

Federal Court



Cour fédérale

Date: 20160524

Docket: IMM-5031-15

Citation: 2016 FC 567

Fredericton, New Brunswick, May 24, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

**ANDRENE SHELOME WRIGHT
(a.k.a. Andrene Shelometh Wright)**

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench on May 4, 2016)

I. Overview

[1] Andrene Shelome Wright [Ms. Wright] seeks judicial review of a decision rendered by the Immigration and Refugee Board, Refugee Protection Division [RPD] dated October 2, 2015,

in which the RPD determined that she was neither a Convention refugee nor a person in need of protection as contemplated by ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. For the reasons that follow, I would dismiss the application for judicial review.

II. Background

[2] Ms. Wright was born on January 25, 1977 and is a citizen of Jamaica. She left Jamaica in December 2007 where she took up residence in the Turks and Caicos, and arrived in Canada on June 6, 2009. She was granted admission as a visitor at that time. In June 2012, she submitted an application for permanent residence on humanitarian and compassionate [H&C] grounds. That application was refused. Since her arrival in Canada, she has applied for and received a total of five extensions to her temporary resident status. Her last extension was valid until November 6, 2014. She applied for a sixth extension, which was refused. She did not depart Canada following that refusal, claiming she did not know about it. On June 29, 2015, she was arrested by Canadian authorities at which time she stated that she was unaware that she was unlawfully in the country. Ms. Wright was released on the condition that she report to the Immigration Office on a monthly basis. Following a Minister's Delegate Review, she was issued a Departure Order on August 6, 2015. On that same date, August 6, 2015, she claimed refugee protection alleging persecution in Jamaica.

[3] In her Basis of Claim [BOC] document, she explained that while working as an evangelist in Jamaica, she was in contact with a number of women. She sometimes stayed with women who were members of the church she served. As a result, rumours spread that she was a

lesbian. She explained that homophobia is rampant in Jamaica and that she feared for her life. She claimed that she was called names and threatened, and that a car she occasionally drove was damaged while parked at her home. At the hearing before the RPD, Ms. Wright testified that she was once assaulted while on a bicycle. She did not report the incident to the authorities nor did she seek medical care for any injuries. This latter incident involving the bicycle was not included in her BOC.

III. Impugned Decision

[4] In a decision rendered at the conclusion of the hearing on October 2, 2015, the RPD concluded that Ms. Wright had not established there was a serious possibility of persecution on a convention ground or that on a balance of probabilities she would personally be subjected to a danger of torture or face a risk to life or risk of cruel and unusual punishment should she return to Jamaica. The RPD concluded that credibility was an issue and that its credibility finding applied to both the s 96 and 97 claims for relief. Following an assessment of the evidence submitted, the RPD concluded there was no credible basis to the claim.

[5] In its decision, the RPD noted Ms. Wright's failure to refer to the bicycle incident in her BOC and her failure to report injuries or seek medical assistance as a result of the assault. With respect to the damaged vehicle incident, the RPD also noted the lack of details she provided and the lack of connection to her; her lack of knowledge about the ownership of the vehicle. In addition to her own testimony, Ms. Wright relied upon three letters in support of her contentions, as well as country condition documents. The letters of support were written by her brother and two of her friends. With respect to the letters, the RPD noted that they were not firsthand reports

of the events that occurred. One letter from a pastor friend indicated that she had been severely beaten. The RPD found that that statement was not consistent with Ms. Wright's own assertion that she walked away from the bicycle incident and did not require medical assistance.

IV. Issue

[6] The sole issue in this matter is whether the RPD's conclusion that there was no credible basis to the claim meets the test of reasonableness.

V. Standard of Review

[7] Both parties agree that the appropriate standard of review for a 'no credible basis' finding is that of reasonableness. See *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2016 FC 144 at para 3; *Mahdi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 218 at para 9) and other cases cited therein. When applying the reasonableness standard, especially as it relates to credibility findings, the Court will show deference to the decision-maker and only intervene if the decision is not justified, transparent and intelligible, or if it falls outside "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

VI. Analysis

[8] Relying upon *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] 3 FC 537 [*Rahaman*] and *Ramón Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314, [2012] FCJ No 368, Counsel for Ms. Wright urges this Court not to

conflate the issue of credibility findings with the issue of a 'no credible basis' finding. His reasons for encouraging the Court in that regard are plainly obvious. Ms. Wright is afforded certain protections and benefits under Canadian law that are not available to her in the face of a 'no credible basis' finding. I accept Ms. Wright's contention that the RPD must assess whether there exists objective documentary evidence before reaching a conclusion of 'no credible basis'.

[9] In that respect, Ms. Wright contends that there is some objective and credible evidence that could support her claim. However, I am not satisfied that the evidence she refers to could be considered objective documentary evidence capable of militating against a 'no credible basis' finding. I am not convinced the three letters of support fall within the category of objective documentary evidence. I am also of the view that her testimony in and of itself does not constitute objective evidence. I now turn to the country condition documentation, which contends police brutality against the Lesbian, Gay, Bisexual and Transgender [LGBT] community and the lack of police intervention in relation to homophobic crimes. I note that the documentation and the evidence related to police conduct are not claimant specific. Furthermore, as this Court set out in *Rahaman* at para 29, "country reports alone are normally not a sufficient basis on which the Board can uphold a claim". I also note that Ms. Wright never claimed that she was a lesbian. To the contrary, she asserts throughout that she is not a lesbian, nor is she a member of the LGBT community. I would therefore conclude that the objective underpinnings that would militate against a 'no credible basis' finding do not exist in this case.

VII. Conclusion

[10] In my view, the RPD's conclusion that Ms. Wright's claim had no credible basis meets the test of reasonableness as set out in *Dunsmuir*. As a result, I would dismiss the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs, and no question is certified.

"B. Richard Bell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5031-15

STYLE OF CAUSE: ANDRENE SHELOME WRIGHT (a.k.a. Andrene Shelometh Wright) v MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: BELL J.

DATED: MAY 24, 2016

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