

Federal Court



Cour fédérale

Date: 20100827

Docket: IMM-6658-09

Citation: 2010 FC 855

Ottawa, Ontario, August 27, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ELICOIT LEXINE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Elicoit Lexine sought refugee protection in Canada claiming to have a well-founded fear of persecution in Haïti based upon his perceived political opinion as the son of a high-ranking member of l'Organisation du Peuple en Lutte ("OPL"). He also claimed that he would be at risk in that country as a Haïtian returning from abroad.

[2] For the reasons that follow, the application for judicial review will be allowed.

Analysis

[3] Although M. Lexine has raised a number of different issues, the application may be disposed of on the basis that the Refugee Protection Division of the Immigration and Refugee Board erred in ignoring or misconstruing material evidence.

[4] M. Lexine says that he attended meetings of the OPL with his father for many years. The OPL is a political party which opposed the Lavalas governments of Presidents Aristide and Préval. In 1999, while M. Lexine was studying in the United States, his father was murdered, allegedly by members of a pro-Lavalas gang. M. Lexine says that at the time of his father's death, he heard from friends and neighbours that the gang was also looking for him and that they wanted to kill him as well.

[5] While seemingly accepting that M. Lexine's father was indeed a high-ranking member of the OPL and that he was brutally murdered in 1999, the Board found that it was "speculative" to attribute his murder to his political enemies. No mention is made by the Board, however, of the evidence that the father had been threatened by his political enemies on five different occasions prior to his death. This evidence was obviously highly relevant to the claim, and the failure of the Board to refer to it suggests that it was overlooked: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1425, 157 F.T.R. 35 at paras.14-17.

[6] Even more troubling is the failure of the Board to consider the attack on the family home in 2000. The Board found that even if M. Lexine's father was indeed murdered by pro-Lavalas forces, "leur objectif fut atteint en 1999". From this it seems that the Board is suggesting that there would be no further risk to M. Lexine once his father was dead.

[7] The difficulty with this finding is that there was evidence before the Board that a group of pro-Lavalas gang members invaded the family home in Port-au-Prince in June of 2000, specifically looking for M. Lexine. Gang members allegedly beat M. Lexine's wife and her siblings and raped one of her sisters.

[8] While the Board found certain specified aspects of M. Lexine's evidence not to be credible, no negative credibility finding was made with respect to this incident. Although there is recognition in the decision that an incident occurred in 2000, the nature of the incident is never discussed. Given that the incident demonstrated the pro-Lavalas gangs' ongoing interest in finding M. Lexine after the death of his father, this omission is a serious one.

[9] M. Lexine produced a photograph purportedly showing the ruins of the family home after it was destroyed by a fire in 2004. M. Lexine says that the fire was set by pro-Lavalas gang members who were looking for him, and who thought that he had returned home when members of his family moved back into the house. The Board did not accept this evidence, because the source of the photo could not be verified.

[10] While it may be open to the Board to discount documentary evidence in cases where a claimant is found to generally lack credibility, as I understand the Board's reasons, its negative credibility findings seem to be limited to certain specified matters. Moreover, the decision to reject the photograph in this case is further undermined by the failure of the Board to come to terms with the evidence of pro-Lavalas gangs' ongoing interest in M. Lexine.

[11] This failure is particularly problematic in light of the fact that there was evidence before the Board that individuals returning to Haiti who had been previously targeted for persecution would remain at risk upon their return.

Conclusion

[12] For these reasons, I have concluded that the Board's decision was unreasonable and the application for judicial review is allowed.

Certification

[13] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6658-09

STYLE OF CAUSE: ELICOIT LEXINE v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 25, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: August 27, 2010

APPEARANCES:

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