

**Date: 20051209**

**Docket: IMM-2201-05**

**Citation: 2005 FC 1675**

**Ottawa, Ontario, December 9, 2005**

**PRESENT: THE HONOURABLE W. ANDREW MACKAY**

**BETWEEN:**

**TSHIJUKA MPIANA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The applicant, a Roman Catholic nun and a citizen of the Democratic Republic of the Congo (the "D.R.C."), seeks judicial review of, and an order setting aside, a decision of the Refugee Protection Division, dated March 17, 2005, which rejected her claim to be a Convention refugee and found also that she was not a person in need of protection under the *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27 ("*IRPA*"), s. 97.

[2] The applicant was the Mother Superior of a congregation of nuns in Lubumbashi, Katanga Province, in the D.R.C. As part of her service as a nun she often visited the central jail, known as Kasapa Prison, in Lubumbashi, taking food and clothing, and seeking to counsel inmates of the prison on spiritual matters. Many inmates were said to be political prisoners, arrested and imprisoned for alleged anti-government activities. Initially, she had visited only occasionally but from early in 2001 she visited the prison once a week, sometimes with other nuns but mostly by herself.

[3] In February 2001 she was summoned by the police to attend at one of their stations. When she did, she was questioned for about six hours, concerning her visits to the prison and what might have been disclosed to her by inmates. Because of her religious vows she refused to disclose any information she had gained from the prison inmates, and ultimately she was allowed to leave with a warning to be careful about her activities in the future.

[4] She continued to visit the prison regularly despite additional summonses and interrogations by the police in October 2001, in March 2002 and December 2002. On each occasion police officers sought information they believed she had been given

by inmates of the prison, but she refused to divulge any information she might have from conversations with the prisoners. On each occasion, after some hours of questioning she was allowed to go, with warnings to be careful in her future activities.

[5] She was concerned about the police treatment and in March 2002, after release from ten hours of police interrogation, she advised the Vicar General of her church about her problems but he did not offer any assistance, rather he indicated he would get back to her but he did not do so.

[6] When she was summoned and interrogated by the police in December 2002, she was told her help was not needed at the prison, that she should leave the province to go where her parents had come from and that she should be more careful if she did not want to lose her life. After this she stopped visiting the prison and told her congregation of nuns not to make visits to the prison.

[7] Some seven months later, in July 2003, four police officers ordered the applicant to accompany them from her convent to a military camp. There she was interrogated at length again, and told to reveal all that prison inmates had told her on her earlier visits. Although she did not do so, she was finally released with threats and warnings about future conduct, as before.

[8] She decided to leave her problems behind her for a time, and to visit a sister who lived in Canada. With a letter of leave from her church responsibilities, signed by the Vicar General of her church, authorizing her to leave Lubumbashi for a six month visit to Canada. She travelled via South Africa, where she spent a month before obtaining a visitor's visa to come to Canada. She arrived in Canada on September 24, 2003.

[9] After her arrival in Canada she kept in contact with church authorities in the D.R.C. She was advised by one of her Order of nuns in December 2003 that police and government security officers were asking about her whereabouts. They were checking to see if she had returned for they believed that while out of the country she had made political contacts that were unacceptable to the authorities. She also received telephone calls from two priests in the D.R.C. who cautioned her that they believed police or government authorities would arrest her upon her return. One of those priests wrote two letters urging her not to return to the D.R.C., where she would likely be mistreated by the authorities. The letters were written on plain paper, not paper with church letterhead.

[10] The findings of the refugee panel were based on its assessment of the applicant's credibility. In its view there was insufficient evidence to establish that the applicant had a well-founded fear of persecution in the D.R.C. on a Convention ground, or that she was a person in need of protection.

[11] In my opinion, while findings of lack of credibility are not ordinarily set aside on judicial review, in this case the panel relied on certain misunderstandings underlying its credibility assessments, and, in my opinion, its findings should be set aside and the applicant's case reconsidered. The following are key misunderstandings of the panel, in my view:

(1) The credibility of the applicant's allegations of being summoned, detained and interrogated by police in Lubumbashi because of her visits to the prison was said to be undermined by her failure to obtain corroborative evidence, though she had notice in advance of her hearing to provide corroborative evidence of key elements of her claim. In short, her own testimony was found not credible on its main aspect not on its merits, but because no corroborative documentary evidence was available to support it.

(2) The two letters produced on plain paper from a priest in Lubumbashi, urging that she not return for fear she would be arrested, were given no weight since unlike the letter authorizing her leave to visit Canada they were not written on church letterhead. The panel could assign proper weight to elements of the evidence, but letters from different persons for different purposes should be accepted or not accepted as having weight on their own merits, not by comparison of the forms of paper used by different authors.

(3) The panel understood the applicant denied there was religious freedom in the D.R.C., a denial she avers she did not make. The panel's assessment of her credibility is influenced by its finding from documentary evidence that there is indeed significant religious freedom, perhaps particularly for those within the applicant's church. I accept that discussion of the existence of religious freedom in the D.R.C. was irrelevant to the claim in this case, since it was not here in issue.

(4) Documentary evidence indicated that the services of a number of international agencies and religious groups were provided, without government opposition, to the inmates of the prison in Lubumbashi, yet the applicant testified she had not interacted with representatives of those agencies. Rather, she claimed she only had contact with prison inmates. Moreover, the panel relied on documentary evidence of the government not targeting opposition parties or their members. These factors in the panel's view made it implausible that police or security forces would target and harass the claimant in relation to her visits to the prison. Since she did not claim to provide services like those of international agencies or to be active in politics in the ordinary political party sense, the relevance of these factors in considering her claim is not readily apparent, in my view.

(5) Her credibility was further undermined, in the panel's opinion, by her failure to claim refugee status while in South Africa where she waited for a month to obtain a visa to visit Canada, and by her subsequent failure to claim that status for nearly three months after her arrival in Canada. The panel found her failure to make a claim earlier made the claim implausible and unreasonable. Yet her claim, noted but not really assessed on its merits by the panel, was essentially a claim sur place, arising only after she was in Canada when, on information from friends in the church in the D.R.C., she came to fear returning there because of likely persecution there if she were to do so.

Of course, that claim does not have to be accepted but it does have to be assessed on the basis on which it is submitted.

## Conclusion

[12] For the reasons set out above, concerning significant misunderstandings of the nature of the applicant's claim, or the lack of relevance of certain factors to the findings they are said to support, I find that the decision in question should be set aside and the applicant's claim reconsidered.

ORDER

**THIS COURT ORDERS that** the decision dated March 17, 2005 is hereby set aside and the applicant's claim is referred for reconsideration by a different panel member of the Refugee Protection Division.

"W. Andrew MacKay"

DEPUTY JUDGE