Federal Court  Cour fédérale

Date: 20161208

Docket: IMM-2621-16

Citation: 2016 FC 1354

St. John's, Newfoundland and Labrador, December 8, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

CHEDZA MUDONGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Chedza Mudongo (the "Applicant") seeks judicial review of the decision of an Officer (the "Officer") refusing her pre-removal risk assessment ("PRRA") application, made pursuant to section 112(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "Act").

[2] The Applicant, a citizen of Botswana, sought protection on the basis of abuse by her husband whom she said she was forced to marry. She sought assistance from one Mr. Ademola Oladapo in the preparation of submissions in support of her PRRA, believing that he was a lawyer.

[3] It transpired that Mr. Oladapo is neither a lawyer nor a registered immigration consultant, and the submissions that he filed on behalf of the Applicant were factually wrong.

[4] The dispositive issue raised by the Applicant in this judicial review application is that she was denied the right to a fair hearing, since erroneous factual submissions were made by the so-called "lawyer" on her behalf. She pleads that her right to procedural fairness was breached.

[5] The Minister of Citizenship and Immigration (the "Respondent") opposes the application and argues that the Applicant has failed to establish a breach of procedural fairness and that she is responsible for her choice of Counsel. He also argues that in any event, the decision of the Officer is reasonable.

[6] The standard of review for a breach of procedural fairness is correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 43. The merits of a PRRA decision are reviewable on the standard of reasonableness; see the decision in *Singh v. Canada (Minister of Citizenship and Immigration),* 2014 FC 11 at paragraph 20.

[7] In the circumstances of this case and considering the submissions of Counsel, I am satisfied that the Applicant was denied her right to a fair hearing, arising from the actions of an imposter who passed himself off as a lawyer.

[8] Since Mr. Oladapo is not a lawyer or consultant, his actions are not reviewable on the standards applicable to lawyers and consultants. I refer to the decision in *Cove v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 266 at paragraph 10 the Court said as follows:

> 10 If individuals are going to hold themselves out as skilled in immigration matters and, as is increasingly the case, adopt the designation of "counsel", then they will be held to the same standard as those who customarily appear before the Court. The consequences to their clients of non-performance will be the same as it is for clients of the immigration bar. There is no reason why the Court should shelter consultants from negligence claims by overlooking their mistakes…

[9] Mr. Oladapo presented a factually incorrect basis for the Applicant's PRRA and in my opinion, that fact means that she did not receive a fair assessment of her claim to be at risk in her country of nationality.

[10] In the result, this application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another Officer for re-determination.

[11] Counsel for the Applicant submitted the following question for certification:

> Irrespective of whether there would be a reasonable probability of success, does the fraudulent preparation of a pre-removal risk

> assessment application by a representative who pretends to be a lawyer constitute a miscarriage of justice?

[12] Counsel for the Respondent opposes certification of the question.

[13] I refer to the test for certifying a question, as set out in *Zhang v. Canada (Citizenship and Immigration)* [2014] 4 F.C.R. 290 (F.C.A.) at paragraph 9. A question should only be certified when it is a question of serious importance and is dispositive of the case.

[14] In my opinion, the question proposed by Counsel for the Applicant does not meet this test and no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another Officer for re-determination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2621-16
STYLE OF CAUSE:	CHEDZA MUDONGO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	NOVEMBER 22, 2016
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	DECEMBER 8, 2016

APPEARANCES:

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