

Federal Court



Cour fédérale

Date: 20110126

Docket: IMM-3696-10

Citation: 2011 FC 91

Toronto, Ontario, January 26, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

FERONA ELAINE MINGS-EDWARDS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Feronia Elaine Mings-Edwards' application for a Pre-removal Risk Assessment identified two distinct risk grounds. One was the harm that she claimed to face at the hands of her abusive former domestic partner. The other was the discrimination and social stigma that she says she would be exposed to in Jamaica because she is an HIV+ woman.

[2] The PRRA Officer found that the determinative issue was the availability of state protection for Ms. Mings-Edwards in Jamaica. I am of the view that this decision was unreasonable insofar as it related to the evaluation of the allegation of risk based upon Ms. Mings-Edwards' HIV status.

Analysis

[3] In addressing the HIV-based component of Ms. Mings-Edwards's PRRA application, the Officer referred to a document produced by Ms. Mings-Edwards which indicated that she could face stigma and discrimination in her community because of her HIV+ status. The Officer rejected this evidence, stating that it was "speculative in nature and not supported by corroborating evidence".

[4] This finding is unreasonable. Ms. Mings-Edwards had provided the Officer with copious country condition information addressing the treatment accorded to HIV+ individuals in Jamaica. This evidence indicated that individuals living with HIV/AIDS in Jamaica face significant social stigma and discrimination, and that there are no laws in place to protect HIV+ individuals from discrimination. Amnesty International describes this as a "pressing unmet obligation".

[5] The documentary evidence also demonstrated that HIV+ individuals in Jamaica are often ostracized by their families. They may lose their homes and their jobs, and can be treated like "a throwaway person".

[6] Because AIDS is frequently dismissed as a disease of gay men and prostitutes, women infected with HIV are particularly stigmatized in Jamaican society, as they are regarded either as

promiscuous or as sex trade workers. This can expose them to violence, and can also negatively affect their ability to access health care and other services.

[7] This evidence was rejected by the Officer solely on the basis that the documents were “indicative of a generalized nature of the human rights and HIV/AIDS issues in Jamaica”. This was unreasonable, as the documents squarely address the risks facing women in Jamaica sharing Ms. Mings-Edwards’ profile. As such, they were directly relevant to Ms. Mings-Edwards’ claim that she will face significant social stigma, discrimination and isolation in Jamaica because of her HIV+ status.

[8] Whether this social stigma, discrimination and isolation amounts to persecution, or cruel and unusual treatment or punishment, is a different question - one that was never addressed by the Officer.

[9] The Officer also stated that the country condition information did “not rebut the presumption that state protection is available to the applicant in Jamaica”. This statement is followed by 11 paragraphs of discussion of the documentary evidence relating to the availability of state protection. However, this entire discussion relates to the availability of state protection in Jamaica for victims of domestic violence. There is no discussion whatsoever of the availability of state protection for HIV+ women.

[10] Consequently, the Officer's finding that adequate state protection is available to Ms. Mings-Edwards in Jamaica lacks the "justification, transparency and intelligibility" required of a reasonable decision: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

Conclusion

[11] For these reasons, the application for judicial review is allowed.

Certification

[12] 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 different PRRA Officer for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3696-10

STYLE OF CAUSE: FERONA MINGS-EDWARDS v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 25, 2011

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

DATED: January 26, 2011

APPEARANCES:

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