

Federal Court



Cour fédérale

Date: 20121219

Docket: IMM-3884-12

Citation: 2012 FC 1510

Montréal, Quebec, December 19, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VALINCIA KENDRA GREGG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated October 6, 2011, wherein the Board determined that the applicant is not a Convention refugee or person in need of protection.

BACKGROUND FACTS

[2] The applicant is a 28-year-old citizen of Saint Vincent. She claims refugee protection because she fears her ex-boyfriend, Delan John [John]. The applicant alleges she started dating John in April or May 2001 and moved in with him in Bequia in October of that year. She chose to leave John in April 2002 and move to New Montrose because he threatened he would kill her if she told anyone he was a drug dealer. The applicant claims she went to the police, but that they told her they were not getting involved in a boyfriend-girlfriend fight.

[3] The applicant alleges that she saw John at a grocery store in New Montrose in December 2002 and that he followed her home, held a knife against her throat, kidnapped her, and raped her. She claims she went to report John to the police, but that they laughed at her and told her to stop making false accusations.

[4] The applicant alleges that in order to hide from John she moved to Bequia to stay with her aunt and her aunt's husband. The applicant claims she decided to flee to Canada after a man claiming to be John's cousin told her at her workplace that John was looking for her.

[5] The applicant arrived in Canada on July 14, 2004. She claimed refugee protection on July 5, 2010.

THE DECISION UNDER REVIEW

[6] The Board accepted that the applicant was in a relationship with John, that it was abusive, that it ended in 2001, and that as she alleged, John may have kidnapped the applicant and sexually

assaulted her in December 2002. However, the Board found that nothing in the applicant's testimony or the documentary evidence credibly conveyed that John looked for her following the alleged incident of December 2002 or subsequent to her departure from Saint Vincent in July 2004, or that John would be looking for the applicant in the future were she to return to Saint Vincent.

[7] Specifically, the Board noted that after the alleged sexual assault of December 2002, the applicant testified she did not go to the authorities and that she moved to Bequia to stay with her aunt, in close proximity to where she used to reside. The applicant testified that she was not aware of any of her family members being contacted, threatened, or assaulted by John, nor of John asking them about her whereabouts. The Board noted that while the applicant testified that her friends tell her they still see John around, she had no attestation letter or confirmation for her allegation that John has asked her friends about her whereabouts.

[8] The Board also noted that the applicant alleged the abuse began in 2001, that there was a sexual assault in December 2002, but that she did not leave Saint Vincent until July 2004 and that the applicant's only explanation for this delay was that she was working. The Board concluded that this delay in departing Saint Vincent negatively impacted the applicant's subjective fear.

[9] Because the Board found that the applicant's narrative regarding John pursuing her since the incident in 2002 and still now in 2012 was not credible, the Board concluded that the applicant is not a Convention refugee or a person in need of protection.

[10] In the alternative, the Board considered whether, in the particular circumstances of this case, the applicant provided clear and convincing evidence of the state's inability to protect her in Saint Vincent. The Board noted that the articles on violence against women that were submitted by the applicant mention police intervention, arrests and convictions in Saint Vincent. The Board also noted that when the applicant allegedly told the police in Bequia in 2001 that John was a drug dealer, she failed to also allege any abuse.

[11] The Board acknowledged the applicant's second alleged attempt to report John to the police after the alleged assault in New Montrose in December 2002 and that the police thought she was making a false accusation, but noted that the applicant testified that she did not pursue the matter or seek a protection order, nor did she attempt to obtain corroboration of her allegations. Therefore, the Board concluded that the applicant failed to take reasonable steps to pursue state protection in Saint Vincent.

[12] The Board also determined that the applicant failed to meet her burden to establish, with clear and convincing evidence, that state protection would not be forthcoming. The applicant could not say from her own experience that the police would not do anything to protect her.

[13] In the further alternative, the Board found that even if the applicant's narrative had been found credible that John has been and would be looking for her in 2012 and if she had credibly established that she sought state protection and that it was not forthcoming or that it was inadequate, an internal flight alternative [IFA] would have been available. The Board determined that both prongs of the test for an IFA had been met because the applicant had failed to credibly establish that

John is or would be looking for her or that it would be unduly harsh for her to relocate to any of the proposed areas.

[14] Therefore, the Board rejected the applicant's claim for refugee protection.

ISSUES

- 1) Did the Board err in concluding that the applicant's prospective fear was not well-founded?
- 2) Did the Board err in concluding that the applicant has an internal flight alternative?

[15] The applicant also submits that the Board's finding on state protection was unreasonable.

There is no need to discuss this issue because, for the reasons below, the IFA is determinative of the matter and is sufficient to dismiss the application (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ 1256 (FCA) at para 8 [*Rasaratnam*]; *Vargas v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1347 at para 22; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 990 at para 13).

STANDARD OF REVIEW

[16] The Board's determination on the applicant's prospective fear is a question of mixed fact and law and is therefore reviewable on the reasonableness standard (see *SAMG v Canada (Minister of Citizenship and Immigration)*, 2010 FC 812 at para 32). Similarly, its internal flight alternative determination is also reviewable on the reasonableness standard (see *Soto v Canada (Minister of Citizenship and Immigration)*, 2011 FC 360 at para 19).

ANALYSIS

1. Did the Board err in concluding that the applicant's prospective fear was not well-founded?

[17] The applicant submits that it was not reasonable for the Board to find that her narrative was not credible regarding John pursuing her after the sexual assault in 2002. She claims the Board repeatedly and implicitly drew unreasonable negative inferences from her testimony, including her inability to remember the name of the man claiming to be John's cousin who told her John was looking for her. I disagree.

[18] The respondent submits that the Board's finding that there was no objective basis for the applicant's claim was reasonable, as the applicant failed to explain why her ex-boyfriend would still be looking for her if she returned to Saint Vincent. The respondent points to the following excerpt from the transcript of the hearing to illustrate that there is no reasonable basis for a prospective fear:

By presiding member (to claimant)

Q. So now, I have to ask you, how many death threats did you have between December 2002 and July 2004 when you left?

A. Numerous.

Q. Can you be a little more specific because that's extremely vague?

A. No response.

Q. How about this, did he ever attack you again?

A. Well, I was actually in - - never coming outside because I was so scared.

Q. You lived inside for two years?

A. Well, I stayed inside - - yeah. I stayed inside pretty much. I was inside scared to come out because I feared that he would attack me again.

Q. Did he know where you lived?

A. Yes.

Q. And, did he come by your house?

A. Well, I stayed with my aunt.

Q. This is your mother's step-daughter.

A. Yes.

Q. Anyone ever call the police when he was outside the house?

A. I don't think so.

[19] On my reading of the decision, the Board analyzed in detail the applicant's testimony regarding her relationship with John and her explanation for why she is still afraid of him in order to reasonably justify the conclusion that the applicant did not credibly convey that John continued to pursue her after the alleged kidnapping and sexual assault and that he continues to pursue her. I find that this credibility determination is within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" and is therefore reasonable (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[20] I also disagree with the applicant that the Board in the case at bar failed to apply the Gender Guidelines. Here, the Board noted at the beginning of the decision that the applicant was of limited education, that the Board progressed in a slow and deliberate manner in order to ensure the applicant understood all questions, and regular breaks were offered and counsel was encouraged to support the applicant as needed. Although the Board made no mention of the applicant's explanation for why she did not leave Saint Vincent immediately after John kidnapped and raped her, the Board considered all the evidence she submitted regarding the core issue of whether John continued to pursue her after the sexual assault and whether he continues to pursue her.

2. Did the Board err in concluding that the applicant has an internal flight alternative?

[21] In finding an IFA, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA exists and also that the conditions in that part of the country must be such that it would not be unreasonable for the claimant to seek refuge there (*Rasaratnam* at para 10 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ 1172 (FCA) at para 12).

[22] The applicant submits that the Board ignored her allegation that she had relocated after the death threat and again after the rape. Moreover, the applicant claims that the islands of Saint Vincent and Bequia are so small that John would be able to find her in Saint Vincent if she were forced to return there.

[23] I disagree with the applicant. I have determined for the reasons aforementioned that it was reasonable for the Board to find that the applicant had failed to establish a prospective fear in Saint Vincent, so the first prong of the test for an IFA was reasonably met. Regarding the second prong, the only evidence the applicant provided on the issue was her testimony. When the Board asked her whether she could find a place to live or work in Canouan, Fancy or Georgetown, she only answered that she did not think she could relocate to those cities because there is no job for her there. In my view, based on this testimony, it was reasonable for the Board to find that the applicant had failed to credibly establish that it would be unduly harsh for her to relocate to Canouan, Fancy or Georgetown and that the second prong of the IFA test was therefore met.

[24] As such, the Board's conclusion on the IFA was reasonable.

[25] For these reasons, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3884-12

STYLE OF CAUSE: VALINCIA KENDRA GREGG v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal (Québec)

DATE OF HEARING: December 12, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: December 19, 2012

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