



**Date: 20140730**

**Docket: IMM-81-13**

**Citation: 2014 FC 756**

**Ottawa, Ontario, July 30, 2014**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**FABIAN PHILMORE FERREIRA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Before his scheduled return to Jamaica, Mr Fabian Ferreira requested a pre-removal risk assessment (PRRA). The officer conducting the PRRA concluded that Mr Ferreira had not established that he was a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex).

[2] In his PRRA application, Mr Ferreira described his experiences with schizophrenia, which had led him to commit a number of crimes. He has been in Canada for over 15 years and has no remaining family in Jamaica. He is currently in his early 30s.

[3] The officer reviewed the risks of harm that might await Mr Ferreira in Jamaica – lack of care, physical mistreatment, criminality and harsh incarceration - and concluded that they related primarily to the inability of Jamaica to provide adequate mental health care to its citizens. That kind of risk is expressly excluded from recognition under s 97(1)(b)(iv) of IRPA. In any case, the officer reasoned, the risks Mr Ferreira feared were speculative. The officer went on to note that mentally ill persons and the homeless may be discriminated against in Jamaica, but that was not enough to conclude that Mr Ferreira was exposed to a risk of persecution or serious mistreatment.

[4] Mr Ferreira contends that the officer's decision was unreasonable because it failed to appreciate that his application was not based entirely on the inadequacy of mental health care in Jamaica; rather, he also claimed that, due to his symptoms and the lack of family support, he would undoubtedly be unable to access treatment in Jamaica. As a result, he would be exposed to a risk of harm as a homeless, crime-prone, mentally ill deportee, with no material resources or family support.

[5] I am satisfied that the officer failed to recognize the particular risks to which Mr Ferreira would be exposed, resulting in an unreasonable conclusion that Mr Ferreira had not made out a claim for protection. I must, therefore, allow this application for judicial review.

[6] The sole issue is whether the officer's decision was unreasonable.

## II. The Officer's Decision

[7] The officer accepted that Mr Ferreira experiences schizophrenia. Mr Ferreira, therefore, bore the burden of proving that the various risks he would face in Jamaica were not the product of inadequate health care resources there (citing *Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365). The officer found that the real basis of Mr Ferreira's application was, indeed, a lack of proper medical care in Jamaica.

[8] The officer acknowledged that mentally ill persons are stigmatized and suffer discrimination in Jamaica. However, documentary evidence showed that those with mental "disabilities" are treated worse than those with a mental "illness". Other evidence showed that homeless persons are victims of violence, but not all of them are mentally ill. The officer also accepted that prison conditions in Jamaica are poor.

[9] Overall, the officer was not satisfied that Mr. Ferreira had established that he faced a risk of persecution or cruel and unusual treatment in Jamaica that was not excluded by s 97(1)(b)(iv).

## III. Was the officer's decision unreasonable?

[10] The Minister contends that the officer properly dismissed Mr Ferreira's application because inadequate medical care is not a valid basis for a PRRA. The other risks Mr Ferreira

identified (homelessness, imprisonment, violence) all flowed from the unavailability of suitable medical treatment.

[11] In my view, however, the officer leaped too readily to the conclusion that the risks facing Mr Ferreira arose from the lack of medical care in Jamaica. Actually, his application was based on his own particular circumstances.

[12] Mr Ferreira explained in his submissions that, without sufficient medical oversight or the support of his family, he would be unlikely to seek out treatment or stay on his medication. In Canada, his mother and a community worker help ensure that he stays on his medication. His condition is stable when medicated. His doctors believe he needs this kind of support in order to maintain compliance with his treatment. No such support exists for him in Jamaica.

[13] Therefore, no matter what level of treatment might be available in Jamaica, Mr Ferreira would probably not benefit from it. He would likely be drawn into a life of homelessness, crime and incarceration in a country where the mentally ill endure undeniable hardship. His case parallels others in which this Court has recognized that mistreatment resulting from an applicant's particular symptoms of mental disorder may be relevant to an applicant's PRRA because s 97(1)(b)(iv) only excludes protection where the inadequacy of medical care is directly responsible for the anticipated harm (see, eg, *Lemika v Canada (Minister of Citizenship and Immigration)*, 2012 FC 467; *Level v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1226).

[14] Where, as here, the applicant's risk relates not to the inability of the country of origin to provide adequate medical care but to the applicant's inability to access treatment, s 97(1)(b)(iv) does not stand in the way of the applicant's PRRA. This is not to say, of course, that all persons from Jamaica who experience schizophrenia should benefit from a positive PRRA. As the officer acknowledged, each case must be decided on its own facts. However, where the risk relates not to the lack of care but to the applicant's inability to benefit from any care that may be available, s 97(1)(b)(iv) will not defeat a PRRA application.

#### IV. Conclusion and Disposition

[15] In my view, the officer failed to appreciate the essence of Mr Ferreira's application and wrongly concluded that it fell within the exception defined by s 97(1)(b)(iv) of IRPA. I find that the officer's conclusion was unreasonable and must, therefore, allow this application for judicial review and order another officer to review Mr Ferreira's application. Neither party proposed a question of general importance for certification, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed.

The matter is referred back to another officer for reconsideration. No question of general importance is stated.

“James W. O’Reilly”

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Judge

## Annex

*Immigration and Refugee Protection Act, SC 2001, c 27*

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

## Convention refugee

## Définition de « réfugié »

**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,

**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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail himself of the protection of each of those countries;

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;

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.

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.

## Person in need of protection

## Personne à protéger

**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

**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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail himself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes

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 adequate health or medical care.

Person in need of protection

(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.

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

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

Personne à protéger

(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-81-13

**STYLE OF CAUSE:** FABIAN PHILMORE FERREIRA v MINISTER OF  
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