Federal Court  Cour fédérale

Date: 20120723

Docket: IMM-8835-11

Citation: 2012 FC 926

Ottawa, Ontario, July 23, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

LILIANA ANTONIA TRINIDAD REYES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 8 November 2011 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is 48 years old and a citizen of the Dominican Republic. She seeks protection in Canada from her former husband (Diaz).

[3] The Applicant and Diaz met in 1987 and had a daughter together in 1989. They married in 1994 and lived together in San Cristobal, Dominican Republic. After they were married, Diaz began to see other women and to come home drunk. When the Applicant complained about this behaviour, he began to beat her. The Applicant worked as a house keeper for a wealthy family in the Santo Domingo, Dominican Republic. After she left Diaz in 2001, he often came to look for her at the house where she worked. On several occasions, he waited for her on a street corner near her workplace. He would also follow her home from work in a car. In 2001, Diaz beat the Applicant so badly that she went to the police in Santo Domingo. They told her they would look for Diaz and would detain him if they caught him. At that time, the Applicant was also granted a restraining order against Diaz.

[4] Diaz continued to physically and emotionally abuse the Applicant. In 2003, she left San Cristobal for Santo Domingo to get away from him. However, Diaz tracked the Applicant down. In 2008, the Applicant returned to San Cristobal. Around that time, Diaz threatened the Applicant with a gun and said he would kill her if she did not listen to him. At this point, she decided to leave the Dominican Republic for Canada to escape Diaz. The Applicant obtained a visitor's visa to Canada and came here on 10 October 2010.

[5] The Applicant claimed protection in Canada on 30 November 2010. The RPD heard her claim on 25 August 2011 and refused it on 8 November 2011. It notified the Applicant of the Decision on 22 November 2011.

DECISION UNDER REVIEW

[6] Before analysing the merits of the Applicant's claim, the RPD noted that it had considered the Immigration and Refugee Board Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender Related Persecution*.

[7] The RPD refused the Applicant's claim because she had not rebutted the presumption of state protection established in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. Although state protection determined the Applicant's claim, the RPD also said it had some concerns about her credibility. It found it was not reasonable for Canada to accept the Applicant as a refugee if her daughters would not permit her to live with them, which would reduce her risk of harm from Diaz.

[8] The RPD referred to a report from the United States' Department of State, the *Country Reports on Human Rights Practices for 2010: Dominican Republic* (DOS Report). This report showed that violence against women in the Dominican Republic was common. However, the Law Against Domestic Violence allowed the state to prosecute rape and other forms of domestic violence. The DOS Report also showed that Violence Prevention and Attention Units existed in Santo Domingo. These units allowed victims of domestic violence to file criminal complaints, obtain free legal counsel, and obtain medical attention. Further, the National Directorate for Assistance to Victims coordinates services for victims of domestic violence, accepts criminal complaints, and provides protection services to victims.

[9] The RPD also referred to the Immigration and Refugee Board's Response to Information Request (RIR) DOM103577.E, which showed the Provincial Officer for Women in the Dominican Republic also offered services to victims of domestic violence.

[10] The RPD noted the Applicant's evidence that Diaz stalked and abused her even after they were divorced. However, it concluded that the Dominican Republic was providing adequate protection to the Applicant. Since adequate state protection was available, the RPD denied her claim.

ISSUES

[11] The Applicant raises the following issues in this application:

a. Whether the RPD's credibility finding was reasonable;

b. Whether the RPD's state protection finding was reasonable.

STANDARD OF REVIEW

[12] The Supreme Court of Canada, in *Dunsmuir v New Brunswick* 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[13] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Finally, in *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, Justice Michael Kelen held at paragraph 17 that the standard of review on a credibility determination is reasonableness. The standard of review on the first issue is reasonableness.

[14] In *Carillo v Canada (Minister of Citizenship and Immigration)* 2008 FCA 94, the Federal Court of Appeal held at paragraph 36 that the standard of review on a state protection finding is reasonableness. This approach was followed by Justice Leonard Mandamin in *Lozada v Canada (Minister of Citizenship and Immigration)* 2008 FC 397, at paragraph 17. Further, in *Chaves v Canada (Minister of Citizenship and Immigration)* 2005 FC 193, Justice Danièle Tremblay-Lamer held at paragraph 11 that the standard of review on a state protection finding is reasonableness. The standard of review on the second issue is reasonableness.

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that

it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in this proceeding

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 themself of the protection of each of those countries;	*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;
[…]	[…]
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 themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(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,	(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards,	(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,
[…]	[…]

ARGUMENTS

The Applicant

[17] The RPD's finding that the Applicant's daughters would take her in and protect her was unreasonable. The RPD rejected the Applicant's explanation that her daughters wanted space from the abusive relationship between the Applicant and Diaz even though this explanation was reasonable. Diaz could find her if she lived with her daughters, so the credibility finding is unreasonable.

[18] The RPD also ignored evidence when it found state protection against domestic violence would be available to the Applicant in the Dominican Republic. A document submitted by the

Applicant (Ciaurriz Report) established that, between January and May 2011, 36 women in the Dominican Republic were killed by their partners. Further, the DOS Report indicated that violence against women in the Dominican Republic is increasing. The RPD ignored this significant evidence which contradicted its conclusions.

[19] RIR DOM103577.E indicates that Violence Prevention and Attention units exist to help women in the Dominican Republic who experience domestic violence. The Applicant submitted documentary evidence that she filed a complaint with one of the units, but nothing was done. This showed that state protection is not available to the Applicant, but the RPD ignored this evidence. As the Federal Court of Appeal held in *Owusu-Ansah v Canada (Minister of Citizenship and Immigration)*, [1989] FCJ No 442,

> The failure to take account of material evidence has been variously characterized by this Court in allowing s. 28 applications. In *Toro v. M.E.I.*, [1981] 1 F.C. 652, my brother Heald, for the Court, said:
>
> > It appears therefore that the Board, in making its decision, has not had regard to the totality of the evidence properly before it. It has therefore erred in law.

[20] The RPD misconstrued relevant evidence, so its state protection finding was unreasonable.

The Respondent

[21] Although the Applicant challenges the RPD's credibility finding, the RPD actually considered her explanation and rejected it. The RPD is not bound to accept a claimant's explanation. It was reasonable for the RPD to reject the Applicant's explanation and conclude her daughter's refusal to shelter her could not ground a positive refugee decision.

[22] When it considered whether state protection was available to the Applicant, the RPD acknowledged that the evidence showing state protection for victims of domestic violence in the Dominican Republic was mixed. The Applicant says the RPD ignored evidence, but it actually considered the evidence she says it ignored. The Applicant adduced evidence to show state protection was not available to her, but the RPD found this evidence was not sufficient to conclude that state protection was inadequate. The Applicant has alleged the RPD ignored the Ciaurriz Report, but the RPD is not required to mention every piece of evidence which comes before it. *Earl v Canada (Minister of Citizenship and Immigration)* 2011 FC 312 shows the Applicant had to connect this document to the availability of state protection, but she has not done this. The Ciaurriz Report, though it addresses gender-related violence, does not address state protection.

[23] The Applicant has also failed to rebut the presumption of state protection with clear and convincing evidence that the Dominican Republic is unable to protect her. See *Carillo*, above. The Applicant may be unhappy with the response she received from the police, but this is not enough to rebut the presumption. There was evidence before the RPD that she had approached the police for protection and they had attempted to find Diaz. Although the Dominican authorities' response was not perfect, this is not enough to rebut the presumption. The RPD's state protection finding was reasonable and dispositive, so the Decision should stand.

ANALYSIS

[24] The Applicant says that the Decision contains a reviewable error because the RPD overlooked highly material facts, in that:

a. There was significant evidence before the RPD that there is a lack of state protection "for a person of the applicant's profile in her country"; and

b. The Applicant provided proof of the numerous complaints she had filed with the authorities in the Dominican Republic, including police reports and psychological and medical reports documenting her abuse, "yet no action was taken by the state to protect her."

[25] The Applicant also says that the RPD made selective use of the evidence and ignored "significant evidence contrary to its findings."

[26] As the Decision makes clear, the determinative issue was state protection and, in this regard, the RPD:

a. Does not question the Applicant's allegation of abuse at the hands of her former husband or her attempts to secure state protection;

b. Makes its finding that the Applicant has not rebutted the presumption of adequate state protection "on the basis of the post-hearing and other evidence[…]";

c. Acknowledges that the "evidence regarding violence against women and the state's response to it is, at best, mixed," and quotes two reports in particular which appear to summarize the situation: the DOS Report and the Immigration and Refugee Board's RIR DOM103577.E from 2010.

[27] In essence, then, the RPD acknowledged the situation for women in the Dominican Republic and found adequate state protection is not easy to assess. However, its review of all the evidence available in this case supported the general descriptions found in the two reports quoted which, in turn, give rise to its finding that "the state is providing the claimant with adequate if not perfect protection […]."

[28] After reviewing the documentation available to the RPD, I cannot conclude its assessment of the general situation was unreasonable and based on a selective use of the documentary evidence.

[29] The RPD does not specifically address in the Decision the Applicant's personal experience with the authorities and her psychological vulnerabilities. However, *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62, directs me to supplement the written reasons with the record. When I read the transcript, it is clear that the RPD was well aware of the Applicant's position and the attempts she had made to obtain protection. The issues were addressed at the RPD hearing, and it is clear to both the Applicant and the Court why the RPD felt that her experiences were not enough to refute the presumption of state protection.

[30] As the Respondent points out, the Applicant's dissatisfaction with the response she received from the police is not sufficient to rebut the presumption of state protection. The record shows the Applicant approached the police on a number of occasions. At least one "Protection Order and Arrest Warrant" was issued against her ex-husband. The Applicant submitted to the RPD that the police and officials at the Ministry responsible for overseeing complaints of female victims of domestic violence attempted to locate her abuser without success. Based on the record before this Court, the authorities in the Dominican Republic responded when the Applicant approached them. The RPD felt that their inability to provide perfect protection to her, and her dissatisfaction with their response, did not amount to the clear and convincing evidence that rebuts the presumption of state protection. See *Carillo*, above, at paragraph 30. This was not an unreasonable conclusion on the evidence.

[31] In addition, I do not think that the credibility concerns raised in paragraph 8 of the Decision about the ability of the daughters to offer her some protection are material to the determinative issue of state protection.

[32] The Applicant is naturally unhappy with this conclusion and points out that there was evidence before the RPD to support her position that state protection in the Dominican Republic is inadequate for a woman in her position who fears violence from her former spouse. It may be that the RPD could reasonably have accepted the Applicant's position on this issue, but this does not mean that its own conclusion was unreasonable. See *Khosa v Canada (Minister of Citizenship and Immigration)* 2009 SCC 12 at paragraph 59. The Applicant's disagreement with how the RPD weighed the evidence is not a basis for the intervention of this Court. See *Reda v Canada (Attorney General)* 2012 FC 79 at paragraph 79 and *Zambrano v Canada (Minister of Citizenship and Immigration)* 2008 FC 481 at paragraphs 72 and 73. I may well have come to different conclusions from the RPD, but if I were to intervene I would merely be substituting my own assessment of the situation for that of the RPD, and this I cannot do. See *Khosa*, above, at paragraph 59.

[33] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-8835-11
STYLE OF CAUSE:	**LILIANA ANTONIA TRINIDAD REYES** - and - **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 12, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	July 23, 2012

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