

Federal Court



Cour fédérale

**Date: 20110518**

**Docket: IMM-1606-10**

**Citation: 2011 FC 572**

**Ottawa, Ontario, May 18, 2011**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**LUVINA LAVERNE THOMAS**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated February 12, 2010, wherein the applicant was determined not to be a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant requests that the decision of the Board be set aside and the claim remitted for redetermination by a different member of the Board.

### **Background**

[3] Luvina Laverne Thomas (the applicant) was born on September 20, 1965 and is a citizen of St. Vincent and the Grenadines (St. Vincent).

[4] At age 13, the applicant began dating Mr. Prince Albert Joe in St. Vincent. She became pregnant with his first child in 1985. In 1990, the applicant travelled to Canada to join Mr. Joe, who she then married. She gave birth to his second child in Canada in 1993.

[5] After the birth of their second daughter, Mr. Joe began abusing the applicant. The abuse escalated when the applicant learned of an affair Mr. Joe was having with another woman. At that time, in 1995, the applicant returned to St. Vincent.

[6] Around the same time that the applicant left Canada, Mr. Joe was convicted and imprisoned in Canada. In 2005, he was released and removed to St. Vincent. Upon Mr. Joe's return to St. Vincent, the applicant accepted him back into her life believing that he was rehabilitated.

[7] Mr. Joe began to abuse the applicant again and threatened the applicant that he would kill her if she went to the police. He also did not support their children or the applicant. The applicant

states that the abuse intensified and culminated in her leaving St. Vincent and returning to Canada for the second time in September 2007 at which she claimed refugee protection in Canada.

[8] The applicant alleges that Mr. Joe called and threatened her in October 2008 after which she changed her telephone number.

### **Board's Decision**

[9] The Board reviewed the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* (the Gender Guidelines) and noted that women making gender related claims of persecution may face special obstacles demonstrating that their claims are credible. These include difficulties providing evidence or testifying on sensitive matters, cross-cultural misunderstandings and socio-economic differences.

[10] Taking into account the Gender Guidelines, the Board still found that some of the applicant's evidence was not reliable. The Board found that the applicant's evidence and testimony on whether she had approached the police was inconsistent. In her Personal Information Form (PIF), the applicant stated that she did not go to the police in St. Vincent because her husband threatened to harm her if she did. However, she testified at the hearing that she did approach the police. The Board recognized that female applicants who have suffered abuse may have difficulty establishing their allegations; yet, the Board found the applicant could easily have included the fact that she sought state protection in her PIF. As such, the Board found that the applicant had not approached the police.

[11] The Board also found it implausible that Mr. Joe had contacted the applicant in 2008 since there was no evidence that he knew she had left for Canada or that he had contacted any of her family in St. Vincent.

[12] Finally, the Board found that the applicant's evidence on the abuse she suffered to be unreliable. The applicant testified that the abuse escalated in St. Vincent and became so bad that she left for Canada as a result. However, the applicant could not recall any details of the abuse prior to leaving for Canada.

[13] The Board found that the applicant's fear was not objectively well founded. The applicant has not been contacted by Mr. Joe since leaving for Canada in 2007. He has not contacted her siblings or family in St. Vincent. The applicant does not know if Mr. Joe is currently living in St. Vincent. As a result, the Board found that there is not a serious possibility that the applicant would suffer persecution by Mr. Joe if she were returned to St. Vincent.

[14] The Board determined that even if there was a possible risk of harm from Mr. Joe, the applicant had not provided clear and convincing evidence that the authorities in St. Vincent would be unwilling or unable to protect her. The applicant did not seek state protection in St. Vincent. She testified that this was because she has heard from people on the street that the police did not help victims of domestic violence. The Board found that there is a belief of citizens in St. Vincent that the police will not help victims of domestic violence and violence against women remains a serious problem. However, while the protection is not perfect, the documentary evidence describes the

strong efforts of the government to address the issue. The Board was not satisfied that there would not be adequate protection for the applicant if she returned to St. Vincent.

[15] The Board concluded that the applicant was not a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

### **Issues**

[16] The applicant submitted the following issue for consideration:

1. Did the Board err in concluding that based on the evidence provided by the applicant, there was not sufficient evidence to establish the applicant's subjective fear of persecution for reasons of her membership in a particular social group as a victim of domestic abuse in St. Vincent and that she lacked credibility in key areas of her claim?

[17] I would rephrase the issues as follows:

1. What is the appropriate standard or review?
2. Was the Board's decision reasonable?

### **Applicant's Written Submissions**

[18] The applicant submits that the credibility finding of the Board is reviewable on the reasonableness standard. The applicant's testimony at the hearing must be presumed to be truthful as there were no significant inconsistencies or implausibilities in the applicant's testimony. The Board made no reference to the applicant's explanations in finding aspects of her testimony not to be credible.

[19] The applicant submits that the Board erred in its determination of the objective basis for her fear. The test for a well founded fear of persecution is a low threshold. The Board need not be convinced that what the applicant fears will certainly come to pass in order to find her fear to be well founded. The applicant submits that the Gender Guidelines indicate that a woman may establish a well founded fear of persecution solely by reason of her membership in a gender defined particular social group. The Board was required to assess the past violence of Mr. Joe in determining whether there was an objective basis for fearing harm from Mr. Joe should the applicant be returned to St. Vincent.

[20] The applicant further submits that the Board erred in its state protection analysis. In her written and oral evidence she stated that she could not approach the police because Mr. Joe would harm her if she did. The Board was under a duty to provide reasons why the threat on the applicant's life was not sufficient to explain why the applicant did not go to the police. The applicant also provided evidence of similarly situated female victims of domestic violence in St.

Vincent let down by the police. The documentary evidence was sufficient to show that the state cannot protect victims of domestic violence.

### **Respondent's Written Submissions**

[21] The respondent submits that the standard of review for all issues is reasonableness. Findings of credibility deserve a high level of deference from the Court because of their factual nature. The Board does not have to accept a witness's testimony simply because it was not contradicted at the hearing. The Board is entitled to make credibility findings based on implausibilities, common sense and rationality and it may reject evidence if it is not consistent with the probabilities affecting the case as a whole. The Board's findings on this basis were reasonable.

[22] The respondent argues that the Board reasonably concluded that Mr. Joe was not interested in contacting the applicant. It was the responsibility of the applicant to provide evidence upon which the Board could conclude that the applicant's fear exists and is objectively well founded. Based on the evidence provided, the Board found that Mr. Joe had not attempted to contact the applicant's family members, the applicant or her daughter.

[23] The Board reasonably noted that the applicant failed to take any steps to seek state protection in St. Vincent at any time. Where state protection is reasonably forthcoming, an applicant's failure to approach the state for protection will defeat the claim. The applicant also failed to adduce clear and convincing evidence that state protection in St. Vincent is inadequate. The applicant was required to do more than rely on the assertion that state protection would not be

available. The Board's finding that the applicant had not rebutted that presumption of state protection was reasonable.

### **Analysis and Decision**

[24] **Issue 1**

What is the appropriate standard or review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[25] Credibility findings lie at the heart of the Board's expertise in determining the plausibility of testimony and drawing inferences from the evidence. Assessments of credibility are essentially pure findings of fact and it was Parliament's express intention that administrative fact finding would command this high degree of deference (see *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 46). For this reason, it is established that in reviewing assessments of credibility, the applicable standard of review is reasonableness.

[26] Likewise, previous jurisprudence has determined that the adequacy of state protection raises questions of mixed fact and law and is also reviewable against a standard of reasonableness (see *Hinzman Re* 2007 FCA 171 at paragraph 38).



[27] In reviewing the Board's decision using a standard of reasonableness, the Court should not intervene on judicial review unless the Board has come to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47).

[28] **Issue 2**

Was the Board's decision unreasonable?

The Board's credibility findings including that the applicant had not approached the police and that Mr. Joe had not contacted her, were reasonable. This Court owes findings of credibility a high degree of deference. The Board reviewed the applicant's PIF and compared that to her testimony at the hearing. The Board gave the applicant an opportunity to explain the discrepancies between her testimony and her written evidence, which she was unable to do in a satisfactory manner. In addition, it was not unreasonable for the Board to find it implausible that Mr. Joe would wait one year to contact the applicant, not contact any of the applicant's family in St. Vincent and yet still be looking for her. The Board's findings were not made capriciously or without regard to the evidence.

[29] The Board concluded that there was no objective basis to the applicant's fear. It found that there was no reason to believe that Mr. Joe would seek out and harm the applicant were she to return to St. Vincent. However, despite this finding, the Board assessed the applicant's evidence on the availability of state protection to determine whether the applicant could receive state protection if Mr. Joe were still looking to harm her.

[30] The onus is on a refugee claimant to provide “clear and convincing” evidence of a state’s inability to protect its citizens in order to rebut the presumption of state protection (see *Ward v Canada (Minister of Employment and Immigration)*, [1993] 2 SCR 689, [1993] SCJ No 74 (QL) at paragraph 52). In order to meet the onus, an applicant may testify regarding his or her own experiences where state protection was not forthcoming or provide testimony of similarly situated individuals who sought state protection and were let down (see *Ward* above, at paragraph 50). The Board reasonably found that the applicant had not approached the state herself. Where state protection is reasonably forthcoming, failure to seek state protection may defeat the applicant’s claim (see *Victoria v Canada (Minister of Citizenship and Immigration)*, 2009 FC 388 at paragraphs 17 to 19). An applicant must do more than rely on a subjective assertion that she thought state protection would not be available to her. As Mr. Justice James Russell held at paragraph 70 of *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, commenting on an applicant’s personal assertion of a lack of state protection in Mexico:

The problem with this assertion is that it is highly subjective and the Applicant has supplied little in the way of objective support for her personal experiences or for her assertion that state protection and an IFA are not available to her.

[31] It was also open to the Board to find that the applicant had not presented clear and convincing evidence of similarly situated individuals let down by the State. The Board noted that the documentary evidence confirmed the common belief that police do not respond to complaints of domestic violence. However, the Board found that the actual evidence was mixed regarding what the police and authorities are doing to prevent and respond to domestic violence. The Board examined the improvements in St. Vincent such as training of police in handling domestic violence and the increase in resources available to victims of domestic violence. The Board’s conclusion that

the applicant had not convinced it that there would not be adequate state protection was transparent, intelligible and justified and within the range of acceptable outcomes.

[32] As a result, the application for judicial review is dismissed.

[33] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

[34] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

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Judge

## ANNEX

**Relevant Statutory Provisions***Immigration and Refugee Protection Act, SC 2001, c 27*

72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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,

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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

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) 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.

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.

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

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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves 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.

(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.

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

**DOCKET:** IMM-1606-10

**STYLE OF CAUSE:** LUVINA LAVERNE THOMAS  
- and -  
MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 24, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** May 18, 2011

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