

Federal Court



Cour fédérale

Date: 20110531

Docket: IMM-1631-10

Citation: 2011 FC 630

Ottawa, Ontario, May 31, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

VERNESSA JN BAPTISTE

Applicant

and

**THE 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 March 2, 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] Vernessa Jn Baptiste (the applicant) was born on May 1, 1981 and is a citizen of St. Lucia.

[4] In 2000, the applicant began a relationship with a man 15 years older than her, named Kenyatta James. The applicant was assaulted by Mr. James on several occasions, beginning in 2001.

[5] In February 2004, Mr. James was assaulting the applicant when a neighbour called the police. The police said that it was a family affair and it did not concern them. The applicant's mother also called the police concerning this incident but the police never arrived.

[6] Mr. James then disappeared for several months. When he returned in August 2004, the applicant told him that she did not want him in her life. Mr. James stabbed the applicant in her thigh. She was taken to the hospital for her injuries. The applicant's mother and father reported the incident to the police and were told that Mr. James was well known to them and a friend of some of the police and that they would not interfere in the applicant's family life.

[7] The applicant left for Canada in August 2004.

[8] In Canada, the applicant began living with a man from St. Lucia. He told her that he would help with her immigration status. In July 2007, this man told the applicant that he was returning to St. Lucia to his wife and children. He said that if the applicant ever returned to St. Lucia, she should consider herself “dead meat” and that he would “deal with” her.

[9] When this man returned to St. Lucia, he told Mr. James that he had been with the applicant and Mr. James threatened to “deal with” the applicant. The applicant’s mother contacted the police again but received no response.

Board’s Decision

[10] The determinative issue for the Board was state protection.

[11] The Board highlighted that refugee protection is a surrogate protection and refugee claimants are required to provide clear convincing proof that their own state cannot protect them. The Board found that St. Lucia is a parliamentary democracy with an independent judiciary. The Board acknowledged that violence against women is a serious problem in St Lucia, but found that the government is making serious efforts to address the problem which include victim support services, the ability of judges of the Family Court to issue protection orders and a vulnerable person team (VPT) launched by the police, as well as an internal complaint system within the police.

[12] The Board noted the assaults that the applicant had experienced, but found that the applicant had not rebutted the presumption of state protection. The Board found that the applicant could have

followed up on her mother's complaints to the police, she could get a protection order issued against her former partner and if she does not get satisfaction from the police, she could report to the police forces internal complaints unit.

Issues

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

Did the Board commit a reviewable error by ignoring vital evidence and/or making selective use of documentary evidence in its state protection analysis?

[14] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in its analysis of state protection?

Applicant's Written Submissions

[15] The applicant submits that the Board's decision is not based on the totality of the evidence before it.

[16] The applicant was assaulted on numerous occasions by her ex-partner. The applicant's mother reported the incidents to the police but they did nothing. The applicant had approached the state for protection and the protection was not forthcoming. She was justified in seeking protection outside of St. Lucia.

[17] In addition, the applicant submits that the Board did not assess whether the serious efforts of the state of St. Lucia to combat domestic violence have yielded any positive results. The Board did not address the reality for victims in St. Lucia. Similarly, the Board erred by not addressing the documentary evidence which contradicted its findings. The Board was obliged to explain why it preferred evidence which supported its findings to those opposing its conclusions.

Respondent's Written Submissions

[18] The respondent submits that the Board understood that the basis for the applicant's claim was membership in a particular social group; women subjected to threats of violence.

[19] The respondent submits that the Board considered all of the evidence before it. The Board need not mention every piece of documentary evidence, only that which is contradictory to its findings.

[20] The onus was on the applicant to prove that she had exhausted all the possible avenues of protection before seeking protection in Canada, however, the applicant never approached the police herself. The Board reasonably found that although there are shortcomings, state protection is adequate in St. Lucia. The Board noted that the police response to domestic violence has improved significantly and that Family Court Protection Orders and victim support services are available.

Analysis and Decision

[21] **Issue 1**

What is the appropriate standard of 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).

[22] It is established that assessments of the adequacy of state protection raise questions of mixed fact and law and are reviewable against a standard of reasonableness (see *Hinzman, Re*, 2007 FCA 171 at paragraph 38).

[23] In reviewing the Board's decision using a standard of reasonableness, the Court should not intervene 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).

[24] **Issue 2**

Did the Board err in its analysis of state protection?

The Board's state protection analysis was reasonable in this case.

[25] The Board acknowledged that the applicant's family and neighbour had gone to the police on her behalf, but highlighted that the applicant never went to the police herself.

[26] The applicant submits that the Board did not consider all of the documentary evidence. The Board need not refer to every document before it, as long as its conclusion acknowledges any contradictory evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD)).

[27] The applicant states that the Board did not consider the document “Shadow Report for St. Lucia on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”, a 2006 report addressing the issue of violence against women. The report notes that many incidents of violence are not effectively handled by the police. It also highlights that the legislation in place is not being effectively implemented.

[28] I cannot conclude that the substance of this article was ignored by the Board. The Board acknowledged that violence against women remains a serious issue in St. Lucia. It noted that there has been corruption in the police in St. Lucia and that there are delays in obtaining protection orders. However, the Board found that in the past several years, there have been many positive changes in how domestic violence is addressed. Specifically, the Board highlighted that the VPT has resulted in increased police responsiveness by 24 percent to sexual crimes involving women and children, the police response to domestic violence has “improved significantly” as a result of sensitization training of police and the VPT and that victims of domestic abuse can request orders from the judiciary in the form of a Family Court Protection Order.

[29] Furthermore, it must be acknowledged that refugee protection is forward-looking. The documentary evidence considered by the Board highlights that positive changes have occurred in St. Lucia in the past several years and continue to occur. The incidents of abuse that the applicant suffered were between 2001 to 2004. As such, I find that the Board’s conclusion that adequate state

protection would be available to the applicant if she returned to St. Lucia today was reasonable and within the range of acceptable possible outcomes defensible on the facts and law (see *Dunsmuir* above at paragraph 47).

[30] The application for judicial review is dismissed.

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

JUDGMENT

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

“John A. O’Keefe”

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-1631-10

STYLE OF CAUSE: VERNESSA JN BAPTISTE
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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

DATED: May 31, 2011

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