

Federal Court

Cour fédérale

Date: 20100326

Docket: IMM-2589-09

Citation: 2010 FC 338

Ottawa, Ontario, March 26, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MARIE-GAVRINE BAKANDASI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Marie-Gavrine Bakandasi is the daughter of a Congolese political activist who is a member of the Union pour la démocratie et le progrès social (UDPS), a party opposed to the regime of President Joseph Kabila. She, along with her mother, apparently helped her father, specifically by distributing documents that were critical of Mr. Kabila and Mr. Bemba, the other presidential candidate in the Democratic Republic of the Congo. The entire family was arrested twice by the Congolese authorities. Since the second arrest, there has been no word as to the father's

whereabouts. For their part, Ms. Bakandasi and her mother were both imprisoned and tortured. Thanks to the help of a guard, they escaped from prison and fled to the Republic of the Congo. They later arrived in Canada, where they claimed refugee protection.

[2] Their claims were processed at the same time by the Refugee Protection Division (RPD) of the Immigration and Refugee Board. The RPD granted refugee protection to Ms. Bakandasi's mother but denied her own claim. Ms. Bakandasi is seeking judicial review of the part of the decision denying her claim.

[3] The applicable standard of review is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. The Supreme Court, at paragraph 47, explains that "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[4] The RPD rendered its decision on February 27, 2009. In the mother's case, it was of the view that the claim was based on two factors: her activities with regard to distributing political documents and her membership in the UDPS. The RPD had its doubts about the credibility of the mother's claims of having distributed political documents, but determined that the mother was a member of the UDPS, and as such could be targeted by the Congolese regime. It therefore accepted the mother's claim for refugee protection.

[5] By contrast, Ms. Bakandasi's claim for refugee protection was denied by the RPD for lack of credibility, since she was unaware of the content of the documents she had allegedly distributed, even though in her PIF she had described the content of the documents.

[6] It is important to underscore the information that the RPD failed to include in its reasons. It reviewed the two cases separately without specifying that Ms. Bakandasi and her mother both stated that they had been persecuted together. The RPD also neglected to mention Ms. Bakandasi's father, an opposition activist presumed to be imprisoned or dead.

[7] The RPD's decision is based on one single difference between Ms. Bakandasi and her mother. According to the RPD, neither of the two actually distributed any political documents. Yet, because the mother is a member of the UDPS, it was thought she could be targeted by the Congolese regime. Since Ms. Bakandasi is not a UDPS member, she apparently would not be exposed to the same risk. In consequence, the mother is a Convention refugee but Ms. Bakandasi is not.

[8] I fail to understand the basis on which the RPD made this distinction, given the fact that Ms. Bakandasi and her mother were both persecuted at the same time and tortured in adjacent rooms by the same people. It strikes me that Ms. Bakandasi's claim is based, not on her fear of persecution for having distributed documents, but on the fact that she actually has been persecuted, mainly because she is a member of the family of an opposition activist. Regardless of whether she really did distribute documents, or is "officially" a member of the UDPS, she is at risk of being persecuted

again in the Democratic Republic of the Congo simply because she is the daughter of a UDPS activist.

[9] The RPD's reasons provide no explanation as to why it failed to consider this aspect of Ms. Bakandasi's claim.

[10] In the absence of such an explanation, the decision is unreasonable. Therefore, the application for judicial review will be allowed.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division of the Immigration and Refugee Board with regard to Ms. Bakandasi is set aside.
3. The matter is referred back to the Refugee Protection Division of the Immigration and Refugee Board for rehearing before a differently constituted panel.
4. No serious question of general importance is certified.

“Sean Harrington”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2589-09

STYLE OF CAUSE: Bakandasi v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 16, 2010

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

DATED: March 26, 2010

APPEARANCES:

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