

Date: 20040406

Docket: IMM-4181-03

Citation: 2004 FC 511

BETWEEN:

MANZI Williams

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR ORDER

PINARD J.:

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 29, 2003, wherein the Board found that the applicant is 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*, S.C. 2001, c. 27 (the Act).

[2] Williams Manzi (the applicant) is a citizen of Rwanda. The applicant claims to fear persecution at the hands of Rwandan authorities because of his imputed political opinions and his membership in a particular social group. The applicant 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] In this case, the Board found that the applicant had a reasonable and well-founded fear of persecution in Rwanda. However, the Board concluded that the applicant had the possibility of seeking protection in Uganda. In reaching this conclusion, the Board relied, *inter alia*, on the fact that the applicant's mother was born in Uganda and as a result, the Board found that the applicant could easily obtain Ugandan citizenship.

[4] Indeed, it is not disputed that at the time of the hearing before the Board, the applicant was no longer a Ugandan national, and that the only nationality he had at the time was that of Rwanda. It is also not disputed that in order for the applicant to regain Ugandan citizenship, he would have, as a pre-condition, to renounce his Rwandan citizenship (see subsections 15(1) and (4) of *The Constitution of Uganda* at page 599 of the Tribunal Record).

[5] For the following reasons, I am of the opinion that the Board erred in law in requiring that the applicant avail himself of the protection of a country (Uganda) which at the relevant time was not for him a country of nationality:

1. Section 96 of the Act defines a Convention refugee in the following manner:

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 political opinion,

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

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 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.

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 the legislator to include such other countries, it would have been very simple to say so.

2. In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at page 752, the Supreme Court of Canada also refers to "countries of citizenship" when stating the rationale underlying international refugee protection:

As described above, the rationale underlying international refugee protection is to serve as "surrogate" shelter coming into play only upon failure of national support. When available, home state protection is a claimant's sole option. The fact that this Convention provision was not specifically copied into the Act does not render it irrelevant. The assessment of Convention refugee status most consistent with this theme requires consideration of the availability of protection in all countries of citizenship.

And at page 754:

As explained above, the well-foundedness of a claimant's fear of persecution can be grounded in the concept of "inability to protect", assessed with respect to each and every country of nationality. Since the Board failed to make a finding on this point, as far as Great Britain is concerned, its ultimate finding of fear of persecution there is similarly erroneous. The validity of Ward's claim is dependant upon such a finding. . .

(Emphasis is mine.)

[6] Accordingly, as the applicant did not have Ugandan nationality at the time he appeared before the Board and as he needed, as a pre-condition, to renounce his Rwandan citizenship in order to regain Ugandan citizenship, the Board erred in denying him refugee status on the basis that he had the possibility of seeking protection in Uganda. Consequently, the application for judicial review is allowed and the matter is sent back to a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board for consideration and determination in accordance with these Reasons.

[7] The following question is certified:

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?

JUDGE

OTTAWA, ONTARIO

April 6, 2004

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4181-03

STYLE OF CAUSE: MANZI Williams v. THE
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 18, 2004

REASONS FOR ORDER: The Honourable Mr. Justice
Pinard

DATED: April 6, 2004

APPEARANCES:

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Ottawa, Ontario

Date: 20040406

Docket: IMM-4181-03

Ottawa, Ontario, this 6th day of April, 2004

PRESENT: THE HONOURABLE MR. JUSTICE PINARD

BETWEEN:

MANZI Williams

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

ORDER

The application for judicial review is allowed. The decision of the Refugee Protection Division of the Immigration and Refugee Board dated April 29, 2003, in which it determined the applicant 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*, S.C. 2001, c. 27, is set aside and the matter is remitted for rehearing by a differently constituted panel in accordance with the Reasons for Order emitted this day.

JUDGE