Date: 20060410

Docket: IMM-3313-05

Citation: 2006 FC 402

BETWEEN:

JACQUELINE ROBINSON

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] The Applicant is a citizen of Jamaica. She arrived in Canada in November of 1990, on a visitor's visa which she never renewed. In 2003, she applied for landing from within Canada on humanitarian and compassionate grounds. That application was refused in February, 2004. Very shortly after she was notified of the refusal, the Applicant filed a claim for Convention refugee protection, or like protection in Canada. By a decision dated the 10th of May, 2005, the Refugee Protection Division (the "Board") of the Immigration and Refugee Board rejected her claim. The Applicant sought judicial review of that decision. These reasons follow the hearing of a portion of that application for judicial review.

BACKGROUND

[2] The Applicant bases her claim to Convention refugee protection or like protection in Canada on a fear of returning to Jamaica by reason of her membership in a particular social group, victims of spousal abuse, based upon abuse that she alleges she suffered in Jamaica between 1986 and 1990 when she was living in a common-law relationship. While the Applicant sought aid from a neighbour who was a police officer, from the mother of her partner and from members of her family, she never reported her plight to the police, notwithstanding the fact that her neighbour and her father urged her to do so. She testified as to the threats her common-law partner made against her if she were to turn to the police.

THE DECISION UNDER REVIEW

[3] The Board expressed its satisfaction that the Applicant "…is who she claims to be and that she is a citizen of Jamaica." It identified the issues before it as the well-foundedness of the Applicant's fear and the availability of state protection.

[4] The Board found the Applicant not to have a subjective fear of persecution or equivalent treatment in Jamaica based on her long delay in claiming protection. The Board further found no objective basis to the Applicant's alleged fear. It noted that she had testified before it that, during the long time she has been in Canada, she and her former common law partner have not communicated. It found that the Applicant adduced no evidence that her former common law partner might still be interested committed to abusing her.

[5] Finally, the Board, while noting that domestic abuse of women is a serious and widespread problem in Jamaica that is perpetuated by social and cultural traditions, concluded that the Applicant had failed to rebut the presumption that, in a democratic nation, and it found that Jamaica is such a nation, state protection is available. By reference to the documentary evidence that was before it, and the Board explained why it chose to prefer the country conditions documentation that was before it over the testimony of the Applicant. It noted that a legislative framework for protection is provided that represents efforts made by the state of Jamaica "…to start building a framework to deal with the problem", that women's organizations in Jamaica "…acknowledged that improvement is starting to show because police attitudes towards cases of domestic violence are beginning to change." Emphasis has been added by me.

THE ISSUES

[6] In addition to procedural issues related to "reverse order questioning" or Chairperson's Guideline 7, which were heard by a different judge and will be the subject matter of separate reasons and a separate decision, counsel for the Applicant raised the following substantive issues: first, whether the Board mis-assessed the evidence; and secondly, whether the Board erred in a reviewable manner in its state protection analysis.

ANALYSIS

a) Standard of Review

[7] I am satisfied that it is trite law that the appropriate standard of review of the Board's finding regard the Applicant's credibility, and thus of the well-foundedness of her fear, both

subjectively and objectively, is patent unreasonableness[1].

[8] Further, I am satisfied that the standard of review relating to a finding of state protection is reasonableness *simplicter*. My colleague Justice Layden-Stevenson noted in *Resulaj v. Canada (Minister of Citizenship and Immigration)*[2]:

> In *Chaves v. Canada (Minister of Citizenship and Immigration)* (2005), 45 Imm. L.R. (3d) 58 (F.C.), my colleague Madam Justice Tremblay-Lamer conducted a pragmatic and functional analysis to determine the applicable standard of review in relation to a finding of state protection. I concur with her analysis and I adopt, as she did, the standard of reasonableness *simplicter* as the appropriate standard of review.

b) Well-foundedness of the Applicant's Fear

[9] The Board wrote on this issue:

> I find that the claimant does not have a subjective fear. If she had a subjective fear, she would not have waited over 14 years before making a claim for refugee protection.

While delay in claiming, and it cannot be denied that there was here an extraordinarily long delay, is a relevant consideration, the Applicant, judging from a review of the transcript of the hearing before the Board, is not a particularly sophisticated person and she explained that she determined after arriving in Canada to "lay low" based on advice from those in Canada in whom she had confidence. In any event, delay in claiming is generally considered not to be sufficient grounds to reject a claim in and of itself[3].

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[1] See : *Chowdhuri v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 139, February 7, 2006 at paragraph 12.
[2] 2006 FC 269, February 28, 2006, [2006] F.C.J. No. 337.
[3] See *Huerta v. Canada (Minister of Employment and Immigration)*, (1993), 157 N.R. 225 at 227 (F.C.T.D.), [1993] F.C.J. No. 271 (F.C.A.), (not cited before the Court).

[10] After noting the Applicant's humanitarian and compassionate application, made almost thirteen (13) years after her arrival in Canada, its refusal, the resulting removal order and her failure to comply with that removal order, the Board noted:

> Days later she made her claim for refugee protection, even though there is no evidence that Brown [her former common law partner] might still be interested in pursuing her.
>
> [emphasis added]

With great respect, that statement is just plain wrong. Before the Board, the Applicant testified, in response to the question: and what do you think would happen to you if you did return to Jamaica today?:

> Oh my God! Because I left and I didn't tell him and I said things to my parents, anybody comes down there, he tells them that "anytime you see Jacquie, tell her things are not over. I'll kill her…because no woman leaves me.

At pages 154 and 155 of the Tribunal Record, there appears an undated letter to the Applicant, alleged on the basis of a cancellation stamp on the related envelope to be of recent date, notwithstanding that the Court's copy of the envelope is indecipherable, from Mr. Brown's mother, who closes her letter with the words "Your 'Mother" above her signature, writes at page 155:

> Jacqueline, I don't know if I will ever see you again but I am begging you, do not return to Jamaica. If Winston [the Applicant's former common law partner] ever knew where to find you he would hunt you down and kill you. I am happy that he can't reach you where you are now.

[11] Based upon the foregoing, I can only conclude that the Board ignored cogent evidence that was before it in concluding there was no credible subjective or objective basis to the Applicant's alleged fear of returning to Jamaica. In committing this error, I am satisfied that the Board erred in a reviewable manner against a standard of patent unreasonableness.

c) Country Conditions

[12] As earlier indicated, the Board preferred to rely on documentary evidence before it rather than on the evidence of the Applicant in regard to country conditions, a course that, I am satisfied, was reasonably open to it. In relying on documentation, and acknowledging that domestic abuse of women is a serious problem in Jamaica and is widespread and perpetuated by social and cultural traditions, the Board speaks of starting to build a framework through legislation, of improvement starting to show and police attitudes beginning to change. The same country conditions documentation speaks of high levels of domestic abuse and rather horrendously inadequate responses where state protection is sought.

[13] In *Mitchell v. Canada (Minister of Citizenship and Immigration)*[4], the reasons for judgment in which were raised by the Court during the hearing of this matter, my colleague Justice O'Reilly wrote at paragraph [10] of his reasons:

> In my view, the Board's treatment of the issue of state protection did not evaluate Jamaica's real capacity to protect women in Ms. Mitchell's situation. It merely noted Jamaica's good intentions to improve the situation through police training, but it did not deal with the reality that faces women there, where domestic violence is the second leading cause of homicide. The Board's conclusion that state protection was adequate was not supported by the evidence it relied on.
>
> [emphasis added]

I reach precisely the same conclusion on the basis of the record before the Court in this matter. Against a standard of review of reasonableness *simpliciter,* I am satisfied that the Board's state protection finding simply cannot be sustained.

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[4] 2006 FC 133, February 7, 2006.

CONCLUSION

[14] In the result, this application for judicial review will be allowed. The decision under review will be set aside and the Applicant's application for Convention refugee status or like protection will be referred back to the Immigration and Refugee Board for re-determination by a differently constituted panel. In light of the fact that aspects of this application for judicial review are being considered by another judge and that there will be two separate decisions, the other of which is likely to go before the Court of Appeal, the Court will direct that a further hearing of this matter before the Refugee Protection Division be deferred until any appeal of the decision regarding other aspects of this application for judicial review is disposed of in the Federal Court of Appeal or the time in which a party may file a notice of appeal to that Court has expired, whichever last occurs. Whether any further delay is directed is a matter for the Federal Court of Appeal to determine.

[15] Counsel for the Respondent did not recommend certification of a question. Counsel for the Applicant urged that the Court consider certification of a question regarding standard of review of state protection findings, he being of the opinion that a standard of review of patent unreasonableness is more appropriate than that here adopted by the Court. I decline to certify a question. Given my conclusion that the state protection finding herein is reviewable on a standard of reasonableness *simpliciter*, a finding that the appropriate standard of review is even more stringent than that I have applied would not in any way affect the result on this application for judicial review. Thus, certification of such a question would be more in the nature of a reference than in the nature of a basis for appeal. I decline to certify a question.

"Frederick E. Gibson"

JUDGE

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3313-05
STYLE OF CAUSE:	JACQUELINE ROBINSON
	and
	MINISTER OF CITIZENSHIP AND IMMIGRATION
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