

Date: 20080520

Docket: IMM-4799-07

Citation: 2008 FC 623

Ottawa, Ontario, May 20, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

JUNGHIE PARK

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult female citizen of South Korea. She has been residing in Canada almost continuously since December 2000 on the basis of a series of six month visitor's visas. The Applicant claimed refugee protection in Canada under both subsections 97(1)(a) and (b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). She did not claim under section 96 of IRPA. The Applicant claimed that she would be subjected to torture or a risk to her life or a risk of cruel and unusual treatment or punishment of she were to be returned to South Korea.

[2] The Immigration and Refugee Board, Refugee Protection Division, considered the Applicants claim and, in a written decision dated October 30, 2007 rejected that claim.

[3] In coming to this decision, the Panel did give consideration to section 96 of IRPA and determined that none of the grounds set out in that section were applicable to the circumstances of the Applicant. As to section 97(1)(a) the panel found that the danger of torture or harm was in respect of the Applicant's estranged husband still living in South Korea. That husband was not an agent of the state thus section 97(1)(a) was inapplicable. Respecting section 97(1)(b) the panel found that South Korea offers good state protection and that the Applicant would not be at risk of harm from the husband if she did not seek him out which left considerable space within the country available for refuge. The Applicant seeks judicial review on two grounds as set out in the Notice of Application:

a) the Board failed to observe cultural perspectives in regard to the relationship between spouses in the applicant's generation in the country where the applicant is originated;

b) the Board based its decision on an erroneous finding of fact in terms of the reality in the protection for abused in the country where the applicant is originated.

[4] These two grounds pertain to section 97 not section 96 of IRPA. Since the Applicant did not specifically raise section 96 before the panel, even though the panel considered it given that the Applicant was unrepresented, and given that it was not raised by the Applicant in her Notice of Application filed with this Court, it requires no further consideration.

[5] The two grounds raised by the Applicant pertain to factual determinations made by the panel. In that regard the criterion for review is that of reasonableness as established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Considerable deference must be

afforded to the panel in determining the matters put in issue by the Applicant as such matters lie squarely within the panel's expertise.

[6] As a preliminary matter, the Applicant has filed her own affidavit with the Court which raises a number of factual allegations, including an allegation that while she was younger in South Korea she was sold for slave trade (human trafficking), suffered forceable confinement, forced labour, abuse and rape which in paragraph 27 of her "Observations" filed with this Court the Applicant says that she has "...never told anyone about this including my family until today in writing this statement". While such allegations are serious, they were never made in the proceedings under review and cannot now be considered in the context of a review of the reasonableness of the decision of the panel. It is acknowledged that evidence going to issues of jurisdiction or natural justice or lack thereof can be received in subsequent Court proceedings but not evidence in respect of issues that were before the panel or should have been placed before the panel (*Kante v. Canada (Minister of Public Safety and Emergency Preparedness)* 2007 FC 109 at paras. 9 & 10).

[7] At the hearing before me, the Applicant was represented by her son. Counsel for the Respondent did not object as it appears that the Applicant speaks little English. Her son raised, for the first time at the hearing, an objection as to the accuracy of the translation of his mother's testimony before Board. The Applicant and her son had the transcript for at least one month and raised no issue except at the hearing. The challenge to the accuracy was made only on the basis of what the Applicant's son says that his mother recollected having said at the hearing. When asked to

give their best example of an error, it was as to whether a stronger word was used to describe a family break up. Respondent's counsel did not consent to this issue being raised at this time. I conclude that the issue cannot be raised, the Applicant had the transcript for at least month without attempting to raise the issue there is no independent means to verify the transcripts accuracy and the challenges raised do not make a material difference to the decision under review.

[8] The Applicant represented herself before the panel and before the Court and has perhaps, because she did not seek or have professional advice, she made a number of procedural errors and omissions. The Court cannot however, because a person chooses not to have representation, make orders and judgments that are outside its jurisdiction or beyond what it is asked, in the Notice of Application, to do.

[9] As to the issues raised by the Applicant in the Notice of Application, I have not been persuaded that, on the basis of the evidence that was before the panel, that the panel made a decision that was not reasonable. The Applicant's evidence as to her husband's activities was before the panel and the panel in its determination acknowledged the husband's abuses but stated that the Applicant would only be exposed to such abuses if she sought out the husband and that state protection was adequate and that there was considerable space in the country where safe refuge could be obtained.

[10] An Applicant is expected to make reasonable efforts to secure state protection (*Castro v. Canada (MCI)* 2007 FC 40 at para. 14). Here the Applicant acknowledges that while a neighbour did on one occasion call the police when it appeared that the Applicant was being abused by her

husband, the Applicant did not pursue the matter apparently out of compassion for him and on the basis that he had fathered her child. While the failure to pursue the matter for such reasons may be justifiable from the Applicant's point of view, it does not form a basis upon which a claim for refugee status should be granted.

[11] The application will be dismissed. There is no question for certification. No order as to costs.

JUDGMENT

FOR THE REASONS GIVEN:

THIS COURT ORDERS that:

1. The application is dismissed;
2. No questions for certification;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4799-07

STYLE OF CAUSE: **JUNGHIE PARK v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 20, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Hughes, J

DATED: May 20, 2008

APPEARANCES:

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