

Federal Court



Cour fédérale

Date: 20120606

Docket: IMM-4903-11

Citation: 2012 FC 699

Ottawa, Ontario, June 6, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BRIDGET MUGWAGWA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Bridget Mugwagwa, a citizen of Zimbabwe, claimed refugee protection in Canada based on her fear of persecution, mainly on political grounds. A panel of the Immigration and Refugee Board rejected her claim, primarily because it did not believe she genuinely feared persecution in Zimbabwe; she returned there twice after leaving for the United States, and failed to seek asylum while in the US. Therefore, she did not meet the definition of a Convention refugee

under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex for statutory provisions cited). It also found that any risk Ms. Mugwagwa faced in Zimbabwe was a general one, shared by the rest of the population, and did not fall within s 97 of IRPA.

[2] Ms. Mugwagwa argues that the Board's conclusion was unreasonable because it failed to take account of the explanations she provided for returning to Zimbabwe and for deciding not to seek asylum in the US. Further, it ignored the evidence relating to the mistreatment of her father and brother when it concluded that she did not face a personalized risk in Zimbabwe. She asks me to quash the Board's decision and order another panel of the Board to reconsider her claim.

[3] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review. The Board's conclusion regarding a lack of subjective fear on Ms. Mugwagwa's part was reasonable on the evidence before it. The same is true regarding the Board's finding that any risk facing Ms. Mugwagwa in Zimbabwe was a general one.

[4] The issues are:

1. Was the Board's finding that Ms. Mugwagwa did not subjectively fear persecution in Zimbabwe unreasonable?
2. Was the Board's assessment of the risk facing Ms. Mugwagwa unreasonable?

II. Factual Background

[5] Ms. Mugwagwa was a member of the Movement for Democratic Change – Tsvangirai [MDC-T] since 2004. She attended meetings and helped recruit new members in rural areas. In June 2004, she was assaulted by a rival group of Zanu-PF youths and had to hide from them to prevent further mistreatment.

[6] Ms. Mugwagwa's family also experienced difficulties because of their association with MDC-T. Her father was beaten and detained. After his release, he went into hiding. Her brother was also attacked by members of Zanu-PF, and was later harassed and detained by police.

[7] In 2006, Ms. Mugwagwa moved to the United States to serve as a domestic employee. Later, before his disappearance, her father stated that members of Zanu-PF were angry because she was financially supporting MDC-T on the basis of her US income.

[8] Ms. Mugwagwa left the US and returned to Zimbabwe twice. She stayed there for a month in 2007 because her work visa in the US had expired. She returned again in 2008 when her employer could no longer afford to pay her. In 2009, she left the US for Canada where she claimed refugee status.

III. The Board's Decision

[9] The Board's main finding was that Ms. Mugwagwa's fear of persecution in Zimbabwe was not genuine. Had she truly feared persecution, she would not have returned to Zimbabwe twice after

she moved to the United States. Further, she did not experience any persecution during those visits even though she continued attending MDC-T meetings while there.

[10] In addition, Ms. Mugwagwa did not attempt to seek asylum in the US. While she explained that the legal fees were high and that her employer discouraged her from applying, these explanations were not consistent with a genuine fear of persecution in Zimbabwe.

[11] The Board went on to conclude that Ms. Mugwagwa did not face a personal risk of torture or cruel and unusual treatment or punishment in Zimbabwe. Any risk she faced was a general one, shared by the rest of the population. In any case, her evidence about her experiences in Zimbabwe, both before and after her visits to the US, did not support a finding of substantial risk.

IV. Issue One – Was the Board’s finding that Ms. Mugwagwa did not subjectively fear persecution in Zimbabwe unreasonable?

[12] Ms. Mugwagwa argues that the Board overlooked her valid explanations for failing to seek asylum in the US. She testified that her work permit had expired in the US, that her employer was opposed to her seeking asylum, that she could not afford a lawyer to present her claim, and that her employer was unable to pay her. In addition, the Board failed to take account of the fact that she avoided problems in Zimbabwe on her two return visits there by keeping a low profile.

[13] In my view, the Board’s finding of a lack of subjective fear was not unreasonable on the evidence before it. Ms. Mugwagwa left the US twice, did not experience any problems back in

Zimbabwe (even though she continued to attend MDC-T meetings), and did not apply for asylum in the US when she had ample opportunity to do so. Her explanations for not seeking asylum were not persuasive. While lawyers can be expensive, Ms. Mugwagwa did not seek legal aid. Further, had she genuinely feared persecution in Zimbabwe, the fact that her employer had discouraged her from seeking asylum in the US would not have dissuaded her.

V. Issue Two – Was the Board’s assessment of the risk facing Ms. Mugwagwa unreasonable?

[14] Ms. Mugwagwa contends that the Board ignored the experiences of her father and brother when it concluded that the risk to her in Zimbabwe is general, not personal.

[15] In my view, the Board’s conclusion that the risk to Ms. Mugwagwa was neither substantial nor personal was not unreasonable on the evidence. The evidence showed that Ms. Mugwagwa had not experienced any sustained mistreatment and was not of particular interest to her Zanu-PF opponents. Her profile was low. She said she was not really harmed, even though stones were thrown at her sometimes. The unfortunate experiences of her brother and father do not, in themselves, demonstrate that she would be subjected to similar mistreatment.

VI. Conclusion and Disposition

[16] The Board’s conclusions that Ms. Mugwagwa’s conduct was inconsistent with a subjective fear of persecution, and that she was unlikely to face a substantial risk of mistreatment in Zimbabwe, were not unreasonable on the evidence. They fell within the range of defensible

outcomes based on the facts and the law. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex “A”

Immigration and Refugee Protection Act,
[IRPA] SC 2001, c 27

*Loi sur l’immigration et la protection des
réfugiés,* LC 2001, ch 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y

individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4903-11

STYLE OF CAUSE: BRIDGET MUGWAGWA
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 16, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: June 6, 2012

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