Federal Court Reports
Williams v. Canada (Minister of Citizenship and Immigration) (F.C.A.) [2005] 3 F.C. 429

Date: 20050412
Docket: A-241-04
Citation: 2005 FCA 126

CORAM: **DÉCARY J.A.**
LÉTOURNEAU J.A.
NADON J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

MANZI WILLIAMS

Respondent

Heard at Montréal (Québec), on March 15, 2005.
Judgment delivered at Ottawa, Ontario, on April 12, 2005.

REASONS FOR JUDGMENT BY: DÉCARY J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
NADON J.A.

Date: 20050412
Docket: A-241-04
Citation: 2005 FCA 126

CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
NADON J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

MANZI WILLIAMS

Respondent

REASONS FOR JUDGMENT

DÉCARY J.A.

[1] This is an appeal on a certified question from a decision of Pinard J. of the Federal Court, overturning a decision of the Refugee Protection Division of the Immigration and Refugee Board (IRB or Board). The Board rejected the respondent's refugee claim on the basis that he could seek protection from a country (Uganda), the nationality of which he could easily obtain upon renouncing the nationality of the country (Rwanda) where he was at risk of persecution. Pinard J. allowed the application for judicial review and certified the following question:

> Does the expression "countries of nationality" of section 96 of the Immigration and Refugee Protection Act include a country where the claimant can obtain citizenship if, in order to obtain it, he must first renounce the citizenship of another country and he is not prepared to do so?

Facts

[2] The respondent, Williams Manzi, is a citizen of Rwanda. He claims that he fears persecution at the hands of Rwandan authorities because of his imputed political opinions and his membership in a particular social group. The respondent also claims to be a person in need of protection because he risks being subjected to torture, a threat to his life or a risk of cruel and unusual treatment or punishment in Rwanda.

[3] The respondent was born in Rwanda in 1982 to a Rwandan father and a Ugandan mother. As a result, he was, by birth, a citizen of Rwanda by virtue of his father's Rwandan citizenship (*jus sanguinis*) and of the fact that he was born in

Rwanda (*jus solis*). He was also born a Ugandan citizen because of his mother's Ugandan citizenship (*jus sanguinis*). He lived in Rwanda from 1982 to 1988, and then in Uganda with his parents from 1988 to 1996. At the end of 1996, he returned to Rwanda with his father. From August 1998 to November 1999, the respondent spent most of his time in Uganda pursuing his studies.

[4] The respondent had dual nationality until 2000. When he reached the age of 18, by retaining his Rwandan citizenship, he automatically ceased to be a citizen of Uganda pursuant to subsection 15(2) of the Constitution of Uganda:

> **15.** (2) A citizen of Uganda shall cease forthwith to be a citizen of Uganda if, on attaining the age of eighteen years he or she, by voluntary act other than marriage acquires or retains the citizenship of a country other than Uganda.
> [5] What is interesting in this case, however, is the fact that under subsection 15(4) of the Constitution, the respondent has a non-discretionary right to reacquire his Ugandan citizenship:
> **15.** (4) A Uganda citizen who loses his or her Uganda citizenship as a result of the acquisition or possession of the citizenship of another country shall, on the renunciation of his or her citizenship of that other country, become a citizen of Uganda.

[6] On August 15, 2002, the respondent left Rwanda. Following a stay in Kenya, he arrived in Canada on August 27, 2002 through the United States and claimed asylum upon arrival. Rwanda was the only country of nationality mentioned at this time.

[7] At the hearing before the Board, on April 29, 2003, the Board raised the issue of the availability of Ugandan citizenship and it was then conceded by the respondent that should he elect to obtain Ugandan citizenship he would have no fear of persecution in Uganda. Therefore, the question of "effective" protection in the second State is not an issue in this case.

The decision of the Board

[8] Although the Board found that the applicant had a reasonable and well-founded fear of persecution in Rwanda, it nevertheless concluded that the respondent had the option of seeking protection in Uganda. This was the case because the respondent's mother was born in Uganda; therefore, the respondent could renounce his Rwandan citizenship, obtain Ugandan citizenship as a matter of course and seek the protection of that country. The Board concluded that the respondent was not a Convention refugee or a "person in need of protection" as defined in sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, R.S.C. 2001, c.27 (IRPA).

[9] The Board also noted that the respondent's mother, daughter and three of his siblings were living in Uganda.

Decision below: Pinard J. of the Federal Court, April 6, 2004

[10] The respondent brought an application for judicial review of the Board's decision to the Federal Court. Pinard J. held that the Board had erred in law in requiring that the respondent avail himself of the protection of a country (Uganda) which at the relevant time was not for him a country of nationality within the meaning of paragraph 96(*a*) of the IRPA:

> As can be seen from a plain reading of the text, the provision refers to "countries of nationality," and not to any other countries, including potential countries of nationality. Had it been the intention of this legislator to include such other countries, it would have been very simple to say so.
>
> [para. 5 of his Reasons]

[11] Pinard J. allowed the application for judicial review and ordered that the matter be sent back to a differently constituted panel of the Refugee Protection Division of the IRB for determination in accordance with his reasons.

Appellant's submissions

[12] The appellant submits that the expression "countries of nationality" in section 96 of the IRPA extends to a country for which citizenship can be regained or obtained if one renounces the citizenship of another country. Relying on *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at pp. 709 and 752, the appellant emphasizes that international refugee protection is to serve as "surrogate" protection. It should only come into play when there is inability to secure national support. Here, that national support would be available in Uganda upon renunciation of Rwandan citizenship and non-discretionary acquisition of Ugandan citizenship. Canadian protection is not therefore available to the respondent.

Respondent's submissions

[13] The respondent's main argument is that the case law cited by the appellant relates to situations where the acquisition of citizenship of another country is a "mere formality." This, according to counsel, only occurs when the individual has the second citizenship at the time of the hearing and decision, but does not have the documents confirming that status. Citizenship, the argument goes, is a fundamental right no person should be compelled to renounce.

Relevant statutory or treaty provisions

[14] *Immigration and Refugee Protection Act*:

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	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

political opinion,
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself 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.

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 themself 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 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.

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.

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 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.

[my emphasis]

[15] 1951 Convention relating to the Status of Refugees:

Article 1. Definition of the term "refugee" A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: ... (2) ... In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.	Article premier. -- Définition du terme « réfugié » A. Aux fins de la présente Convention, le terme « réfugié » s'appliquera à toute personne : [...] 2) [...] Dans le cas d'une personne qui a plus d'une nationalité, l'expression "du pays dont elle a la nationalité" vise chacun des pays dont cette personne a la nationalité. Ne sera pas considérée comme privée de la protection du pays dont elle a la nationalité toute personne qui, sans raison valable fondée sur une crainte justifiée, ne s'est pas réclamée de la protection de l'un des pays dont elle a la nationalité.

[16] Universal Declaration of Human Rights, 1948:

Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.	Article 15 1. Tout individu a droit à une nationalité. 2. Nul ne peut être arbitrairement privé de sa nationalité, ni du droit de changer de nationalité.

The standard of review

[17] The finding by the Board that the respondent could obtain Ugandan citizenship as a matter of course upon renouncing his Rwandan citizenship is a finding of fact which cannot be interfered with by the applications judge unless it amounts to a palpable and overriding error. The finding is not challenged by the respondent and, in any event, Pinard J. did not disturb it.

[18] Whether the existence of an option to seek protection in Uganda is a valid cause for the denial of the refugee status is a question which requires the interpretation of section 96 of the IRPA. This is a question of law. It is well settled

that on questions of law of such nature, the standard of review is correctness. The Board could not afford to be wrong. Nor could the applications judge.

Discussion

[19] It is common ground between counsel that refugee protection will be denied where it is shown that an applicant, at the time of the hearing, is entitled to acquire by mere formalities the citizenship (or nationality, both words being used interchangeably in this context) of a particular country with respect to which he has no well-founded fear of persecution.

[20] This principle flows from a long line of jurisprudence starting with the decisions of our Court in *Canada (Attorney General) v. Ward*, [1990] 2 F.C. 667 (F.C.A.), and in *Minister of Employment and Immigration v. Akl* (1990), 140 N.R. 323 (F.C.A.), where it was held that, if an applicant has citizenship in more than one country, he must demonstrate a well-founded fear of persecution in relation to each country of citizenship before he can seek asylum in a country of which he is not a national. Our ruling in *Ward* was confirmed by the Supreme Court of Canada (*supra*, para. 12) and the principle eventually made its way into the IRPA, section 96 referring to "each of their countries of nationality."

[21] In another decision rendered before the Supreme Court of Canada rendered its own in *Ward*, *Bouianova v. Minister of Employment and Immigration* (1993), 67 F.T.R. 74, Rothstein J. (sitting then in the Trial Division of the Federal Court of Canada) broadened the holding of our Court in *Akl*. He held that if, at the time of the hearing, an applicant is entitled to acquire the citizenship of a particular country by reason of his place of birth, and if that acquisition could be completed by mere formalities, thereby leaving no room for the State in question to refuse status, then the applicant is expected to seek the protection of that State and will be denied refugee status in Canada unless he has demonstrated that he also has a well-founded fear of persecution in relation to that additional country of nationality.

[22] I fully endorse the reasons for judgment of Rothstein J., and in particular the following passage at page 77:

> The condition of not having a country of nationality must be one that is beyond the power of the applicant to control.
>
> The true test, in my view, is the following: if it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. While words such as "acquisition of citizenship in a non-discretionary manner" or "by mere formalities" have been used, the test is better phrased in terms of "power within the control of the applicant" for it encompasses all sorts of situations, it prevents the introduction of a practice of "country shopping" which is incompatible with the "surrogate" dimension of international refugee protection recognized in *Ward* and it is not restricted, contrary to what counsel for the respondent has suggested, to mere technicalities such as filing appropriate documents. This "control" test also reflects the notion which is transparent in the definition of a refugee that the

> "unwillingness" of an applicant to take steps required from him to gain state protection is fatal to his refugee claim unless that unwillingness results from the very fear of persecution itself. Paragraph 106 of the *Handbook on Procedures and Criteria for Determining Refugee Status* emphasizes the point that whenever "available, national protection takes precedence over international protection," and the Supreme Court of Canada, in *Ward*, observed, at p. 752, that "[w]hen available, home state protection is a claimant's sole option."

[23] The principle enunciated by Rothstein J. in *Bouianova* was followed and applied ever since in Canada. Whether the citizenship of another country was obtained at birth, by naturalization or by State succession is of no consequence provided it is within the control of an applicant to obtain it. (The latest pronouncements are those of Kelen J. in *Barros v. Minister of Citizenship and Immigration*, 2005 FC 283 and Snider J. in *Choi v. Canada (Solicitor General)*, 2004 FC 291.)

[24] The principle has also been recognized in England (*Zaid Tecle v. Secretary of State for the Home Department*, [2002] E.W.J. No. 4196, England and Wales Court of Appeal (Civil Division), in Australia (see "Refugee Status and Multiple Nationality in the Indonesian Archipelago: Is there a Timor Gap?", Rysyard Protrowicy, [1996] International Journal of Refugee Law, Vol. 8, No. 3, p. 319) and in France (see Spivak, Conseil d'État, No. 160832, April 2, 1997; "Traité du droit de l'asile," Denis Allard et Catherine Teitgen-Colly, Presses Universitaires de France, 2002, p. 446, where reference is made to *Bouianova*).

[25] It follows that Pinard J. erred in finding that "countries of nationality," in section 96 of the IRPA, did not include potential countries of nationality. It is true that the French text, "tout pays dont elle a la nationalité," as well as both the French and English texts of article 1(A)(2) of the Refugee Convention, could support a restrictive interpretation, but such an interpretation, as appears from the case law, would be incompatible with the true purpose of international refugee protection.

[26] Counsel for the respondent argues that none of the cases referred to examined a situation whereby citizenship in another country could only be achieved through renunciation of one's actual citizenship. This case is not one, he says, where mere formalities suffice to confirm an existing citizenship in another country; in this case, the citizenship in another country is conditional upon the renunciation and cannot therefore be said to exist at the time of the hearing.

[27] This argument has no merit. What the case law has established is that, where citizenship in another country is <u>available</u>, an applicant is expected to make attempts to acquire it and will be denied refugee status if it is shown that it is within his power to acquire that other citizenship. It is, here, within the respondent's power to renounce his Rwandan citizenship and to obtain a Ugandan citizenship. That other citizenship is there for him to acquire if he has the will to acquire it. In *Chavarria v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 17 (F.C.T.D.), the only case relied upon by the parties that touches the issue of renunciation of citizenship without, however, expanding on it, Teitelbaum J. denied refugee status even though the reacquisition of another citizenship "would probably mean that Eduardo would have to renounce his Salvadoran citizenship..." (at paragraph 60).

[28] Counsel for the respondent takes issue with *Chavarria* which, he says, was wrongly decided. In his view, citizenship is a fundamental right no one should be compelled to renounce. This proposition, in my view, is much too broad.

[29] First, we are not dealing here with forcing an individual to renounce his citizenship. The respondent is free and remains free, in Canada, not to renounce his Rwandan citizenship and not to seek Ugandan citizenship. If he chooses not to renounce and not to seek Ugandan citizenship, he will have to live with the consequences of his choice.

[30] Second, we are not dealing here with someone who, should he renounce his citizenship, will become stateless.

[31] Third, precisely because citizenship is a fundamental right, when faced with a choice between becoming a refugee in one country and a citizen in another, a person would gain by opting for citizenship status rather than for refugee status.

[32] Fourth, a person cannot be said to be deprived of the right of citizenship when he is given the possibility of renouncing the citizenship of a country where he is at risk of persecution in exchange of acquiring as a matter of course the citizenship of a country where he is not at risk. One's loss is one's gain. Further, it appears that a Rwandan citizen has an automatic and natural and historic right to Rwandan citizenship even if he has renounced it in order to acquire foreign citizenship (*Rwanda Assessment*, October 2002, paragraphs 5.3 to 5.5 and footnote 25(*g*), A.B. vol. 1, Tab A, pages 119 and 165).

[33] I would allow the appeal, set aside the decision of the Federal Court and restore the decision of the Refugee Protection Division of the Immigration and Refugee Board in which it determined that the applicant was not a Convention Refugee.

[34] The certified question,

Does the expression "countries of nationality" of section 96 of the Immigration and Refugee Protection Act include a country where the claimant can obtain citizenship if, in order to obtain it, he must first renounce the citizenship of another country and he is not prepared to do so?

should be answered as follows in the circumstances of this case: Yes.

"Robert Décary"

J.A.

"I agree.
Gilles Létourneau, J.A."

"I agree.
M. Nadon, J.A."

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-241-04
STYLE OF CAUSE:	M.C.I. v. Manzi Williams
PLACE OF HEARING:	Montreal, Québec
DATE OF HEARING:	March 15, 2005
REASONS FOR JUDGMENT:	Décary J.A.
CONCURRED IN BY:	Létourneau J.A. Nadon J.A.
DATED:	April 12, 2005

APPEARANCES:

Ms Michelle Joubert	FOR THE APPELLANT
Mr. William Sloan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. John H. Sims, Q.C. Deputy Attorney General of Canada Montreal, Québec	FOR THE APPELLANT
Mr. William Sloan Montreal, Québec	FOR THE RESPONDENT