threats and violence have no connection to the applicants' ethnicity. Their refugee claim was based on fear of crime because of their wealth, and as a result of their membership in the Indo-Guyanese community.

[12] The Board was correct to note that victims of crime, corruption or vendettas generally fail to establish a link between their fear of persecution and one of the Convention grounds. However, this Court has also held that being the victim of a private vendetta and being a Convention refugee are not necessarily mutually exclusive: *Pepa v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 834, 222 F.T.R. 315 at paragraph 9. As the claim was based largely on the applicants ethnicity as members of the Indo-Guyanese community, the Board ought to have discussed why, or in what way, the criminality they faced was not due to their membership in that particular group. Because it failed to do this, its reasons cannot be held to be adequate.

[13] No questions were proposed for certification and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted and the matter is remitted for reconsideration by a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6089-10

STYLE OF CAUSE: SHAMDAI MOHAN
RUPAN MOHAN

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 11, 2011

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

DATED: July 8, 2011

APPEARANCES:

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