

Federal Court



Cour fédérale

Date: 20131024

Docket: IMM-13238-12

Citation: 2013 FC 1082

Toronto, Ontario, October 24, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

PATRICIA JOSEPH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER
(Reasons delivered orally on October 23, 2013)

[1] The hearing of the Applicant's refugee claim, in which she alleges that she is an abused spouse from St. Lucia, has had a difficult history. The hearing has taken more than two years to complete and its commencement was adjourned many times based on medical opinions because the Applicant is very ill. She has severe Lupus and it was a life threatening condition at the time of her refugee hearing.

[2] The hearing before the Immigration and Refugee Board [the Board] which was scheduled on a peremptory basis was unexpectedly held in two stages. The first stage was adjourned because, due to her illness, the Applicant was incapable of continuing. The circumstances were difficult, and there is no criticism of the Board's treatment of the Applicant during the hearing.

The Issues

[3] The issues are:

- i) Was there a failure of natural justice?
- ii) Did the Board ignore the Applicant's evidence about the length of her relationship with her abusive common law spouse?
- iii) Did the Board ignore relevant medical evidence?

Issue 1.

[4] The Board twice advised counsel for the Applicant that two issues were outstanding and that they were to be the only focus of both counsel's questions of the Applicant and her final submissions on the Applicant's behalf. These issues so identified were "credibility" and "state protection." The existence or otherwise of a "subjective fear" was not included in the topics to be addressed.

[5] The Board's screening form lists "delay" as a factor to be considered when the Board is determining whether an Applicant has demonstrated "subjective fear." The screening form does not list "delay" as a factor to be considered under the heading "credibility." For this reason counsel for the Applicant did not question the Applicant or make submissions about the Applicant's delay of approximately two years in making her refugee claim [the Delay].

[6] Thus, the Applicant's explanation for the Delay was not fully presented to the Board.

[7] The panel's negative decision of November 23, 2012 was based in part on the Board's conclusion that the Delay had not been adequately explained.

[8] For this reason, there has been a material breach of the rules of natural justice.

[9] This finding makes it unnecessary to consider the remaining issues.

Certification

[10] No question was posed for certification.

ORDER

THIS COURT ORDERS that the application for judicial review is allowed and the matter is sent back for redetermination by a differently constituted panel of the Board.

FURTHER ORDER

UPON NOTING that the circumstances of this case were unusual in that counsel for the Applicant (without supporting medical evidence) repeatedly submitted to the Board and to this Court that the Applicant's illness and treatment meant that her memory had failed and that she was not capable of participating in her hearing [the Submissions].

To avoid a repetition of the unsupported Submissions, Applicant's counsel is hereby directed that, if she wishes to make the Submissions at any future hearing she will be entitled to do so only if she files timely medical opinions from recognized experts on the topics listed below:

1. The Applicant's capacity to understand questions and provide responsive answers at a hearing.
2. The effectiveness, strength, and reliability of the Applicant's memory.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13238-12

STYLE OF CAUSE: PATRICIA JOSEPH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 23, 2013

**REASONS FOR ORDER AND
ORDER:** SIMPSON J.

DATED: OCTOBER 24, 2013

APPEARANCES:

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