

IMM-215-95

Faustina Annan (*Applicant*)

v.

Minister of Citizenship and Immigration of Canada (*Respondent*)

Indexed as: Annan v. Canada (**Minister of Citizenship and Immigration**) (T.D.)

Trial Division, Dubé J."Montréal, June 28; Ottawa, July 6, 1995.

Citizenship and Immigration " Status in Canada " Convention refugees " R.C. woman fleeing Ghana to escape Muslims intending to perform clitoral excision " Practice officially condemned, but tolerated " State's willingness to act important factor in determining whether state protection available " Applicant refugee within meaning of Act.

The applicant, a twenty-three-year-old Roman Catholic woman from Ghana, fled her country when a Muslim religious leader decided that excision (summary removal of the clitoris with whatever tools are available, without sanitary precautions, for the purpose of preventing Muslim women from experiencing any sexual enjoyment) should be done to purify her. The religious leader was acting at the instigation of a local Muslim police inspector's son who, having failed to convince her to marry him, had kidnapped the applicant and, with a few friends, gang-raped her.

The Refugee Division rejected applicant's claim to Convention refugee status on the basis that Ghana was not a Muslim country, that the practice of clitoral excision occurred only in certain parts of the north, that the government did not approve of the practice and that it was about to declare it illegal. This was an application for judicial review of that decision.

Held, the application should be allowed.

The facts clearly demonstrated that the applicant's fear was valid. Since it was established that the practice, while officially condemned, was still tolerated in Ghana, there was no basis upon which to conclude that if the applicant returned to her country, she could expect protection from the state. The state's willingness to act must be considered as well as its ability to provide protection.

Furthermore, the applicant could not find refuge elsewhere in Ghana. This is a small country with largely tribal cultural foundations and it was not unreasonable to believe that the police inspector had the necessary resources at his disposal to obtain information from his colleagues elsewhere in the country and find her wherever she might settle. The applicant therefore understandably fears that her persecutors will learn of her return and continue to pursue her.

Statutes and Regulations Judicially Considered

Immigration Act, R.S.C., 1985, c. I-2 , s. 2(1) "Convention refugee" (as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 1).

Cases Judicially Considered

applied:

Canada (Attorney General) v. Ward, 1993 CanLII 105 (S.C.C.), [1993] 2 S.C.R. 689; (1993), 103 D.L.R. (4th) 1; 153 N.R. 321; *Mendivil v. Canada (Secretary of State)* (1994), 167 N.R. 91 (F.C.A.); *Rasaratnam v. Canada (Minister of Employment and Immigration)*, reflex, [1992] 1 F.C. 706; (1991), 140 N.R. 138 (C.A.); *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (F.C.A.), [1994] 1 F.C. 589; (1993), 109 D.L.R. (4th) 682; 22 Imm. L.R. (2d) 241; 163 N.R. 232 (C.A.).

referred to:

Canada (Minister of Employment & Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130; 150 N.R. 232 (F.C.A.).

APPLICATION for judicial review of a decision of the Refugee Division rejecting the applicant's claim to Convention refugee status. Application allowed.

counsel:

Jean-François Fiset for applicant.

Michèle Joubert for respondent.

solicitors:

Blain, Fiset et Associés, Montréal, for applicant.

Deputy Attorney General of Canada for respondent.

The following is the English version of the reasons for order rendered by

Dubé J.: The applicant, a citizen of Ghana twenty-three years old, arrived in Canada on June 6, 1994 and claimed refugee status on account of a valid fear of persecution based on her religious beliefs.

1. Relevant facts

The applicant's father was born at Tamale in the northern part of Ghana while her mother is a native of Suyani, a more southerly region. Before her marriage the applicant's mother was forcibly subjected to excision by her husband's family in accordance with Muslim custom. The family also required that excision be done on their first child, a girl, and the child bled to death. The parents subsequently converted to Christianity and fled to Suyani to avoid having excision done on their second daughter, the applicant.

The father subsequently became a prosperous merchant who used his influence and his financial resources to assist in the building of Roman Catholic churches in his area. He was threatened with death if he refused to convert back to Islam and did not have excision done on the applicant. The father complained to the police officers in his area but they said they were unable to protect him and even accused him of being a religious fanatic.

In January 1994 the son of a Kintampo police inspector began harassing the applicant to get her to marry him. When she rejected his proposal the young man hunted her down, threatened her with rape and finally kidnapped her, hid her and then he and his friends took turns raping her for several hours. The inspector's son later summoned a Muslim religious leader to determine whether excision had been done on her. The latter decided that the excision would be done the next day to purify her.

It should be noted that before being kidnapped she had seen her parents beaten before the family home. She managed to escape and fled from Ghana with the help of a Roman Catholic priest.

Clearly, the applicant fears returning to Ghana as she feels she may be forced to undergo excision by Muslim fanatics, especially as she cannot expect protection from the police since it is the inspector's son who is still pursuing her in order to get her to marry him and force her to comply with Muslim customs.

2. Refugee Division decision

The Refugee Division (the Division) concluded that the applicant did not have a valid fear of persecution if she returned to her country. It first noted that Ghana is not a Muslim country and does not favour one religion over another. The practice of excision only occurs in certain parts of the north where the operation is done at an early age. Moreover, the Ghanaian government does not approve of this practice and is about to declare it illegal. On this point, it concluded that the fear expressed by the applicant that one of her attackers from the north might recognize her and decide to pursue her was only a remote and unlikely possibility.

The Division also concluded that there was no indication that the Ghanaian authorities were unable or had refused to protect the applicant from Muslim fanatics, although her attempts to obtain protection from the local authorities had been unsuccessful: her main attacker's father is the Kintampo police inspector.

Finally, the Division took into consideration the psychological report indicating that as a result of her experiences in Ghana the applicant is suffering post-traumatic shock, is depressed, withdrawn and showing tendencies to suicide, but it concluded that these findings were not a determining factor in its decision.

3. Analysis

Under the provisions of paragraph 2(1)(a) of the *Immigration Act* [R.S.C., 1985, c. I-2 (as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 1)] (the Act), the term "Convention refugee" is defined as follows: "any person who . . . [has] a well-founded fear of

persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion".

There is no doubt that the applicant is experiencing a subjective fear of being persecuted by Muslim fanatics who wish to impose on her, as a Roman Catholic, the cruel and barbaric practice of excision. Excision is a summary removal of the clitoris with whatever tools are available, without sanitary precautions, for the purpose of preventing the Muslim woman from experiencing any sexual enjoyment. Moreover, the Division did not question the applicant's credibility as to the aforementioned facts and the fear felt by her. In my opinion, the events described above clearly establish that this fear is valid.

Additionally, the case law on the matter has developed two other tests for coming within the definition of a "Convention refugee". First, an applicant must establish that the state is not protecting her and second, that there is no possibility of internal flight to somewhere else in her country. These are the two tests I mentioned at the hearing of this case in Montréal, Quebec on June 28, 1995.

(a) Absence of protection by state

To begin with, *Canada (Attorney General) v. Ward*¹*ftnote¹ 1993 CanLII 105 (S.C.C.), [1993] 2 S.C.R. 689. established conclusively that a state's inability to protect its citizens is an integral part of the concept of a "Convention refugee" and that it is up to the applicant to show such inability. La Forest J. of the Supreme Court of Canada noted in *Ward* (at page 725) that "Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant".

Additionally, in *Mendivil v. Canada (Secretary of State)*²*ftnote² (1994), 167 N.R. 91 (F.C.A.). the Federal Court of Appeal relying on *Canada (Minister of Employment & Immigration) v. Villafranca*³*ftnote³ (1992), 18 Imm. L.R. (2d) 130 (F.C.A.). restated the rule that no government which professes democratic values or affirms its respect for human rights can guarantee that its citizens will be protected at all times.

In the case at bar the documentary evidence was that Ghana is not an Islamic state (12 per cent of the population is Muslim). The respondent submitted that the fact that the police had not acted on the applicant's complaint in January 1994 is not evidence that Ghana is unable to protect the applicant, rather that the accused's father chose to protect his son.

However, it should be noted that even though there has been no complete breakdown of the Government apparatus in Ghana, that country's Government, again according to the documentary evidence, has failed to demonstrate any intention of protecting its female citizens from the horrific torture of excision practiced at various places throughout the country. In other words, the state's willingness to act must be considered as well as its ability to provide protection.

It appeared that from time to time the Government of that country has indicated it intended to make this practice illegal but has not yet done so. Why would the applicant be likely to be reassured by such pious statements of intent? As this

atrocious mutilation is still tolerated in Ghana, there is surely no basis for concluding that if the applicant returned to that country she could expect protection from the state.

(b) Possibility of domestic flight

On the second test the Division concluded that the applicant could find refuge elsewhere in Ghana. It relied primarily on the fact that the applicant lived in another part of Ghana for most of her life. As the Federal Court of Appeal pointed out in *Rasaratnam v. Canada (Minister of Employment and Immigration)*,⁴*ftnote⁴ reflex, [1992] 1 F.C. 706. the possibility of domestic flight is an integral part of the definition of a refugee. It is true that it is up to the applicant to show that she cannot find refuge anywhere else in her country.⁵*ftnote⁵ See *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (F.C.A.), [1994] 1 F.C. 589 (C.A.). The documentary evidence in fact was that the practice of excision is less prevalent in the southern part of Ghana.

Nonetheless, it must be taken into account that Ghana is a small country and that its cultural foundations are still largely tribal. The applicant understandably fears that her persecutors will learn of her return and continue to pursue her. It is not unreasonable to believe that the Kintampo police inspector has the necessary resources at his disposal to obtain information from his colleagues elsewhere in the country. It should also be noted that a medical report filed at the hearing before the Division indicates that the applicant was examined by Dr. Thomas Mensa following the gang rape of which she was the victim. She saw the physician on three occasions, taking a host of precautions so that her attackers would not know she was in the Suyani area. Despite all these precautions she had to miss her appointment on May 18, 1994 as she was told that her attackers were still after her and had been told of her visit to the region.

Moreover, the Roman Catholic priest's efforts to find the applicant's parents have proved unsuccessful, so that she would have to return alone to a country where she is everywhere under threat.

4. Conclusion

It is well-settled law that in order to meet the definition of a "Convention refugee" a person must show convincingly and coherently that he or she has a reasonable fear of persecution either by the authorities in the country of origin or by other groups whom the authorities refuse or are unable to provide protection against. In my opinion, the applicant has shown that she has a valid fear of persecution as well as the fact that there is no state protection or possibility of domestic flight. In the circumstances, I feel that the Division erred in concluding that the applicant is not a refugee within the meaning of the Act.

The Division's decision is accordingly quashed and the matter is referred back to a panel of different members to be decided in accordance with the above reasons.