

Date: 20090219

Docket: IMM-3293-08

Citation: 2009 FC 179

Toronto, Ontario, February 19, 2009

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

DIAKY LUCIEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] In the present case, the Applicant applied to the Refugee Protection Division (RPD) for refugee protection on the basis of political affiliation in Haiti. The evidence relied upon by the Applicant with respect to this claim is that his affiliation with a certain political party resulted in his persecution by political opponents which included the beating death of his father. The RPD in considering the claim did not make a negative credibility finding but found that the in-country conditions in Haiti have changed to such an extent during the seven years of the Applicant's

absence that there is no longer an objective fear of persecution. On this basis, the Applicant's claim under s. 96 and s. 97 of the *IRPA* was dismissed.

[2] Counsel for the Applicant in the present Application makes a strong argument that the RPD failed to accurately find the present in-country conditions in Haiti, and, therefore, the decision under review is made in reviewable error. In addition, Counsel argues that the RPD's failure to independently consider the evidence and argument tendered at the hearing with respect to risk under s. 97 constitutes a reviewable error.

[3] In my opinion, the RPD's failure to conduct an independent analysis under s. 97 is the cardinal reviewable error in the decision under review. Independent of whether there is more than a mere possibility of persecution should the Applicant return to Haiti, there is ample evidence on the record to warrant an independent analysis of risk to the Applicant under s. 97 should he return. On this issue a discreet argument with respect to s. 97 was placed before the RPD which is unaddressed in the decision. Counsel for the Applicant argued that there is sufficient evidence of mistreatment of deportees upon their return to Haiti to warrant a finding that the Applicant would face s. 97 risk should he return (see Tribunal Record, p. 160 and p. 262 and following). In my opinion, the failure of the RPD to address this argument constitutes a reviewable error.

ORDER

Accordingly, I set aside the RPD's decision and refer the matter back to a differently constituted panel for redetermination.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3293-08

STYLE OF CAUSE: DIAKY LUCIEN v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 19, 2009

REASONS FOR ORDER AND ORDER: CAMPBELL J.

DATED: FEBRUARY 19, 2009

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