

Federal Court



Cour fédérale

Date: 20140122

Docket: IMM-2348-13

Citation: 2014 FC 73

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, January 22, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

Marie Mirlaine HARVEY-ST VIL

Respondent

REASONS FOR ORDER AND ORDER

[1] The application for judicial review filed by the Minister of Citizenship and Immigration pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC (2001), c 27 (the Act), must be dismissed.

[2] Marie Mirlaine Harvey-St Vil, the respondent, is a Haitian citizen with “belonger” status in the Turks and Caicos Islands. According to the uncontradicted evidence, this means that she may

return there if she so desires. Her status, which apparently has not been revoked, enables her to live and work in that country and to enjoy all civic rights there, including the right to vote.

[3] On the basis of the testimony and documentary evidence before it, the Refugee Protection Division (RPD) concluded that the respondent could not be a refugee within the meaning of Article 1E of the *United Nations Convention Relating to the Status of Refugees*. That conclusion is not contested.

[4] What is contested is the RPD's decision that section 97 of the Act was applicable in this case. Because of incidents involving the Turks and Caicos police forces, the RPD concluded that adequate protection was not available to the respondent.

[5] A party seeking judicial review of a decision based entirely on an assessment of the facts bears a heavy burden. On the basis of the evidence presented by the respondent, I would have been tempted to reject her arguments. However, that is not the test.

[6] *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, established the following:

[47] . . . In judicial review, 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.

The deference implied by the standard of reasonableness follows from a desire to leave some decisions in the hands of administrative decision makers. Paragraph 49 of *Dunsmuir* reads as follows:

[49] . . . In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[7] I have carefully read the applicant's written submissions and listened to the oral arguments. I am not persuaded that the RPD's decision falls outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The onus was on the applicant to demonstrate that the decision was unreasonable. In my view, this is a factual situation in which the respondent's testimony and the documentary evidence in the record could support the conclusion reached by the RPD. This case must be decided on the basis of the applicant's burden of proof.

[8] The applicant informed the Court in a letter dated October 31, 2013, that it was partially abandoning its application. It had the good grace to drop its challenge of the RPD's decision regarding Haiti. Only the conclusion regarding Turks and Caicos is subject to judicial review.

[9] Accordingly, while it does not endorse the RPD's decision in that matter, the Court cannot conclude that it was unreasonable. The application for judicial review is therefore dismissed. Because this case turns on a very narrow set of facts, there is no question for certification.

ORDER

The application for judicial review of the decision rendered on March 4, 2013, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed. There is no question for certification.

“Yvan Roy”

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2348-13

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v Marie Mirlaine HARVEY-ST VIL

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 20, 2013

**REASONS FOR ORDER AND
ORDER BY:** Roy J.

DATED: January 22, 2014

APPEARANCES:

Suzon Létourneau FOR THE APPLICANT

Stéphane Handfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE APPLICANT
Deputy Attorney General of Canada

Handfield & Associés FOR THE RESPONDENT
Montréal, Quebec