

Federal Court



Cour fédérale

Date: 20130724

Docket: IMM-12071-12

Citation: 2013 FC 810

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, July 24, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

VICKNEY STANDLEY PIERRE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] According to *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, [2009] 4 FCJ 164, the purpose of Article 1F(b) of the United Nations Convention relating to the Status of Refugees [Convention] requires "ensuring that the right of asylum is not used by the perpetrators of serious ordinary crimes in order to escape the ordinary course of local justice" (at para 28).

[2] [TRANSLATION] "The offence of break and enter is subject to a maximum term of life imprisonment because the crime violates the sanctity of the home and also presents a danger to life through the potential for violent confrontation with the occupants (Clayton C. Ruby, *Sentencing*, Markham, LexisNexis, 2008, para. 23.429, at p. 930). The possession of ammunition in violation of an order is subject to a maximum penalty of 10 years" (*Lévesque v R*, 2009 QCCA 1476, at para. 7).

23.429 Under section 348 of the *Criminal Code*, the offence of break and enter into a dwelling house carries a maximum term of life imprisonment, while the break and enter into other premises involves a lower maximum penalty of 10 years' imprisonment or punishment by summary conviction. This statutory maximum is often interpreted as a reflection of the extreme seriousness with which Parliament, and hence the courts, will regard the offence of housebreaking. It is a crime which is seen to violate the sanctity of the home and to present danger to life through the potential for violent confrontation with occupants.

(Clayton C. Ruby, *Sentencing, supra*)

II. Introduction

[3] The Court was faced with an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB].

[4] The RPD accepted the applicant as a Convention refugee.

[5] In February 2009, the applicant was arrested and charged with break and enter in the United States. This offence of theft was committed in a dwelling house.

[6] The RPD decision is set aside because of the analysis error regarding the seriousness of the crime in question.

III. Facts

[7] The applicant was accused of "burglary" in the US, and therefore of "a second degree felony" without appearing before the US Criminal Court to which he had been summoned.

[8] One month later, the defendant decided to flee the US and arrived in Canada, seeking political asylum from Haiti.

IV. Analysis

[9] The RPD neglected to analyze the most relevant case law in terms of legislation under Article 1F(b) of the Convention with regard to serious crimes committed in a foreign jurisdiction.

[10] The RPD erred in law by neglecting to grant sufficient weight to the seriousness of the crime committed according to the evidence on file, the offence having taken place in a dwelling house.

[11] In *Jayasekara, supra*, the Federal Court of Appeal established factors to consider with regard to the seriousness of a crime for the purposes of Article 1F(b) of the Convention:

- a. elements of the crime;
- b. mode of prosecution;
- c. penalty prescribed;
- d. facts and mitigating and aggravating circumstances underlying the conviction.

[12] It is the responsibility of the RPD to assess the facts surrounding the commission of the offence in a detailed manner, in order to understand what might affect the sentence in question; this will clarify the seriousness of the offence, which requires a thorough analysis.

[13] For society's sake, Parliament is concerned with the perpetrator's intent. This is reflected in the Supreme Court of Canada decision, *R v Hamilton*, 2005 SCC 47, [2005] 2 SCR 432 (at pp. 447-448).

[14] *R v Lewis*, [1979] 2 SCR 821, another Supreme Court of Canada decision, leads us to the conclusion that if a refugee claimant has committed a non-political crime, evidence of a motive for this crime does not have a high priority impact.

[15] Even though the residents of the home were absent, the crime in question could be punishable by life in prison, considering the risk to human life through potentially violent interactions with potential occupants.

[16] According to *Jayasekara, supra*, the purpose of Article 1F(b) of the Convention requires "ensuring that the right of asylum is not used by the perpetrators of serious ordinary crimes in order to escape the ordinary course of local justice".

[17] As the RPD analysis is completely erroneous in law and according to the case law on evidence of the crime committed and the structure of the evidence on file, a review is essential.

V. Conclusion

[18] For all the above-noted reasons, the applicant's application for judicial review is allowed.

JUDGMENT

THE COURT ORDERS that the RPD decision be set aside and refers the matter back to a differently constituted panel for redetermination by the RPD of the evidence, analyzing the relevant legislation with regard to exclusions under Article 1F(b) and the case law that assists in interpreting the legislation. No question of general importance for certification arises.

"Michel M.J. Shore"

Judge

Certified true translation
Elizabeth Tan, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: Montréal, Quebec

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AND JUDGMENT:** SHORE J.

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