

Federal Court



Cour fédérale

**Date: 20160510**

**Docket: IMM-4670-15**

**Citation: 2016 FC 520**

**Ottawa, Ontario, May 10, 2016**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**DELINE MARLA ANTOINE  
ADELLA ANTOINE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

A. *Nature of the Application*

[1] This application, brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeks to set aside the September 29, 2015 decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, where the

RPD found that the applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the IRPA respectively. The RPD found there was no credible basis for the claim.

[1] The application is granted for the reasons that follow.

B. *Facts*

[2] The applicants are a mother, Deline Marla Antoine the Principal Applicant [PA], and her daughter Adella Antoine, born on September 26, 2003. Both are citizens of St. Lucia.

[3] The PA alleges that in 2003 she entered a common-law relationship with Marvin Baptiste, the father of Adella. Mr. Baptiste physically and emotionally abused the PA, leaving her in 2005. The PA subsequently became involved with another male who she subsequently discovered was married. That relationship failed.

[4] In October, 2011 the PA met Julietta Charley and entered a relationship with her. The couple was discovered by Julietta's sister. The sister attended at the PA's workplace accusing her of turning Julietta into a lesbian and trying to rape her. This led to the PA's firing.

[5] The PA was subsequently beaten by Julietta's sister and her boyfriend, an incident the PA reported to the police. In following up with the police the PA was threatened with arrest as a result of the allegations of her attempted rape of Julietta. The PA then received threats at her home, and the sister and some men insulted and physically attacked the PA for going to the

police. She also received threats from her neighbours. As a result, the PA and her daughter fled to Canada.

[6] The PA alleges that as a bisexual woman she would face persecution were she to return to St. Lucia. She also fears that Adella could be attacked or kidnapped by Julietta's sister or other members of the community.

C. *Decision under Review*

[7] The RPD dismissed the claim on the basis that the evidence did not demonstrate that: (1) the PA is a bisexual woman; (2) Julietta's sister or the community would target her upon return to St. Lucia; and (3) there is a basis to support the fear of an attack or kidnapping of her daughter upon return to St. Lucia.

[8] The RPD found it improbable that the police would only have threatened arrest if they truly believed the PA had attempted to rape Julietta since the Criminal Code in St. Lucia defines same-sex relationships as gross indecency and the applicants' documentary evidence shows there are elements of homophobia in the police. Nor did the PA provide any evidence of reporting to the police.

[9] The RPD did not give any weight to emails the PA provided as evidence to establish the existence of Julietta and her sister and the events alleged. The RPD held that that the emails are not reliable or persuasive.

[10] The RPD also disbelieved that the PA is currently in a same-sex relationship in Canada. The RPD drew an adverse inference as a result of a discrepancy between the partner's affidavit and the PA's testimony relating to the length of the relationship and the partner's failure to appear at the hearing. The RPD held that photographs of the PA with a young woman alleged to be her same-sex partner in Canada were not persuasive or sufficient evidence of her claim to be a bisexual woman.

[11] Finally, the RPD did not give any weight to a psychological assessment of the PA finding her exhibiting symptoms consistent with major depressive disorder and generalized anxiety disorder. The RPD concluded that the report does not establish whether the symptoms were the result of her refugee claim or that she is a victim of persecution in St. Lucia based on sexual orientation.

## II. Issues and Analysis

### A. *Positions of the Parties*

[12] The applicants argue that the decision is unreasonable and is based on misstatements, misunderstandings and mischaracterizations of the evidence. The applicants submit that the RPD's global credibility finding is the result of an overly vigilant and microscopic examination of the applicants' evidence. In written submissions the applicants identify bias as an issue but confirmed in oral submissions that a bias argument is not being advanced.

[13] Specifically, the applicants submit the RPD erred in finding it improbable that the police would only threaten the PA with arrest if they truly believed she attempted to rape Julietta. The applicants submit that this amounts to an implausibility finding based on speculation. The applicants further argue that the credibility findings and the conclusion that the PA was not a bisexual were based upon concerns with peripheral issues and disregarded supporting evidence including letters, emails from Julietta and her sister and the psychological report. Finally, the applicants submit that the RPD erred in ignoring the merits of the PA's partner's affidavit because (1) the RPD did not bring the alleged inconsistency of the length of the relationship to the PA's attention and (2) the RPD cannot reject an affidavit merely because the affiant is not present for cross-examination.

[14] The applicants further argue that, contrary to the PA's reasonable expectations, the RPD erred in failing to consider the Chairperson's Gender Guidelines [Gender Guidelines]. Finally, the applicants argue the RPD erred in failing to carry out a proper analysis under section 97 of the IRPA.

[15] The respondent argues that the RPD reasonably concluded the applicants' claim had no credible basis and that the applicants essentially disagree with the weight the RPD placed on evidence. The respondent further submits that it was not unreasonable for the RPD to find it implausible that the police would only threaten the PA with arrest for allegedly attempting to rape her former girlfriend.

[16] The respondent also advances the position that the RPD's failure to expressly mention the Gender Guidelines does not vitiate the decision as there is no suggestion that the RPD ignored the Gender Guidelines. Instead, the RPD found the PA was not credible and the Gender Guidelines cannot cure reasonably made credibility findings. The credibility findings also relieved the RPD of the need to provide a separate analysis under section 97 of the IRPA because no evidence existed that could establish that the applicants were persons in need of protection.

B. *Issues*

[17] The application raises the following issues:

1. Did the RPD err in finding it improbable that the police only threatened to arrest the PA;
2. Did the RPD err in failing to discuss the Gender Guidelines;
3. Did the RPD err in failing to conduct a separate section 97 analysis; and
4. Did the RPD otherwise err in rendering its no credible basis finding?

III. Analysis

A. *Standard of Review*

[18] The reasonableness standard applies to the RPD's decision on questions of fact and mixed fact and law including the finding of no credible basis (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7; *Mahdi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 218 at para 9).

B. *Issue 1 - Did the RPD err in finding it improbable that the police only threatened to arrest the PA?*

[19] I am of the opinion that the RPD committed a reviewable error in concluding that it was improbable that the police had only threatened the PA with arrest for the alleged rape of Julietta.

[20] The RPD notes that, pursuant to the Saint Lucian Criminal Code, same sex relationships fall within the definition of gross indecency and that item 6.2 in the National Documentation Package indicates that “there are elements of homophobia in the police.” Relying on these two indicators alone the RPD then concludes that it was improbable that the police would only threaten arrest in light of the allegation of attempted rape.

[21] It is well-established in the jurisprudence that while the RPD can make adverse credibility findings based on an implausibility, this must only occur in the clearest of cases (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paras 7-8, 208 FTR 267 (TD); *Habibi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 253 at para 28).

[22] In this case the RPD did not consider other reasonable explanations for the reported police response. As submitted by the applicant, it is equally probable to conclude that the police lacked sufficient evidence to effect an arrest. In addition, the very report relied on by the RPD to justify the finding states, under the heading “Protection” that **“LGBT persons who do report abuse to the police end up being ridiculed and their case is treated as “insignificant” or**

“**not important**” [emphasis added]”. This introduces another equally probable explanation for the reported police conduct; the police were ridiculing the PA in response to her complaint.

[23] In my view, the documentary evidence identifying homophobia in the police force coupled with reports to the effect that the police ridicule persons bringing LGBT related complaints conforms with rather than contradicts the PA’s allegations that the police threatened her once they learnt of the LGBT nature of the case and the allegations against her. The RPD could not reasonably rely on item 6.2 in the National Documentation Package to justify its negative credibility finding based on a perceived implausibility in this case.

[24] My conclusion that the RPD erred in making this implausibility finding also undermines the negative finding arising out of the PA’s failure to provide a report from the police. The PA explained, when asked about this, that “When I went back, they actually threaten – said to me that they would arrest me because a report was made against me that I tried to rape Julietta. So, I left it at that”.

[25] The error in rendering the implausibility finding in turn impacted upon the RPD’s consideration of the applicants’ supporting documentary evidence, all of which the RPD determined deserved no weight.

[26] On the basis of the unreasonable implausibility finding alone, a finding which impacted other key elements of the RPD’s analysis, I am satisfied the application should succeed. I need not address the other issues raised. The parties did not identify a question for certification.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted and the matter is returned for redetermination by a differently constituted panel. No question is certified.

"Patrick Gleeson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4670-15

**STYLE OF CAUSE:** DELINE MARLA ANTOINE, ADELLA ANTOINE v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 26, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** MAY 10, 2016

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