

Federal Court



Cour fédérale

Date: 20120227

Docket: IMM-5035-11

Citation: 2012 FC 270

Toronto, Ontario, February 27, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**OSSEL O'BRIAN FORBES
ERICA MICHELLE FORBES NEE APPLETON
(A.K.A. ERICA MICHELLE FORBES)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are husband and wife, both citizens of Jamaica. The husband came to Canada in 2006, the wife in 2008; both claimed for refugee protection. That claim was rejected by a decision of a Member of the Refugee Protection Division, Immigration and Refugee Board of Canada dated July 5, 2011. The Applicants seek judicial review of that decision and to set it aside. I am dismissing this application.

[2] The Applicants' claim for refugee protection is based essentially on allegations that a relative known as Desmond living nearby in Jamaica has made several threats of harm against them arising out of a dispute as to ownership of some land. The Applicants characterized it as a family feud in their evidence before the Board. The Board considered their claim under both sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) and rejected their claim under both sections. Counsel are agreed that the standard of review is reasonableness.

[3] In respect of section 96, the Board found that the Applicants had failed to establish a link between their fear and one of the Convention grounds. In respect of the section 97 issue the Board found that, on a balance of probabilities, neither of the claimants would be subject to a risk of life, or a risk of cruel and unusual treatment or punishment, or a danger of torture having regard to Desmond. While the Board's reasons are brief, I am satisfied that the reasons are adequate having regard to the criteria set out by the Supreme Court of Canada in *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[4] As to section 96, Applicants' Counsel argued that the Applicants were members of a particular social group; namely, a "family". Simply because the Applicants comprise a family does not, as such, mean that they are members of a particular social group as defined by section 96 of IRPA. This was addressed by Justice Sharlow (as she then was) in *Serrano v Canada (Minister of Citizenship and Immigration)*, 166 FTR 227, 1999 Can LII 7997 (FC) at paragraphs 40 to 42:

40 In the absence of binding authority on this point, it is necessary to return to the principles in Ward to determine whether "family" is a stand-alone category of "particular social group" as counsel for the

applicants argues, or merely a derivative of some other recognized category as the respondent argues.

41 *Ward says that "particular social group" is a generic category that can be expanded to include groups that are not expressly mentioned in the Convention, but cannot be expanded beyond what is needed to reflect "the underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative" (Ward, per La Forest J. at page 739).*

42 *The applicant is asking me to hold that everyone who fears persecution solely because of a family connection may be entitled to the protection of the Convention. I think that would stretch the category of "particular social group" far beyond its proper limits. I do not accept that family connection is an attribute requiring Convention protection, in the absence of an underlying Convention ground for the claimed persecution. I conclude that in the context of the facts of this case, the respondent's position is a better reflection of the objectives of the Convention than the applicants' position.*

[5] Justice Snider addressed the same issue in *S.M. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 949 at paragraph 11:

11 *Merely being a family member of someone who has been the victim of crime does not mean that there is a nexus to a Convention ground. As explained in Rivaldo Escorcía v Canada (Citizenship and Immigration), 2007 FC 644, at paragraph 39,*

*Saying, however, that a claim is not extinguished does not relieve non-excluded family members from putting forward evidence that supports their claim. The jurisprudence of this Court has found that persecution against one family member does not automatically entitle all other family members to be considered refugees (see *Pour-Shariati v. Canada (The Minister of Employment and Immigration)* (1997), 215 N.R. 174 (F.C.A.), 39 Imm. L.R. (2d) 103; *Marinova v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 178, 103 A.C.W.S. (3d) 1198). In *Granada v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766, 136 A.C.W.S. (3d) 123, [2004] F.C.J. No. 2164 (F.C.) (QL), a similar case*

of a family claiming their refugee status dependent upon a family member's fear of persecution against the FARC, the Court stated at para. 16:

The family can only be considered to be a social group in cases where there is evidence that the persecution is taking place against the family members as a social group: Al-Busaidy v. Canada (Minister of Employment and Immigration) (1992), 139 N.R. 208 (F.C.A.); Casetellanos v. Canada (Solicitor General), [1995] 2 F.C. 190 (F.C.T.D.); Addullahi v. Canada (Minister of Citizenship and Immigration) (1996), 122 F.T.R. 150; Lakatos v. Canada (Minister of Citizenship and Immigration), 2001 FCT 408, [2001] F.C.J. No. 657 (F.C.T.D.) (QL). However, membership in the social group formed by the family is not without limits, it requires some proof that the family in question is itself, as a group, the subject of reprisals and vengeance or, in other words, that the applicants are targeted and marked simply because they are members of the family even though they themselves have never been involved in politics and never will be so involved. (Canada (Minister of Citizenship and Immigration) v. Bakhshi, [1994] F.C.J. No. 977 (FCA) (QL)).

[Emphasis in original]

[6] The Board Member in the present case committed no error in respect of his section 96 analysis. With respect to his section 97 analysis, the decision of the Member is reasonable and falls within the boundaries of reasonableness as established by the Supreme Court in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 and reiterated in *Newfoundland and Labrador Nurses*, supra.

[7] The application is dismissed. Neither Counsel requested a certified question. There is no basis for ordering costs.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5035-11

STYLE OF CAUSE: OSSEL O'BRIAN FORBES, ERICA MICHELLE
FORBES NEE APPLETON (A.K.A. ERICA
MICHELLE FORBES) v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 27, 2012

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

DATED: February 27, 2012

APPEARANCES:

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