

Date: 20081217

Docket: IMM-2360-08

Citation: 2008 FC 1388

Ottawa, Ontario, December 17, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ALEX HANIEL MUCKETTE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant is a citizen of Saint Vincent and the Grenadines (St. Vincent) whose refugee claim was based upon the persecution he experienced as a gay man in his home country. The Refugee Protection Division (RPD) rejected his claim. This is the judicial review of that RPD decision.

II. BACKGROUND

[2] The Applicant's evidence detailed a long history of stigma and actions against him because of his sexual orientation. These incidents, commencing when he was approximately 13, included being ejected from his mother's house, being slapped or beaten by several family members, routinely being called names, and being threatened with death. These incidents culminated in being stoned by a group of men from whom he ran.

[3] His testimony that homosexuals are routinely harassed and discriminated against in St. Vincent is supported by documentary evidence.

[4] In 2004, at the age of 22, the Applicant began working on a cruise ship, and returned to St. Vincent from time to time.

[5] St. Vincent has on its "books" laws making homosexual acts illegal. It is accepted that the law is not enforced.

[6] The RPD accepted the Applicant's evidence, but found that the various incidents were discriminatory and not individually or cumulatively persecutory. The RPD dismissed the importance of the death threats on the grounds that the threats were not acted upon.

III. ANALYSIS

[7] The central issue in this case is whether the RPD erred in treating the incidents experienced by the Applicant as mere discrimination.

[8] I concur with the Applicant's submission that the cumulative effect of the incidents tipped into the area of persecution when death threats, which had some degree of reality to them, were made.

[9] The RPD's error in this case was to adopt a dismissive attitude towards complaints which were found to be credible. The RPD failed to address whether the death threats had a degree of reality to them and in effect dismissed them because no one had attempted to kill the Applicant.

[10] There are a number of issues which the RPD did not address, such as failure to seek state protection, reavilment, and lengthy delay in departing St. Vincent. These issues may be considered as part of the redetermination.

[11] This judicial review will be granted, the RPD's decision quashed, and the Applicant's claim remitted to a different panel for a fresh determination. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is granted, the RPD's decision is quashed, and the Applicant's claim is to be remitted to a different panel for a fresh determination.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2360-08

STYLE OF CAUSE: ALEX HANIEL MUCKETTE

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 25, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: December 17, 2008

APPEARANCES:

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Ms. Judy Michaely FOR THE RESPONDENT

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