

Federal Court



Cour fédérale

Date: 20120405

Docket: IMM-4577-11

Citation: 2012 FC 395

Toronto, Ontario, April 5, 2012

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

FERNANDA PEREIRA DOS SANTOS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Fernanda Pereira Dos Santos (the “Applicant”) seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, (the “Board”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, (the “Act”) determining that she is not a Convention refugee and not in need of protection pursuant to sections 96 and 97 of the Act.

[2] The Applicant is a citizen of Brazil. She entered Canada as a visitor in 2004. She submitted her claim for refugee protection on February 6, 2009. Following a hearing before the Board on May 2, 2011, her claim was denied by a decision dated May 30, 2011.

[3] The Applicant claims to fear her former boyfriend who is also the father of her child. She alleges that he will find her in Brazil and remove the child from her care and custody.

[4] The Board found that the determinative issue in this case was state protection, specifically the future-looking nature of the claim since the Applicant's fear arose while she was living in Canada with her child. The Board found that documentary evidence shows support for women facing gender related violence and legislation supporting children's rights.

[5] The Board's finding on state protection is the dispositive issue in this application for judicial review. That finding, being a question of mixed fact and law, is reviewable on the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339). This means that the reviewing Court is to assess the challenged decision in terms of justification, transparency and intelligibility; it is not open to it to substitute its own view of a preferable outcome (*Khosa*, at para. 59).

[6] Having regard to the evidence before the Board, that is the Applicant's Personal Information Form ("PIF"), the documentary evidence and the Applicant's oral testimony, I am not persuaded that the Board committed any reviewable error. It assessed the Applicant's personal circumstances against the documentary evidence about the availability of state

protection that is protection from state agencies including the police, and the contemporary legislative framework and access to courts. I reject the Applicant's submission that the Board provided only a "laundry list" of the documentary evidence relative to the efforts by Brazil to address violence against women, without analyzing that documentary evidence.

[7] In the result, the application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board is dismissed. There is no question for certification arising in this case.

“E. Heneghan”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4577-11

STYLE OF CAUSE: FERNANDA PEREIRA DOS SANTOS v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 3, 2012

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

DATED: April 5, 2012

APPEARANCES:

Hart A. Kaminker FOR THE APPLICANT

Julie Waldman FOR THE RESPONDENT

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