

Date: 20080403

Docket: IMM-3414-07

Citation: 2008 FC 440

Toronto, Ontario, April 3, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

NANKUMARIE YOUNGAUTH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a Decision of the Refugee Protection Division (RPD) which rejects the Applicant's claim for protection on the basis that the Applicant failed to seek state protection in Guyana, and, in any event, state protection is available in Guyana.

[2] The Applicant's claim for protection as recounted in her PIF is based on a highly detailed story of horrific abuse at the hands of her common-law husband. Before the RPD, the Applicant testified to seeking police protection against this abuse on two occasions, and recounts that the

police rejected her appeal for protection. The Applicant also gave evidence of police corruption instigated by her abuser as a reason for the rejections she suffered.

[3] The six lines of narrative in the Decision intended to describe the Applicant's life situation do not characterize the true nature of the suffering which is the basis of her prospective fear. As a result, there is no analysis of the degree of protection that she would be required to receive against the predatory violence of her abuser were she to return to Guyana. Indeed, no finding of credibility is made with respect to the elaborate story of violence that the Applicant tells in her PIF and in her direct testimony, and, consequently, that story must be taken to be accepted as true. There is no acknowledgement in the Decision to this effect.

[4] Without any analysis of the evidence, the RPD in a one-and-a-half page statement rejects the Applicant's claim on the basis that prospectively "the authorities will provide her with adequate protection" (Decision, p.2). This statement is followed by a cursory inspection of the evidence tendered by the Applicant to supply clear and convincing proof that state protection is not available in Guyana against the conduct of her husband should she be required to return there. Without documenting clearly the evidence supplied by the Applicant which goes to show that there is a serious failure in Guyana to protect women who suffer violence, the RPD extracts statements from the evidence which are intended to show that, indeed, protection is available. However, ironically, these statements establish that there are: "problems in some areas, including violence against women and children"; "public confidence in cooperation with the police is extremely low"; although there are penalties for violation of protection orders "these provisions are frequently not

enforced”; and “Court staff need to be more sensitive to the problems”. Nevertheless, in the result, the RPD states this conclusion:

A review of the United States Department of State Report satisfies me the state is making serious efforts to implement laws and there is adequate protection for citizens who fear violence at the hands of their spouses or others.

(Decision, p. 2)

In my opinion, this statement does not constitute a finding on state protection in Guyana which is responsive to the evidence.

[5] With respect to the Applicant’s attempts to seek state protection in Guyana, the RPD found that:

In the past, the claimant has not attempted to seek help from the authorities. She testified she only told her aunt of her problems.

(Decision, p. 3)

[6] This statement fails to acknowledge the Applicant’s testimony during the hearing before the RPD that twice she sought state protection from the police and was rejected. There is no question that the RPD was alive to this evidence since the RPD member precisely asked whether the applicant tried to get the police to stop her husband from beating her to which he received the answer that, yes, she did (Tribunal Record, p. 158). In addition, Counsel for the Applicant stressed in argument before the RPD that police corruption is a factor in the rejection of the Applicant’s pleas for protection (Tribunal Record, p. 172). As a result, the Decision under review exposes a complete failure to deal with the evidence tendered by the Applicant. Therefore, the Decision is made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for re-determination before a differently constituted panel.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3414-07

STYLE OF CAUSE: NANKUMARIE YOUNGAUTH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: APRIL 3, 2008

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