Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20091123

Docket: A-607-08

Citation: 2009 FCA 344

CORAM: **EVANS J.A.**
SHARLOW J.A.
RYER J.A.

BETWEEN:

TENZIN WANGDEN

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

Heard at Toronto, Ontario, on November 23, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on November 23, 2009.

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario on November 23, 2009)

SHARLOW J.A.

[1] This is an appeal of the judgment of Justice Mosley (2008 FC 1230) dismissing Mr. Wangden's application for judicial review of the decision of the Minister's delegate that Mr. Wangden's refugee claim was ineligible to be referred to the Refugee Protection Division.

[2] Mr. Wangden entered Canada from the United States and applied for refugee status. He claims to be stateless. He was born in Tibet, which is now part of the People's Republic of China.

[3] The United States is a signatory to the 1951 *Convention relating to the Status of Refugees*. The law of the United States relating to refugee claims, the *Immigration and Nationality Act*, provides for a claim of "asylum" under § 208 or a claim of "withholding of removal" under § 241(b)(3). While Mr. Wangden was in the United States, he asserted a claim for asylum but he withdrew that claim before it was determined. Mr. Wangden also asserted a claim for withholding of removal. That claim was granted.

[4] The question before Justice Mosley was whether Mr. Wangden's successful claim for withholding of removal brought him within paragraph 101(1)(*d*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which reads as follows:

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if […]	101. (1) La demande est irrecevable dans les cas suivants : […]
(*d*) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country […].	*d*) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé […].

[5] Justice Mosley held that paragraph 101(1)(*d*) made Mr. Wangden's refugee claim ineligible. He relied primarily on the expert opinion of Professor David A. Martin, Professor of Law at the University of Virginia, which was submitted by the Minister. That opinion provides complete and rational answers to all of the arguments made for Mr. Wangden in support of his proposition that, because of the legal limitations on his rights as a person granted withholding of removal, he does not have all of the rights under United States law that should be accorded a Convention refugee.

[6] We agree with the decision of Justice Mosley, substantially for the reasons he gave, and therefore we have concluded that this appeal must be dismissed.

[7] Justice Mosley certified the following question to permit this appeal to be brought:

> Is the legal remedy or status of “withholding of removal” in the United States of America equivalent to being “recognized as a Convention refugee”, pursuant to s.101(1)(*d*) of the *Immigration and Refugee Protection Act*?

In our view, the answer to this question is yes.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-607-08

An appeal from a judgment of Mr. Justice Mosley, dated November 5, 2008, in Federal Court File No.: IMM-1570-08

STYLE OF CAUSE:	TENZIN WANGDEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 23, 2009
REASONS FOR JUDGMENT OF THE COURT BY:	(EVANS, SHARLOW & RYER JJ.A.)
DELIVERED FROM THE BENCH BY:	SHARLOW J.A.

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