

Federal Court



Cour fédérale

Date: 20121121

Docket: IMM-942-12

Citation: 2012 FC 1347

Ottawa, Ontario, November 21, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**FRANCITA PETER, SHANAM PETER,
EDISON GEORGE PETER**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[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 20 December 2011 (Decision), which refused the Applicants' application to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicants are citizens of St. Lucia. They seek protection in Canada from persecution at the hands of the Mal Tete gang in St. Lucia. The Primary Applicants are Francita Peter (Francita) and her husband, Edison George Peter (Edison). Their adult son is Shanam Peter (Shanam).

[3] The Applicants lived in the town of Vieux-Fort on the island of St. Lucia. In March 2005, Francita witnessed the beating of a man named Marcus by members of the Mal Tete gang. Francita reported "Ya Ya," one of the gang members, to the police. The next day, members of the Mal Tete came to the Applicants' home, threw rocks at it, and killed one of their dogs. While the gang members were outside shouting threats, Francita called the police. The police said they would come, but they never did.

[4] The next day, Francita heard stones being thrown at her house and what sounded like gun shots. She saw one of the gang members come into her yard and take Shanam's bike. The Applicants called the police and were told they should make a report, which they did.

[5] Later, Francita was visiting a friend at the hospital when Edison pulled up to the hospital in his bus with Shanam. Shanam had been stabbed in the chest and was bleeding profusely; Edison rushed him into the emergency room. Gang members had also damaged Edison's bus by throwing rocks at it. Police officers came to the hospital and told the Applicants they would investigate the matter. When the Applicants called the police a few days later to follow up they were told there was no report of the incident on record.

[6] The Mal Tete gang kept threatening the Applicants and so they went into hiding. Sometimes they would go to the north or west of the island and stay with relatives for a few days, and would then return home to Vieux-Fort. Members of the Mal Tete would demand that family members tell them where the Applicants were, and the Applicants were threatened whenever the Mal Tete saw them. At one point a member of the gang grabbed Francita by her arm and told her that her family likes to talk too much and they will pay with their lives for reporting Ya Ya to the police. He said that this was just a warning, but any day the gang could come and take the whole family. That night Francita decided her family needed to leave St. Lucia.

[7] Francita arrived in Canada on 30 July 2007. Shanam followed on 22 December 2007. Edison attempted to enter Canada on two occasions in 2008, but was refused. He successfully entered Canada on 27 June 2010. Francita sought refugee protection in October 2008, Shanam in December 2008, and Edison in June 2010.

[8] The Applicants each filed a Personal Information Form (PIF) with the RPD as part of their refugee claims (Original Narratives). The PIFs center on the story of Francita, but are told from each of their perspectives. The Applicants submitted a package of documents to the RPD on 17 June 2011, which included amended PIF narratives (Amended Narratives). The basic story recounted in the two narratives is the same, but there are multiple inconsistencies. For example, Francita's Original Narrative says that guns shots were fired at her house, and stones were thrown, whereas the Amended Narrative only says that stones were thrown at it. The Original Narrative also discusses phone calls from a member of the Mal Tete gang saying he knows people in the police force, but this is not mentioned in the Amended Narrative. The details about Shanam's stabbing are also different; the Original Narrative says Francita was in Martinique at the time, and the Amended

Narrative says she was visiting friends at the hospital. There are also differences in the two narratives with regards to the theft of Shanam's bike, the damage to Edison's bus, and other things.

[9] Francita states in her Amended Narrative that she was initially represented by a man named Desmond Cherrington. Mr. Cherrington told the Applicants not to worry about anything because they had a strong case, and had them sign blank PIF forms. A hearing date was initially set for 17 February 2011, but Mr. Cherrington informed the Applicants that he was not prepared for it. At this point Francita started to doubt his competence, and hired the Applicants' current counsel. They obtained copies of the Original Narratives and realized they contained many lies and exaggerations; the Applicants submitted their Amended Narratives in order to correct these mistakes. There was no documentation relating to Mr. Cherrington included with the Applicants' claim.

Documentary Evidence

[10] The Applicants submitted a variety of documents in support of their claim. Two letters from St. Jude Hospital were included. The first is dated 2 December 2008 and states that Shanam was treated for stab wounds to his chest on 26 April 2005. The second letter is dated 29 April 2011 and states that Edison has a history of arterial hypertension and suffered a stroke on 16 April 2009.

[11] The Applicants also submitted affidavits from two people, Edd Jules and George Kisna, stating they knew of the events described in Francita's Amended Narrative. There was also a letter of reference from Francita's employer, John Fox, as well as education and employment certificates for Shanam.

[12] A letter from a psychologist, Gerald M. Devins, dated 3 August 2011 was also submitted. In the letter, Dr. Devins states that Francita is suffering from post-traumatic stress disorder, and that she fears going back to St. Lucia. Dr. Devins says that:

...Other stress-related symptoms include variable energy and problems with concentration and memory. Intrusive ideation (i.e., memories of traumatic events and worries that erupt spontaneously into consciousness) occurs frequently and interferes with reading and conversation. At times, her mind simply goes blank. Ms. Peter has become distracted and forgetful (e.g., she confuses dates and details of past events; she forgets names, telephone numbers, addresses, and appointments; she misplaces her keys, searching for them extensively before discovering that they have been in plain view [“right where I was looking for it”]). Concentration and memory problems are common among people exposed to traumatic stress. Difficulties are exacerbated under pressure, such as arises in the high-stakes context of a Refugee Hearing. Symptoms may arise during the Hearing in the form of difficulty understanding questions, requests for questions to be repeated or rephrased, inability to retrieve specific details of the past, or an apparent difficulty to formulate a coherent response. Stress-related cognitive problems can lead to difficulties in providing clear and consistent testimony. Should such problems become evident, it will be important to understand that they likely reflect the disorganizing effects of traumatic stress rather than an effort to evade or obfuscate.

[13] There was also a letter from the Riverdale Immigrant Women’s Centre dated 29 September 2011 which states that Francita has been receiving counselling at their centre. The letter says that Francita has been suffering from depression and anxiety, and has demonstrated signs of trauma and fear.

[14] Also included were copies of faxes from all the Applicants to the St. Lucia Police Commission requesting copies of documents and reports. The faxes provided the Applicants’ names and the contact information of their lawyer. It does not appear that the St. Lucia Police Commission ever responded to these requests.

[15] The RPD held an oral hearing to determine the Applicants' claims on 11 August 2011 and 20 October 2011. The RPD found the Applicants' evidence was not reliable and rejected their claim on 20 December 2011.

DECISION UNDER REVIEW

[16] The RPD found that the Applicants were not Convention refugees or persons in need of protection because they were not credible and had failed to demonstrate on a balance of probabilities that they faced a risk to their life if returned to St. Lucia as required by section 97 of the Act. The RPD also found that the Applicants had suffered discrimination, but this did not amount to persecution within the meaning of section 96 of the Act.

Credibility

Different PIF Narratives

[17] The RPD found the Applicants were not credible because of differences between their Original Narratives and their Amended Narratives. It noted differences such as the year that Francita witnessed the gang beating, whether or not their home and vehicle were riddled with bullets, how many of the family's dogs were killed, the number of times the police were contacted, the number of times they relocated, and whether or not the Mal Tete gang contacted their family.

[18] The RPD found the Applicants' explanation for the differences in the Narratives was unreasonable. The RPD said the Applicants' first immigration consultant is a member of a regulatory body, the Canadian Society of Immigration Consultants, and the Applicants "have a greater responsibility than simply to cast aspersions upon the character of their former counsel." The

Applicants had an obligation to confront their former counsel with the allegations and give him a chance to reply. The RPD thought the Applicants' explanation that they did not complain about Mr. Cherrington because the split was not amicable and they found it stressful was unreasonable. It further noted that the Applicants admitted they probably should have pursued the matter, but in the intervening two months between the first hearing date and its resumption they still did not do so.

[19] The RPD drew a negative inference from the Applicants' lack of action in regards to their allegation of Mr. Cherrington's incompetence. The RPD stated that these are serious allegations, and require serious action. Since the first hearing, the Applicants acquired new counsel and were better positioned to take appropriate action. The RPD stated that it is not enough to simply blame former counsel, and at this point their complaints were nothing more than bald assertions.

[20] The RPD also noted that Francita said the first time she saw her Original Narrative was some time after February 2011. However, in her in-take interview in October 2008 she verbally repeated one of the exaggerations: that two of her dogs were killed by the gang members. Francita explained that her former counsel had told her to say certain things; if this is the case then she knew of the embellishments and repeated them knowing them to be untrue. The RPD found that this demonstrated that Francita was a willing participant in the deception and that she knew of it well before February 2011, as she had initially testified. The RPD pointed out that the Applicants signed their Original Narratives indicating that they were truthful, and this has the same effect as being made under oath. They admitted the information was not truthful, which calls into question the reliability of their oral evidence as well. Still, the RPD decided to proceed with the analysis using the Applicants' Amended Narratives.

Documentary Evidence

[21] The RPD pointed out that the Applicants did not provide copies of any police reports they had allegedly made. At least one of the forms was not signed, and the forms did not contain information that could assist authorities in finding the requested information, other than their names. The Applicants said they never received a response from the authorities in St. Lucia. However, no evidence was presented, such as fax confirmations or mail receipts, that the requests were actually sent. The Applicants were also unclear about what information was faxed to the authorities. The RPD found the Applicants' attempts to gather the police reports unreasonable, and did not think the authorities would have been able to respond in any meaningful way.

[22] The RPD further noted that after this issue was discussed at the first hearing, the Applicants sent essentially the same request – that is, one including very little information – to the authorities in St. Lucia. The RPD said that, based on the information sent by the Applicants, the authorities would not even be able to determine if they were citizens of St. Lucia; the lack of information essentially ensured the Applicants would not be able to obtain an informed response. In light of the credibility concerns the Applicants knew would be raised by the tampering allegations of their former counsel, it would be reasonable to expect the Applicants to be particularly diligent in obtaining this documentation that was reasonably available. The RPD drew an adverse inference from the lack of meaningful effort to obtain this information.

Oral Testimony

[23] The RPD found contradictions in the Applicants' oral testimony. For example, the Applicants said they never followed up with the police on any matter, but in Francita's Amended Narrative she

says she called the police a few days after Shanam was stabbed. She explained the contradiction by first stating that “Crime was a major problem and police don’t help you unless you pay,” and then said that she personally did not follow up with the police. The RPD rejected this explanation; it stated that if Francita had not followed up personally with the authorities she would have explained that it was the other Applicants who had done so, rather than saying why it was useless to go to the police. The RPD concluded that it did not find the Applicants’ story about their efforts to obtain state protection believable.

[24] The RPD noted multiple inconsistencies in the Applicants’ statements about moving around to avoid being threatened by the Mal Tete gang. It noted that none of these moves were listed in the Applicants’ PIFs; each Applicant resided in Vieux Fort until their respective departure from St. Lucia. Francita was consistent about her residence in Vieux Fort, whereas there were inconsistencies as to the other two Applicants’ residences between their PIFs, their Narratives, and their oral testimony.

[25] The RPD pointed out that the Applicants’ Narratives say that they went to stay with relatives in different parts of St. Lucia to avoid the gang, and the gang would go to their relatives’ homes asking for their whereabouts. However, when asked about this at the hearing they only said that they either left their relatives’ homes because they were too crowded or because they did not feel safe anywhere in St. Lucia because it is so small. They never mentioned that they left because the gang was actively seeking them at the other locations. The RPD found the Applicants’ story about moving around and returning home to Vieux Fort implausible. If the Applicants’ lives had been threatened, they were in hiding, and the gang was asking for their whereabouts, it makes no sense that they would simply return home. The RPD concluded that if the Applicants moved, which it did

not believe they did, then their relatives were not being asked for the Applicants' whereabouts at these new locations.

Delay in Claiming Refugee Protection

[26] The RPD also found there was significant delay in the Applicants' making their claims, and this further undermined their credibility. Francita requested protection 15 months after arriving in Canada. She explained that she did not inquire earlier with the authorities because she was fearful of returning to St. Lucia. However, she had legal status in Canada for at least six months, and as this initial status drew to an end it is reasonable to expect a person who is truly fearful to take steps to seek to stay in Canada at the earliest opportunity. The RPD drew a negative inference from this delay, and concluded that Francita is not as fearful of returning to St. Lucia as she claims. The RPD further stated that this went towards Francita's general credibility, and that her description of the risk of harm to the Applicants was not believable.

[27] Shanam arrived in Canada in December 2007, but then waited to request protection until two months after his mother did, in December 2008. They shared the same initial counsel, so he would have known his mother requested protection in October 2008. Shanam was unclear about whether or not he knew his mother had requested protection, and he stayed in Canada without valid status for six months before he made his claim. Based on these reasons, the RPD drew a negative inference as to Shanam's subjective fear and the risk he faces if returned to St. Lucia.

[28] Edison requested protection at the airport upon his arrival from St. Lucia in June 2010. However, he had made two previous attempts to enter Canada in 2008. The second attempt was in November 2008, after Francita had already requested protection. At the hearing, Francita said that

she told Edison to say he wanted protection when he arrived at the airport, but he forgot. The RPD found this explanation unreasonable. If Edison was facing a threat in St. Lucia such that he had to call the police multiple times and he was fearful for his life it is unlikely that he would simply forget to request protection. The RPD found that Edison did not have the required subjective fear, and drew a negative inference as to the general credibility of his allegations of risk.

Section 96 Analysis

[29] The RPD found the Applicants had not demonstrated that the harm feared was connected to a Convention ground. Francita witnessed a crime and reported it to the police, and because of this the Applicants feared retaliation by members of the Mal Tete gang. This is a criminal matter with no nexus to any of the Convention grounds, and thus the Applicants' claims must fail under section 96 of the Act.

Section 97 Analysis

[30] The RPD identified the determinative issue in this analysis as being whether, on a balance of probabilities, the Applicants face a risk to their lives or a risk of cruel and unusual treatment or punishment. The RPD reiterated that the Applicants' evidence of relocation to avoid the gang was not reliable, and neither was the evidence of family members being harassed to disclose their whereabouts. The RPD also stated that "If the claimants did move, there is no reliable evidence that the gang was actively seeking the claimants." The RPD concluded that, considering the small size of St. Lucia, the gang either did not have the ability or the desire to seek the Applicants.

[31] The RPD accepted the Applicants' evidence that the gang would come around to their home in Vieux Fort and threaten them, but noted that in the 28 months between when the incident occurred and the time Francita left for Canada the gang made no effort to come into the family home or follow through on their threats. Throughout this whole time only two incidents occurred: the gang approached Shanam at work with a gun and they came into the family's home and grabbed Francita's arm. If the Mal Tete was legitimately trying to harm the Applicants they could have done so at either of these moments.

[32] Further, Edison was in St. Lucia for two years after Francita left and he was not mistreated by the gang during this time. He was also experiencing medical issues, which would have made him a vulnerable target for the gang if they truly intended to harm him. Edison was generally unclear about everything that happened in St. Lucia, besides specific sections of the Amended Narrative. He clearly remembered his son getting stabbed, but he became forgetful around issues such as police reports and their residence. He was also unclear as to why the gang wanted to kill him. In the absence of documentation attributing these difficulties to his medical issues, it seemed to be more of a "convenient memory."

[33] The RPD stated that aside from Edison's memory issues, it did not appear the Mal Tete gang was as able to, or interested in, harming the Applicants as they claimed. It found that on a balance of probabilities the Applicants had not established that they faced a risk to their lives or a risk of cruel and unusual treatment or punishment if returned to St. Lucia. It concluded the Applicants are not Convention refugees or persons in need of protection, and rejected their claims.

ISSUES

[34] The Applicants raise the following issue in this case:

1. Whether the RPD erred in making its credibility findings by failing to apply the RPD Chairperson's Guideline on Gender and by failing to consider the report submitted on Francita's psychological state;
2. Whether the RPD erred in its consideration of the Applicants' delay in claiming and subjective fear.

STANDARD OF REVIEW

[35] 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.

[36] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held at para 4 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 para 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 para

17 that the standard of review on a credibility determination is reasonableness. The standard of review on the first issue is reasonableness.

[37] In *Cornejo v Canada (Minister of Citizenship and Immigration)* 2010 FC 261, Justice Michael Kelen held at para 17 that the standard of review on the assessment of subjective fear of persecution was reasonableness. Justice John O’Keefe made a similar finding at para 20 in *Brown v Canada (Minister of Citizenship and Immigration)* 2011 FC 585. The standard of review on the second issue is also reasonableness.

[38] 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 para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at para 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

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

Convention refugee

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

Définition de « réfugié »

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

opinion,

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;

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;

[...]

[...]

Person in Need of Protection

Personne à protéger

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,

(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, and

(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) the risk is not caused by the inability of that country to provide adequate health or medical care

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[...]

[...]

ARGUMENTS

The Applicants

Psychologist's Report

[40] The Applicants argue that in conducting its credibility assessment the RPD ignored the psychologist's report that spoke to Francita's trauma and memory problems. The Applicants submit that this was a critical piece of evidence about Francita's credibility, and the failure of the RPD to consider it constitutes a reviewable error.

[41] The Applicants say that where an applicant submits a medical report which speaks to problems he or she may have giving testimony, the RPD is duty bound to consider this evidence and use it as a lense through which to view the evidence provided. See *Kuta v Canada (Minister of Citizenship and Immigration)*, 2009 FC 687 (*Kuta*) at paras 6-7; *C.L.J. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 387 at para 7. The Applicants further submit the *Kuta* decision establishes the RPD ought to have considered *Guideline 4: Women Refugee Claimants*

Fearing Gender-related Persecution: Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act in rendering its Decision.

[42] A letter from a psychologist was admitted as evidence stating that Francita presents with numerous symptoms which may make it difficult for her to testify at a refugee hearing. The Applicants submit the RPD's failure to consider this evidence renders the Decision unreasonable. The Applicants further assert that *Cortes v Canada (Minister of Citizenship and Immigration)*, 2011 FC 329 at para 6 establishes that once the RPD made a negative finding on credibility it was unable to make any alternative findings because there were no facts upon which to base these alternative findings. Thus, regardless of any other findings made by the RPD, the unreasonableness of its credibility findings means the Decision must be set aside.

Delay

[43] The Applicants also argue that the RPD provided insufficient reasons for its finding that the Applicants' delay in claiming refugee protection negatively impacted their credibility. The Applicants state that the RPD is required to consider any reasonable explanation offered for the failure to claim refugee status at an earlier date (*Hue v Canada (Minister of Employment and Immigration)*, [1988] FCJ No 283 (FCA)).

[44] The Applicants cite *Gyawali v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1122, where Justice Danièle Tremblay-Lamer found at para 18 that where an individual has a valid temporary status, his or her credibility should not be impugned for failing to initiate a refugee claim upon arrival in Canada. The Applicants submit the RPD did not properly consider their reason for the delay, nor did it provide an adequate explanation for rejecting it. The adequacy of reasons is a

factor that goes to the reasonableness of a decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[45] Francita also stated that she was not educated and did not understand the refugee system, but this was not taken into consideration. The Applicants cite Justice Donald Rennie in *Pena v Canada (Minister of Citizenship and Immigration)*, 2011 FC 326, where he said at para 4:

The failure to claim elsewhere is not, in and of itself, determinative. However, the Board must carefully consider any explanation provided by the applicant and give reasons for rejecting it. Given that the Board accepted that the applicant was abused, and that her testimony as to why she did not claim while in the U.S. was not challenged, the Board was under an obligation to give considered reasons for rejecting the explanation; *Owusu-Ansha v. Canada (Minister of Employment and Immigration)* [1989] F.C.J. No. 442 (C.A.); *Bobic v Canada (Minister of Citizenship and Immigration)* 2004 FC 1488. In this case, the explanation before the Board was consistent with the existence of subjective fear, and its unilateral dismissal, was, without more, in error. The Board's rejection of this explanation informed much of its approach to the balance of the applicant's testimony and cannot be considered immaterial to the outcome.

[46] The Applicants submit that the sum of these errors is that the Decision is unreasonable, and that it ought to be quashed and sent back to a different panel of the RPD for redetermination.

The Respondent

Reasonable Credibility Finding

[47] The Respondent argues that the RPD reasonably concluded that the Applicants were not credible because it reasonably relied on inconsistencies in the Applicants' Original Narratives, Amended Narratives, PIFs, and oral testimony, as well as their failure to produce corroborating police reports and their significant delay in claiming refugee protection.

[48] The RPD elaborated on a number of specific reasons why it did not find the Applicants credible. For example, the RPD pointed out inconsistencies as to the following facts: when the beating took place (June 2007 vs. March 2005), whether or not their home and vehicle was riddled with bullets, how many of their pets were killed, the number of times they contacted the police, the number of times they relocated, and whether they were located by the gang members at these other places.

[49] The RPD did not accept that the Applicants could simply blame their previous counsel for the discrepancies without providing any evidence. It also concluded that their attempts to obtain police reports from St. Lucia were “half-hearted,” even after it came up at the first hearing. The Respondent asserts that the RPD was clear and cogent in its explanation of why it did not find the Applicants credible.

[50] The Respondent submits that a credibility determination is reasonable so long as it is made in clear and unmistakable terms (*Hilo v Canada (Minister of Employment & Immigration)*, (1991) 130 NR 236 (FCA)). The RPD’s reasons were not vague and general; they pointed out specific instances that indicated the Applicants were not credible. The case law demonstrates that inconsistent, implausible and contradictory evidence, evidence of a lack of persistent persecutory treatment, and delay in leaving the country and making a refugee claim are all well- founded reasons for doubting an applicant’s credibility (see *Sheikh v Canada (Minister of Employment and Immigration)*, (1990) 11 Imm LR (2d) 81 (FCA); *Leung v Canada (Minister of Employment and Immigration)*, (1990) 74 DLR (4th) 313 (FCA)).

Psychologist's Report

[51] The Respondent further states that the RPD did not ignore the psychologist's report; it simply did not need to mention it because the credibility findings had nothing to do with Francita's ability to testify at the hearing. The report explained problems she may have giving testimony, but problems in her oral testimony had little bearing on the RPD's credibility finding. The majority of the credibility findings had nothing to do with her testimony or her demeanour while providing oral evidence. The report would not have provided an explanation for the contradictions in the Narratives, nor the inconsistent oral evidence given by the other two Applicants. The Respondent submits that the report was not required to be mentioned in the Decision because it had little relevance, and the absence of a review of the report in the Decision does not render it unreasonable.

Delay

[52] The Respondent says the RPD's finding on delay was not an alternative finding to its finding on credibility; it was part of the credibility finding. Delays in leaving the country, as well as a delay in making a claim, are both well-founded reasons for doubting an applicant's credibility (*Sheikh*, above; *Leung*, above). The Applicants' allegation that the RPD did not provide adequate reasons for rejecting the Applicants' explanation for the delay is without merit. The RPD did provide reasons, and explained how the delay impacted the Applicants' credibility. The RPD stated, on page 15 of the Reasons, that it drew an adverse inference from the Applicants' delay in claiming refugee protection, and this went to their credibility. This further supports the Respondent's submission that the RPD's credibility finding, and Decision, was reasonable.

Conclusion

[53] The Respondent also submits that even if the evidence is believed, the RPD reasonably found that the Applicants are still not in need of section 97 protection. The gang made no effort to follow through on their threats, and Edison remained in St. Lucia over the years 2008-2010, but was not mistreated by the gang.

ANALYSIS

[54] The RPD provided a range of cogent reasons for rejecting the Applicants' claim on the basis of credibility. The Applicants only take issue with some aspects of the RPD's credibility finding, so the Court must conclude that they accept the balance of the reasons.

The Psychologist's Report and Medical Evidence

[55] The Applicants say that the Decision is unreasonable because the RPD ignored the psychologist's report by Dr. Devin's which speaks to the various traumas and memory problems that Francita is experiencing, as well as the medical evidence regarding Edison's condition. A reading of the CTR reveals that the RPD was fully alive to Edison's problems and took them into account. It stopped the hearing, and appointed Francita as Edison's personal representative, and she provided many of the answers to the questions he was asked. So there was no procedural unfairness by the RPD with regard to Edison.

[56] Dr. Devin's report about Francita speaks of difficulties that are "exacerbated under pressure, such as arises in the high-stakes context of a refugee hearing." The report has no relevance to the inconsistencies that the RPD found between the PIF narratives. A reading of the Decision as a

whole reveals that the credibility assessment was not based upon problems with testimony. The credibility assessment was based upon (i) inconsistencies, exaggerations or embellishments between the PIF narratives and amended narratives, (ii) the failure to produce any corroborative police reports, (iii) contradictions between amended PIF narratives and oral testimony, and (iv) significant delay in making claims for protection in Canada.

[57] In detail, and as the Respondent points out, the credibility assessment was based upon the following cumulative factors:

- a. There was a number of inconsistencies, exaggerations or embellishments between the information in the Applicants' original PIF narratives and their amended narratives, such as: when the beating of the young man by the gang member took place (June 2007 vs March 2005), whether or not their home or vehicle was riddled with bullets; how many of their family pets were killed by the gang members; the number of times the police were contacted; the number of times they relocated to avoid persecution and whether they were located by gang members in these other places;
- b. The RPD did not believe the Applicants' explanation for their inconsistent evidence in their narratives. While they blame their previous counsel, they provided no evidence that they had pursued a complaint against him. It was not enough to simply blame previous counsel and not provide evidence that former counsel has been given an opportunity to respond;
- c. The Applicants failed to provide copies of any of the police reports that they alleged they had made, and the evidence of their attempts to obtain these reports was "half-hearted";

- d. In oral testimony, all three Applicants stated that they never followed up with the authorities on any matter. However, Francita's amended narrative indicates that they did follow up following the stabbing of Shanam;
- e. While the Applicants claimed that they moved to different locations in St. Lucia to avoid the gang, none of these moves were listed in their PIFs;
- f. In all three amended narratives, the Applicants indicated that the gang would go to their relatives' homes asking for their whereabouts. However, in oral testimony, none of the Applicants mentioned that the gang was actively seeking them in other locations;
- g. It was not plausible that the Applicants would have returned to their home where they were in greatest danger if their lives were truly being threatened;
- h. An adverse inference was drawn from Francita's and Shanam's delay in seeking protection in Canada for 15 months and one year, respectively, despite being at risk of removal. An adverse inference was also drawn from Edison's failure to claim protection on his second attempt to enter Canada, since by the time of this attempt, his wife and son had already claimed protection. His explanation, that he forgot, was rejected as not being reasonable.

[58] The inconsistencies between the PIF narratives were blamed by Francita upon the actions of former counsel, not upon her own psychological problems. No mention of Dr. Devin's report, or the Guidelines, was required to deal with this.

[59] The Applicants also say, however, that in addition to the different PIF narrative, the RPD went on to assess the evidence as given in their amended narrative, and this is where Dr. Devin's report and the guidelines do become relevant.

[60] When I review this aspect of the Decision, the following is clear:

1. Failure to provide copies of police reports and information from the authorities in St. Lucia had nothing to do with any problems Francita's might have testifying at the hearing;
2. The issues in regards to the Applicants' move around St. Lucia have nothing to do with difficulties in testifying at the hearing. The Applicants had simply failed to list the different addresses on the form. The RPD points out that Francita "is consistent about her residence in Vieux-Fort on her initial form, as well as her PIF." The inconsistencies occurred because of discrepancies between the accounts given by the three Applicants;
3. The third principal reason for undermining the Applicants' subjective fear is delay. Here again, there is little to suggest that this factor was affected in any way by Francita's problems in testifying at the hearing.

[61] In fact, when I review the CTR as a whole, Dr. Devin's assessment of Francita's problems is not convincing. She does not, generally speaking, have problems testifying, and even becomes the personal representative for Edison and protects him by providing clear and unequivocal answers. Francita says twice at page 308 of the CTR that she finds the refugee claim process stressful and sometimes forgets things. However, this appears to be her explanation as to why she did not make a formal complaint about her former counsel, and not an explanation for an inability to answer

questions put to her by the RPD. She has no problem answering other questions and does not suggest she cannot remember. The CTR also makes clear (p. 405) that the RPD takes full note of the psychologist's report and of the fact that Francita has been receiving counselling.

[62] I can find no reviewable error with this aspect of the Decision.

Delay

[63] The Applicants argue that the RPD used delay as an "alternative finding" to deny the claim. This is clearly not the case. The RPD says at para 23 of the Decision that delay is one of the many factors that are taken into account when assessing credibility: "To further discount the claimants' credibility, there was a significant delay in making their requests for protection."

[64] The RPD's reasons are fulsome and clear, and the Applicants' explanations were fully considered and pronounced upon.

Conclusions

[65] The Applicants have raised nothing that shows the Decision lacks justification, transparency and intelligibility, or that it falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Most — if not all — of the credibility issues have nothing to do with any problems that Francita might have as a female or as someone under stress, and the RPD was careful to recognize Edison's problems and took them fully into account. I can find no procedural unfairness or other reviewable errors in the Decision.

[66] 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-942-12

STYLE OF CAUSE: **FRANCITA PETER, SHANAM PETER,
EDISON GEORGE PETER**

- and -

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 25, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: November 21, 2012

APPEARANCES:

Richard A. Odeleye

APPLICANTS

Bridget A. O'Leary

RESPONDENT

SOLICITORS OF RECORD:

BABALOLA, ODELEYE
Barrister and Solicitor
Toronto, Ontario

APPLICANTS

William F. Pentney
Deputy Attorney General of Canada

RESPONDENT