Federal Court  Cour fédérale

Date: 20160812

Docket: IMM-168-16

Citation: 2016 FC 922

Ottawa, Ontario, August 12, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

SHERRY-ANN BOYCE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated December 11, 2015, which dismissed her appeal of the decision of the Refugee Protection Division [RPD]. The RAD confirmed that the applicant is neither a Convention refugee nor a person in need of protection. The RAD found that the applicant was not credible and that she had not rebutted the presumption of adequate state protection.

[2] On judicial review, the applicant submits that: the RAD breached procedural fairness by not conducting an oral hearing; and, the RAD erred in its review of the RPD decision and made unreasonable findings with respect to: the assessment of the psychotherapist's report, the application of the Chairperson's *Gender Guidelines* [Guidelines], and the analysis of state protection.

[3] For the reasons set out below, I find that the RAD conducted an independent assessment of the evidence on the record. The RAD did not err in not holding an oral hearing and no breach of procedural fairness resulted. The RAD reasonably found that the RPD considered the applicant's stress as noted in the psychotherapist's report in its assessment of her evidence, but the report could not cure the deficiencies and the resulting credibility findings. The RAD also reasonably found that the RPD had applied the Guidelines to the conduct of the hearing. Similarly, the RAD's independent findings regarding the psychotherapist's report, the Guidelines and the applicant's credibility are reasonable. As a result, the application for judicial review is dismissed.

I. Background

[4] The applicant, Ms. Boyce, a citizen of Saint Lucia and Barbados, last arrived in Canada in March 2013. She remained in Canada after her status expired in September 2013 and made a claim for refugee protection in June 2014.

[5] The applicant's claim is based on her fear of gender-based violence from her former boyfriend, Leslie Lashley, and because she is bisexual.

[6] The applicant alleges that she faced violence and death threats from Mr. Lashley in Barbados. She first came to Canada in October 2008 when he was jailed in Barbados. She returned to Barbados approximately three months later and reunited with Mr. Lashley. She recounts that the violence continued.

[7] She returned to Canada again in 2011 on a work permit. She recounts that she had a lesbian relationship while in Canada. She returned to Barbados in December 2011 and ended her relationship with Mr. Lashley. She alleges that she engaged in another lesbian relationship while in Barbados. Mr. Lashley discovered this relationship, came to her apartment, threatened to kill her and attacked her girlfriend. She claims that the police did not respond and that Mr. Lashley continued to threaten her after this incident.

II. The RPD Decision

[8] The RPD found that the determinative issues were credibility and the availability of state protection in Barbados and concluded that the applicant is not a Convention refugee or person in need of protection.

[9] The RPD noted omissions of key details from her Basis of Claim form [BOC] which she raised in her testimony. The RPD noted several major inconsistencies between her oral and written testimony and her inability to consistently answer basic questions about her claim. The RPD also noted the lack of corroborative evidence. The RPD found that her delay in making a refugee claim after losing status in Canada in September 2013 was not reasonably explained. The applicant claimed that she did not know about the refugee process; however, she was living with

a relative who had made a refugee claim, also on the basis of bisexuality. The RPD ultimately found that there was no credible evidence that any of the events that the applicant recounted regarding Mr. Lashley in the last five years were true. The RPD also found that the applicant has never been in a lesbian relationship.

[10] The RPD also found that the applicant had not rebutted the presumption of state protection with clear and convincing evidence, noting that a person in her situation in 2008 could have sought protection from the authorities in Barbados and that if she were to return, there is ample evidence that the state has both the ability and willingness to protect her.

III. The RAD Decision under Review

[11] The RAD decision is lengthy and addresses all the arguments raised by the applicant on appeal.

[12] The RAD considered new evidence submitted by the applicant: a letter from a friend and a letter from the Deputy Commissioner of the Royal Barbados Police Force. The RAD found that the letter from a friend was not relevant and could have been sent prior to the RPD hearing, as it was simply an expanded version of a previous letter submitted to the RPD. The RAD found that the letter from the Deputy Commissioner, which states that Mr. Lashley was convicted of threatening the applicant in 2008 and was charged with assaulting the applicant in 2008, but these charges were dropped, could have been provided before the RPD hearing. Nonetheless, the RAD considered its relevance and admitted it as new evidence.

[13] With respect to the applicant's argument to the RAD that the RPD had failed to assess her psychological report, which would have explained her stress-related memory problems, the RAD found that the RPD had considered the assessment of Natalie Ribick, a psychotherapist, which noted that the applicant demonstrated post-traumatic stress disorder [PTSD], generalized anxiety and major depressive disorder. The RAD also noted that the RPD had reviewed the governing jurisprudence regarding such reports, had not disputed the overall diagnosis or condition, and had found that PTSD could be based on "any number of matters in the [a]ppellant's life." The RAD found that the RPD had taken into account the potential stress of the hearing due to the conditions described by the psychotherapist. The RPD demonstrated an awareness of the problems outlined in the psychotherapist's report, gave the applicant an opportunity to verify her answers, repeated the questions and put the questions to her in a straightforward way. The RAD concluded that the low weight attached to the report by the RPD with respect to the claim was sound.

[14] The RAD also made its own finding, attaching little weight to the "story given to the psychotherapist" due to the egregious credibility issues and because the applicant self-reported the events to the psychotherapist.

[15] With respect to the applicant's argument that the RPD failed to take notice of the psychology of abused women, in accordance with the Guidelines, the RAD found that the RPD was aware of the Guidelines. However, the egregious credibility issues, including the inconsistencies between the documentation and testimony, could not be explained by the Guidelines or the psychology of abused women.

[16] The RAD also considered the credibility findings made by the RPD.

[17] With respect to the RPD's adverse credibility inferences arising from the applicant's failure to consistently indicate how many lesbian relationships she had, the RAD found, based on its review of the RPD transcript, that nothing suggests that she misunderstood the questions. The RAD found that it was not credible that she would not respond accurately, given that being in a lesbian relationship would have been a breach of cultural norms in her country and was a key aspect of her claim. The RAD also found that she was inconsistent about her lesbian relationship in Barbados.

[18] The RAD found that the applicant was vague about when her lesbian relationship in Canada occurred and that it was not credible that she would forget when her first lesbian experience occurred.

[19] The RAD found that there was no evidence produced to support the existence of the applicant's lesbian partners or relationships. The RAD, therefore, found that the applicant is not bisexual and did not participate in a lesbian relationship, noting that this was supported by its other credibility findings.

[20] The RAD did not accept the applicant's argument that the credibility findings related to her allegations of violence by Mr. Lashley were based on a minor mistake in recounting dates. The RAD agreed with the RPD that the omission of two alleged rapes by Mr. Lashley from the

applicant's BOC and her inconsistent evidence regarding when his abuse began led to an adverse credibility finding, given that these issues go to the basis of her claim.

[21] The RAD noted that the new letter from the Deputy Commissioner indicates that the applicant reported an assault and threats in 2008. The RAD found that it was not credible that she would not have also reported to the police in 2005 or 2011, after the alleged rapes.

[22] The RAD then addressed additional credibility findings that were not challenged by the applicant in her appeal to the RAD. For example, the RAD referred to the applicant's extensive testimony regarding an October 2008 incident of abuse by Mr. Lashley. The RAD noted that the new evidence, the letter from the Deputy Commissioner, indicated that Mr. Lashley was charged with threatening and assaulting the applicant in August 2008, was convicted for threatening the applicant in September 2008, and was imprisoned for six months. The RAD found that it was, therefore, not possible for the applicant to have been beaten by Mr. Lashley in October 2008, because he would have been in prison at that time.

[23] The RAD also found that the applicant's testimony was inconsistent about whether she went through official channels or through a friend in the police force to report the October 2008 incident to the police.

[24] The RAD confirmed the RPD's credibility findings based on inconsistencies regarding how the applicant reported the October 2008 incident to the police, the details of the incident at her home perpetrated by Mr. Lashley and her address in Barbados.

[25] The RAD concurred with the RPD's overall finding that there was no sufficient credible and trustworthy evidence of any of the events alleged regarding Mr. Lashley, noting that the applicant was not consistent regarding alleged beatings by Mr. Lashley, specifically when she went to the police, whether she had friends in the police force, why she went to the police and the police response.

[26] With respect to the applicant's delay in claiming refugee protection, the RAD noted that the circumstances of the delay and any reasonable explanation must be considered. The RAD agreed that it was not credible that she would not have been aware of her relative's refugee claim on the basis of his bisexuality. The RAD noted that despite the applicant's alleged fear of Mr. Lashley, she returned to Barbados several times from Canada. The RAD found that given the nature of the delay, the RPD was entitled to draw an adverse inference and to find that the applicant lacks subjective fear.

[27] With respect to state protection, the RAD reviewed the objective country condition evidence and found that state protection would be available for the applicant in Barbados upon her return. The RAD also noted that the letter from the Deputy Commissioner confirmed that the applicant had availed herself of the state protection of the police in the past.

IV. The Issues

[28] The applicant argues that the RAD erred in finding that she had not requested an oral hearing, erred in not convoking an oral hearing and breached procedural fairness as a result of not convoking an oral hearing.

[29] The applicant also argues that the RAD erred in its assessment of her psychological report because it provided an explanation for her inconsistent testimony and omissions and, therefore, should have been considered in assessing her credibility.

[30] The applicant further argues that the RAD erred in finding that the RPD applied the Guidelines and that the RAD also erred in not applying the Guidelines.

[31] The applicant finally argues that the RAD erred in its state protection analysis.

V. The Standard of Review

[32] In *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] FCJ No 313 (QL) [*Huruglica*], Justice Gauthier clarified that the RAD should fulfill its appellate role and apply the standard of correctness when reviewing an RPD decision, noting that the level of deference to be given to findings of credibility will depend on the circumstances and the jurisprudence of the RAD will develop.

[33] Although the RAD decision preceded the decision in *Huruglica*, the requirement for an independent assessment of the evidence does not differ from the guidance of the Federal Court, which the RAD applied. In the present case, the RAD conducted a thorough assessment of the record and reached independent findings which were consistent with those of the RPD.

[34] On judicial review, if issues of procedural fairness arise, the standard of review is correctness. The issues regarding the RAD's exercise of discretion to hold an oral hearing, the

assessment of the psychotherapist's report, the assessment of credibility and the application of the Guidelines are matters of fact or mixed fact and law and are reviewable on the reasonableness standard.

[35] The reasonableness standard focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

The RAD did not err by not holding an oral hearing in accordance with subsection 110(6)

[36] The applicant argues that she requested an oral hearing and the RAD erred, first, by finding that no such request had been made and, second, by not convoking an oral hearing given that the new evidence related to a key credibility finding.

[37] The applicant acknowledges that her request for an oral hearing was included only in her affidavit which stated: "I am requesting an oral hearing pursuant to subsection 110(6) of [the] Act *if the Division deems it necessary*." [Emphasis added.]

[38] The applicant also acknowledges that her submissions to the RAD did not address the request for an oral hearing, why such a hearing was necessary or how the criteria in subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 had been met, as required by the *Refugee Appeal Division Rules*, SOR/2012-257 [the Rules].

[39] The applicant submits that regardless of her failure to comply with the Rules, the RAD has the discretion, bordering on an obligation, to convoke an oral hearing on its own motion. The applicant argues that the RAD should have exercised its discretion in the circumstances of this case.

[40] The applicant points to *Zhuo v Canada (Minister of Citizenship and Immigration),* 2015 FC 911, [2015] FCJ No 922 (QL) [*Zhuo*], in which Justice O'Reilly found that where the conditions within subsection 110(6) have been met, the RAD should generally be required to hold an oral hearing. The applicant submits that this is analogous to an obligation to hold an oral hearing where the conditions are met.

[41] The applicant argues that she was denied procedural fairness by the RAD's failure to hold an oral hearing. She submits that an oral hearing would have provided her with an opportunity to address the letter from the Police Commissioner and explain that, although Mr. Lashley was convicted of threats in September 2008, his six month jail sentence may not have commenced at that time and, therefore, her testimony that he assaulted her in October 2008 should not have resulted in an adverse credibility finding.

[42] I find that, although the RAD misstated that no oral hearing had been requested, this oversight does not result in any breach of procedural fairness. As acknowledged by the applicant, the request for a hearing was included only in the affidavit and only "if deemed necessary."

[43] The issue is, therefore, whether the RAD erred by not convoking an oral hearing on its own motion.

[44] As noted by the respondent, the recent decision of Justice Hughes in *Ejere v Canada (Minister of Citizenship and Immigration)*, 2016 FC 749 addressed the same issue, the request was framed the same way and no submissions were provided as required by the Rules. Justice Hughes noted that subsection 110(6) provides that the RAD may hold a hearing in certain circumstances and that it is not obliged to hold a hearing because one is requested (citing *Sow v Canada (Minister of Citizenship and Immigration)*, 2016 FC 584 at paras 33-34, [2016] FCJ No 583 (QL)[*Sow*]). Justice Hughes then considered whether the RAD should have held a hearing on its own volition and concluded, on the facts of that case, that there was no need for a hearing.

[45] In *Sow*, Justice Heneghan addressed the applicant's argument that procedural fairness was breached and disagreed, noting at para 33, that "[t]he acceptance of new evidence by the RAD does not automatically mean that an oral hearing will be accorded." Justice Heneghan added, at para 34:

> [34] In my opinion, this provision gives the RAD discretion whether to allow an oral hearing, when it accepts new evidence. Since it has a discretion, it is not obliged to conduct an oral hearing, arguably on the grounds that it is satisfied that it can determine the relevant issue without a hearing.

[46] In *Zhuo*, relied on by the applicant, Justice O'Reilly found, on the facts of the case before him, and noting that the RAD had acknowledged that the criteria for holding a hearing had been met, that the RAD should have held an oral hearing before making adverse credibility findings. He stated at paras 9-11:

> [9] The legislation clearly states that the RAD "may" hold a hearing where the statutory criteria are met. In my view, however, an oral hearing will generally be required when the statutory criteria have been satisfied.
>
> [10] In an analogous context, officers conducting a pre-removal risk assessment must generally hold an oral hearing in similar circumstances (under s 113(*b*) of IRPA, and s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). Even though the language is equally permissive ("a hearing may be held"), this Court has held that an oral hearing will usually be required where there are serious credibility issues before the officer that are central to the decision (*Strachn v Canada (Minister of Citizenship and Immigration)*, 2012 FC 984, at para 34).
>
> [11] I believe the same should apply here. Where the conditions for holding an oral hearing are present, the RAD should generally be required to convene one. Obviously, the RAD retains a discretion on this question but that discretion must be exercised reasonably in the circumstances. In particular, the mere fact that a party has not requested a hearing will generally not be sufficient reason to justify a refusal to convene one when the circumstances appear to require it. While the RAD rules allow an appellant to request a hearing, IRPA does not actually impose a burden either to request, or to satisfy the RAD that the circumstances merit, an oral hearing (see *Refugee Appeal Division Rules*, SOR/2012-257, Rule 5(2)(d)(iii)). The onus rests with the RAD to consider and apply the statutory criteria reasonably.
>
> [Emphasis added.]

[47] It is important to note that in *Zhuo*, Justice O'Reilly highlighted that the discretion to convoke an oral hearing must be exercised reasonably. Where the new evidence submitted meets the criteria of subsection 110(6), which include that the evidence would justify allowing or rejecting the claim, it could be argued that refusing to hold an oral hearing is an unreasonable exercise of discretion. However, that argument does not apply in the present case.

[48] Unlike in *Zhuo*, the RAD did not acknowledge that the criteria of subsection 110(6) had been met. The RAD decision conveys that it did not find that the new piece of evidence from the Deputy Commissioner would have led it to another conclusion with respect to the applicant's credibility. Contrary to the applicant's argument, I do not agree that the letter raised an issue that was central to the decision of the RPD or that would have justified allowing or rejecting the claim. The letter addressed one incident of abuse by Mr. Lashley in 2008 that was not in dispute. The applicant now submits that if she had had an oral hearing she could have explained that Mr. Lashley's six month sentence did not "necessarily" commence at the time of his conviction and, as a result, her testimony that he assaulted her again in October 2008, when he was under sentence, should not have resulted in an adverse credibility finding. However, she did not provide any such evidence to the RAD along with the letter from the Deputy Commissioner to establish that this was in fact what occurred. Moreover, the RPD and RAD made numerous credibility findings and the explanation she could have offered, if it was factual, could not have changed the overall findings regarding the credibility of her allegations, which were based on inconsistencies, omissions and other discrepancies.

[49] As a result, the criteria of subsection 110(6) were not satisfied. The RAD did not err in failing to exercise its discretion to convoke an oral hearing.

> *The RAD did not err in its assessment of the RPD's findings regarding the psychotherapist's report or in its own assessment of that report.*

[50] The applicant submits that both the RPD and RAD erred in attaching little or no weight to the psychotherapist's report on the basis of the applicant's credibility, because the report set out

clinical observations regarding her condition, including stress and its impact on her memory. The applicant submits that the report was based in part on objective and independent testing and could have explained the problems in her evidence which led to negative credibility findings (*Mendez Santos v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1326 at para 19, [2015] FCJ No 1392 (QL) [*Mendez Santos*]).

[51] The respondent submits that neither the RPD nor the RAD erred in its assessment of the report, which was based only on the applicant's account of events, which was reasonably found not to be credible.

[52] I note that, contrary to the applicant's submission, the report of the psychotherapist was not based on any independent or clinical testing, but states that it was based on one interview with the applicant, on the events recounted by the applicant and on the psychotherapist's observations of the applicant in accordance with her professional experience. Some of the jurisprudence relied on by the applicant to argue that the report could provide corroborative evidence relates to expert medical reports that report on independent and objective testing and the resulting clinical observations, which are not related to the applicant's recounting of events. That is not the situation here.

[53] As I recently noted in *Moya v Canada (Minister of Citizenship and Immigration)*, 2016 FC 315, [2016] FCJ No 335 (QL):

> [57] Other jurisprudence has also cautioned that the recounting of events to a psychologist or a psychiatrist does not make these events more credible and that an expert report cannot confirm allegations of abuse. For example, the RAD referred to *Rokni v*

> *Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 182 (QL), 53 ACWS (3d) 371 (FCTD), and *Danailov v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1019 (QL), 44 ACWS (3d) 766 (FCTD), which note that opinion evidence is only as valid as the truth of the facts upon which it is based. The same caution was noted by Justice Phelan in *Saha v Canada (Minister of Citizenship and Immigration)*, 2009 FC 304 at para 16, 176 ACWS (3d) 499: "It is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons."

[54] Similarly, in *Egbesola v Canada (Minister of Citizenship and Immigration)*, 2016 FC 204, [2016] FCJ No 204 (QL), Justice Zinn addressed arguments that the report of a psychologist had not been considered. Justice Zinn noted at para 12:

> [12] As submitted by the respondent, the "facts" on which the report is based are those told to Dr. Devins by the principal applicant, and thus are not facts until found to be so by the tribunal. What can be reasonably taken from the report is that the principal applicant suffers from PTSD, and that she requires medical treatment for it.

[55] The applicant also submits that the RAD erred in not considering that the psychotherapist's report, which noted her condition and its impact on her memory and testimony, should have been considered by and should have guided the RPD in making its credibility findings, and also by the RAD in confirming the credibility findings.

[56] In *Khatun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 159, [2012] FCJ No 169 (QL), the applicant made a similar argument that the RPD had failed to take her psychological state into account when it assessed her credibility. Justice Russell noted:

> [86] The RPD clearly acknowledged the Pilowsky Report and the Applicant's specific psychological state. The RPD also noted that the PIF was prepared by the Applicant with the aid of counsel and that the Applicant affirmed that her PIF was complete, true and correct. Just because the Applicant may suffer from cognitive and psychological problems does not mean that credibility is not an issue or that all inconsistencies can be attributed to those problems. The RPD must still assess credibility, and provided it takes into account the evidence of cognitive or emotional impairment, the Court must be loath to interfere because the Court does not have the advantage of seeing and hearing the witness testify.

[57] Justice Russell added at para 94:

> [94] In this case, the Applicant tries to rely on the Pilowsky Report and the RPD's alleged ignorance of it to explain away all of the negative credibility findings. However, as stated by the Respondent, no psychological report could act as a cure-all for deficiencies in the Applicant's evidence.

[58] In *Mendez Santos*, relied on by the applicant, Justice Boswell found that the RPD's credibility findings were not reasonable because the psychological condition described in two doctor's reports provided an explanation for the applicant's vague and contradictory testimony. In that case, the reports assessed the mental capacity of the applicant with objective and independent medical testing and found serious cognitive deficiencies. Justice Boswell found that the RPD conducted its analysis backwards and should have relied on the psychological reports in assessing the applicant's credibility.

[59] The applicant's argument in the present case, that the RAD proceeded backwards in its credibility assessment, cannot succeed. In this case, unlike *Mendez Santos*, there was no independent medical testing conducted of the applicant and there was no independent medical diagnosis of cognitive deficiencies. The report did not go so far as to state any diagnosis of

cognitive impairment; the psychotherapist's report is based on what the applicant reported and what the psychotherapist notes is consistent with such experiences.

[60] The report was based only on observations of the applicant and the applicant's recounting of the events, the vast majority of which the RPD and RAD found to be not credible.

[61] Nevertheless, the RPD and the RAD accepted the overall conclusion of the psychotherapist that the applicant experienced PTSD and generalized anxiety. The RAD found that the RPD had taken into account the applicant's potential distress due to her condition as described in the report. This is a reasonable finding by the RAD and is supported by the evidence on the record, including the transcript of the RPD.

[62] The RAD's own finding that it "gives little weight to the *story* given to the psychotherapist because of the number of egregious issues of credibility outlined in [the RAD] decision and the nature of the self-reported story given to the psychotherapist" [emphasis added] is also reasonable and consistent with the jurisprudence which, in a nutshell, provides that a psychological report based on a discredited story cannot rehabilitate that story.

[63] Moreover, the weight attached to evidence is within the purview of the RAD and it is not for the court to re-weigh evidence that has been carefully considered by the RAD.

The RAD did not err in its application of the Gender Guidelines

[64] The applicant argues that the RAD erred in finding that the RPD had applied the Guidelines and that the RAD failed to assess her evidence in accordance with the Guidelines. In particular, it failed to account for her social, cultural and economic context in Barbados as a domestic violence victim. She adds that the RAD's credibility findings arising from her testimony about Mr. Lashley's attack on her and her girlfriend should have been assessed through the lens of the Guidelines.

[65] I do not agree that the RAD erred in finding that the RPD had applied the Gender Guidelines or in its own application of the Guidelines.

[66] In *Diallo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1450 at para 32, 259 FTR 273, Justice Mactavish explained that the Guidelines alert the decision maker "to the effect that social, cultural, traditional and religious norms can have on the testimony of those claiming to fear gender-based persecution."

[67] The Guidelines are intended to guide the conduct of the hearing and encourage the decision maker to consider the applicant's testimony in accordance with her circumstances as a domestic abuse victim in her society or country of origin. The Guidelines do not cure reasonable credibility findings and cannot buttress the state protection analysis.

[68] The RAD conducted an independent assessment of the evidence on the record, including a transcript of the RPD hearing. The RAD reasonably found that the RPD's conduct of the hearing was consistent with the Guidelines and that the RPD had considered the psychology of abused women. The RAD also reasonably found that the applicant's credibility was undermined by her own testimony and that the inconsistencies in her evidence could not be explained by the Guidelines.

The RAD did not err in its state protection analysis

[69] The applicant argues that the RAD's assessment of the objective evidence of state protection was flawed because it focused on efforts and aspirations. However, the evidence notes that at the operational level, the state fails to protect victims of domestic abuse in Barbados. The applicant notes that it is against the law to engage in homosexual acts in Barbados and that the evidence relied on by the RAD regarding possible protection for her must be considered in this context.

[70] The RAD concurred with the RPD's finding that the applicant was not bisexual, but conducted a state protection analysis with respect to the applicant's allegations of domestic violence.

[71] The RAD noted the state protection analysis conducted by the RPD, which was extensive and balanced. The RPD had acknowledged that, although the laws prohibited domestic violence and imposed strong penalties, there were difficulties in responding to and treating domestic violence victims. The RPD had found that although the documentary evidence was mixed,

women in the applicant's situation in 2008 would have sought protection – in other words, there would be no justification for the applicant not to seek state protection based on an inability or unwillingness to protect on the part of the state.

[72] In its own analysis, the RAD noted that state protection need not be perfect, but must be adequate, and concluded, on a forward looking assessment, that state protection would be available to the applicant if she sought protection upon her return.

[73] The RAD's assessment of state protection reflects the key principles from the jurisprudence and the objective evidence, which notes some challenges, but reasonably supports the conclusion that state protection is adequate and would be available to the applicant should she return to Barbados and seek state protection.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question arises for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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