

Federal Court



Cour fédérale

Date: 20150416

Docket: IMM-987-14

Citation: 2015 FC 479

Toronto, Ontario, April 16, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**MICHELL ROBERTA HOWARD
MARKAYLA ANTONI BROWN
(A.K.A. MARKAYLA ANTONIA
MISHAELA BROWN)
SADE SACHEENA M GRAHAM
(A.K.A. SADE SACHEEN MISHKA GRAHAM)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Delivered Orally from the Bench in Toronto, Ontario on April 15, 2015)

[1] The principal applicant and her two daughters have applied for a judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated January 27, 2014 wherein the Board determined that they are neither Convention refugees

nor persons in need of protection (the Decision). The application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

[2] The applicants are citizens of Jamaica. In December 1996, the principal applicant had her first daughter with Neville Graham in a common law relationship. Mr. Graham verbally and physically abused her and twice she reported the abuse to the police but received no help. The first time she had no visible injury but her face was swollen on the second occasion. In 1999, Mr. Graham beat and burnt her with a hot iron; he was convicted of this offence and sentenced to three years in prison.

[3] In December 2006, the principal applicant met Mark Brown, who became the father of her younger daughter. After two months, Mr. Brown started being abusive and threatened to beat the principal applicant if she went to the police. The abuse continued but there was never any medical evidence to support the allegations of abuse.

[4] The principal applicant visited the US for recreational purposes many times. She was there in 2002; she visited three times in 2005, and again in 2006, 2007, 2009 and 2011. She has a friend in Miami and an aunt in New Jersey. As well, her mother spends six months a year working in New York.

[5] In March 2011, the principal applicant ended the relationship with Mr. Brown after a violent incident. Thereafter, she said that he pursued her aggressively.

[6] In May 2011, he punched her at a restaurant. She did not go to the police because she thought Mr. Brown was involved with gangs and because it was her experience that the police would not respond unless she suffered a severe injury.

[7] In September 2011, the principal applicant decided to leave Jamaica. Mark Brown provided her with a letter permitting her to take his daughter to Canada.

[8] On December 19, 2011, the applicants came to Canada as visitors and two days later claimed refugee protection.

I. The Decision

[9] The Board found that the principal applicant did not rebut the presumption of state protection in Jamaica. It noted that she never approached the police about her problems with Mark Brown.

[10] The Board also found the principal applicant lacked subjective fear because she had failed to seek protection in the United States. Lastly, the Board found that the applicant lacked an objective basis for her alleged fear. It made an adverse credibility finding because Mr. Brown supported her Canadian visa application.

II. Discussion

[11] When dealing with state protection, the Board failed to consider the applicant's explanation that she did not go to the police about Mark Brown's abusive behaviour because the police had twice failed to respond to her reports about Neville Graham's abuse. They only responded after she was very badly hurt.

[12] The Board also failed to consider whether police in Jamaica provide adequate protection for victims of domestic violence. The Board simply reviewed the organization of the police forces and legislation.

[13] For these reasons, the Board's conclusion about state protection was unreasonable. However, state protection was not determinative in this case. Rather, the Board was not persuaded that the applicant had a well-founded fear of persecution for the following reasons:

- First, she had family and a friend in the US. She visited the US regularly. Nevertheless, she never claimed asylum.
- Second, at the time Mark Brown was supposedly aggressively pursuing her and threatening her so that she would continue their relationship, he facilitated her trip to Canada with their daughter by giving her a letter in support of her visa application.

[14] Given these findings, it is my conclusion that the Board's dismissal of the applicants' refugee claim was reasonable. Accordingly, the application will be dismissed.

[15] No question was posed for certification pursuant to section 74(d) of the IRPA.

ORDER

THIS COURT ORDERS that the application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-987-14

STYLE OF CAUSE: MICHELL ROBERTA HOWARD, MARKAYLA ANTONI BROWN (A.K.A. MARKAYLA ANTONIA MISHAELA BROWN) SADE SACHEENA M GRAHAM (A.K.A. SADE SACHEEN MISHKA GRAHAM) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 15, 2015

ORDER AND REASONS: SIMPSON J.

DATED: APRIL 16, 2015

APPEARANCES:

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Asha Gafar FOR THE RESPONDENT

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