

Federal Court



Cour fédérale

**Date: 20220421**

**Docket: IMM-3527-21**

**Citation: 2022 FC 569**

**Ottawa, Ontario, April 21, 2022**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**LOURALE BISHOP**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicant, Ms. Lourale Bishop, is seeking judicial review of a decision rendered on April 28, 2021 [Decision] by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In its ruling, the RAD dismissed Ms. Bishop's appeal of a decision rendered by the Refugee Protection Division [RPD] finding that she was neither a Convention

refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The appeal was dismissed on the basis that Ms. Bishop was unable to rebut the presumption of state protection in her country of origin, Saint Lucia.

[2] Ms. Bishop now seeks to have the Decision set aside and referred back to the RAD for reconsideration. She claims that the Decision is unreasonable and that the RAD erred in determining that she lacked credibility. More specifically, Ms. Bishop submits that, in reaching its conclusions on state protection, the RAD relied on two unreasonable adverse credibility findings: first, the RAD adopted a logically fallacious reasoning regarding her evidence on a police warning; second, the RAD conducted a microscopic review that focused on peripheral details of her testimony.

[3] For the following reasons, Ms. Bishop's application for judicial review will be dismissed. Having considered the Decision, the evidence before the RAD and the applicable law, I conclude that the Decision is reasonable and that the evidence amply supports the RAD's conclusions on the availability of state protection for Ms. Bishop in Saint Lucia. The RAD's reasons have the qualities that make its analysis logical and consistent in relation to the relevant legal and factual constraints.

## II. Background

### A. *The factual context*

[4] Ms. Bishop is a citizen of Saint Lucia and was born on June 13, 1991. She is the mother of a seven-year-old daughter, Mariska Bishop, who was fathered by Ms. Bishop's former partner, Mr. Wayne Arthur. Ms. Bishop moved in with Mr. Arthur when she was 19 years old, and the couple lived happily for the first two and a half years of their relationship.

[5] In June 2014, Mr. Arthur threatened Ms. Bishop with a shard of glass following a quarrel about Mr. Arthur's behaviour with his friends. A second incident happened in December 2015, where Ms. Bishop was punched in the face. Following this event, she decided to leave the family home without her daughter and spent two months at a relative's house before moving back with Mr. Arthur. A third incident occurred in July 2016, where Ms. Bishop was once again hit by Mr. Arthur.

[6] Following this third incident, Ms. Bishop complained to the police about Mr. Arthur's threats, but remained silent about the physical violence he had inflicted on her. This was the only occasion Ms. Bishop denounced her situation to the Saint Lucia authorities. She decided to leave the family home a second time to move in with her extended family.

[7] A few weeks later, Mr. Arthur found Ms. Bishop, and threatened to kill her and their daughter if she complained to the police again. It is unclear from the record when Ms. Bishop

moved back in with Mr. Arthur. Ms. Bishop alleges to have been raped and beaten by Mr. Arthur on numerous occasions thereafter. Mr. Arthur also began threatening and beating their daughter.

[8] In May 2017, Ms. Bishop was invited to a family wedding taking place in Canada. Ms. Bishop was granted a visitor visa to attend the wedding. She left Saint Lucia without her daughter and without telling Mr. Arthur, and she entered Canada on June 23, 2017. She made a claim for refugee protection on November 14, 2017. Her daughter is now residing with Ms. Bishop's mother, in Saint Lucia.

**B. *The RAD Decision***

[9] The RAD began its analysis by reviewing Ms. Bishop's submissions regarding the admissibility of new evidence on appeal, and concluded that the evidence in question was inadmissible under subsection 110(4) of the IRPA as it was already part of the record. Furthermore, the RAD examined Ms. Bishop's request for holding a hearing under subsection 110(6) of the IRPA. The RAD declined the request, as holding a hearing was contingent on the admissibility of the new evidence submitted by Ms. Bishop.

[10] The RAD found that three of the RPD's adverse findings regarding the credibility of Ms. Bishop were incorrect. The RAD notably observed that the RPD erred in finding that Ms. Bishop had never been in a common-law partnership with Mr. Arthur, and that she had mischievously waited until the expiration of her visitor visa before making a claim for refugee protection in Canada. The RAD nonetheless determined that the RPD had correctly found that Ms. Bishop did not qualify for protection under the IRPA, as she had failed to rebut the

presumption that Saint Lucia had the capacity to offer her protection from Mr. Arthur. In support for its conclusion, the RAD observed that Ms. Bishop had only approached the Saint Lucia police authorities once, that she had not fully divulged all the information about the extent of Mr. Arthur's physical assaults, and that the country condition documentation revealed the existence of several actions taken by Saint Lucia to offer support and relief to women suffering from spousal abuse.

[11] In its state protection analysis, the RAD noted that there were inconsistencies between Ms. Bishop's Basis of Claim and her testimony before the RPD, which adversely affected the credibility of her story. First, when asked by the RPD why she did not tell the police she had been physically assaulted by Mr. Arthur, Ms. Bishop mentioned that Mr. Arthur's father was a police officer. However, this fact had not been included in her initial Basis of Claim. Moreover, she was unable to provide evidence supporting this assertion. Second, at the hearing before the RPD, Ms. Bishop stated that her complaint to the Saint Lucia authorities had not been taken seriously by the police as, according to her, the officers knew Mr. Arthur and gave him a warning "half jokingly." However, this element was also absent from Ms. Bishop's narrative, where she had simply mentioned that the police gave a warning to Mr. Arthur further to her complaint. The RAD found that these omissions undermined Ms. Bishop's credibility, as they pertained to key material elements of the story at the source of her claim for refugee protection.

[12] In addition to having approached the authorities only once and to having failed to disclose to the police the extent of Mr. Arthur's assaults, Ms. Bishop admitted not having exhausted all the means available in Saint Lucia for women who experience spousal abuse.

Those means were mentioned in the objective country evidence and included legislation, support services, police training, measures for the prosecution and hearings related to violence against women, as well as a hotline for women experiencing violence at the hands of their spouse.

Considering all of the evidence before it, including the lack of credibility of Ms. Bishop on two material elements of her story, the RAD concluded that Ms. Bishop fell short of meeting her burden to prove that Saint Lucia was unwilling or unable to protect her and her daughter. The RAD thus determined that Ms. Bishop had not rebutted the presumption of state protection and failed to establish a well-founded fear of persecution or risk under section 96 and subsection 97(1) of the IRPA.

**C. *The standard of review***

[13] The parties agree that the presumptive standard of reasonableness applies to this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). There is no reason to conclude otherwise, as the circumstances of this case do not lend themselves to the application of any of the exceptions to the presumption of reasonableness identified by the Supreme Court of Canada (*Vavilov* at para 17). I underline that, prior to *Vavilov*, the courts had already determined that the standard of reasonableness was applicable to issues dealing with the application of the test of adequacy of state protection to a particular factual situation (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 [*Hinzman*] at para 38; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 [*Burai*] at para 17; *Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 16).

[14] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing court must therefore consider whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are borne (*Vavilov* at paras 15, 95, 136).

[15] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with “respectful attention,” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). However, when the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

### **III. Analysis**

[16] Before delving into the analysis of the reasonableness of the RAD Decision, it bears reminding a few key principles governing the issue of state protection.

[17] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*], the Supreme Court of Canada reminded that international refugee law was formulated as a back-up to the protection an applicant can expect from the state of which he or she is a national (*Ward* at 709). This means there is a presumption that the state is capable of protecting its citizens, with the exception of countries where there has been a complete breakdown of state apparatus (*Ward* at 725).

[18] The onus lies on an applicant to establish that his or her home state is unable to provide adequate protection (*Notar v Canada (Citizenship and Immigration)*, 2021 FC 1038 at para 26; *Glasgow v Canada (Citizenship and Immigration)*, 2014 FC 1229 [*Glasgow*] at para 35). In order to do so, an applicant must provide clear and convincing evidence of the state's inability to protect, which will usually require a claimant to show "that they sought, but were unable to obtain, protection from their home state, or alternatively, that their home state, on an objective basis, could not be expected to provide protection" (*Hinzman* at para 37; *Glasgow* at para 35). It is also not disputed that the appropriate test in a state protection analysis commands an assessment of the adequacy of that protection at the operational level, not solely the efforts or intentions of the state (*Burai* at para 25; *Mata v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1007 at paras 13–14; *Vidak v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 976 at para 8). The evidence must be "relevant, reliable and convincing" and must satisfy the decision maker, on a balance of probabilities, that adequate protection is unavailable (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30; *Rstic v Canada (Citizenship and Immigration)*, 2022 FC 249 at para 29). This is what Ms. Bishop has failed to demonstrate.



**A. *Did the RAD adopt a logically fallacious reasoning by posing a false dilemma regarding the nature of the police warning to Mr. Arthur?***

[19] Ms. Bishop submits that the RAD's finding regarding the inconsistency of her evidence on the nature of the warning given by the police to Mr. Arthur is unreasonable. Ms. Bishop argues that the RAD failed to meaningfully grapple with the arguments she had presented on appeal with respect to the "jokingly" qualifier she used. Additionally, Ms. Bishop submits that the supposed contradiction identified by the RAD between a "warning" and a "warning made jokingly" is a false dilemma reflecting a lack of internal rationality in the Decision (*Vavilov* at para 104).

[20] With respect, I disagree with Ms. Bishop's arguments.

[21] It is well established that the RAD owes no duty of deference toward the RPD as its standard of appellate review is that of correctness. Section 111 of the IRPA establishes an appellate procedure where the RAD must conduct its appeal by reviewing all aspects of the RPD decision and come to an independent assessment of whether the claimant is a Convention refugee or a person in need of protection (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 58; *Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 39). That said, it must be stressed that an appeal before the RAD is not a true *de novo* proceeding. Indeed, the RAD does not start anew, still benefits from the record below, and must not ignore the original decision in all respects (*Huruglica* at para 79). Thus, the RAD is not required to restart the analysis from scratch in order to show that it conducted its independent review of the case at hand (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para

34). Additionally, the RAD may show deference to the RPD's credibility findings when the RPD has enjoyed a particular advantage over it, for instance when assessing oral evidence that was made before the RPD in the context of a hearing (*Huruglica* at para 103; *Wahjudi v Canada (Citizenship and Immigration)*, 2017 FC 279 at para 13). In the case of Ms. Bishop, the reasons make it abundantly clear that the RAD conducted its own analysis of the evidence on the record, and that it was not satisfied that the explanation given by Ms. Bishop about the inconsistencies between her narrative and her testimony before the RPD could salvage her case (*Warrich v Canada (Citizenship and Immigration)*, 2022 FC 76 at para 33; *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19).

[22] I am not convinced by Ms. Bishop's submissions that the RAD's finding about the inconsistency on the issue of the police warning reflects a lack of internal rationality in the Decision. It is true that a warning made jokingly is still a warning. However, I agree with the Minister that a police warning is inherently serious, and subsequently stating that a police warning was made jokingly constitutes a material change. Relying on cases such as *McKenzie v Canada (Citizenship and Immigration)*, 2019 FC 555 at para 34, *Strugar v Canada (Citizenship and Immigration)*, 2013 FC 880 at para 7 and *Zhang v Canada (Citizenship and Immigration)*, 2007 FC 665 [*Zhang*] at para 6, Ms. Bishop argues that she was simply adding details to her Basis of Claim, not contradicting a previous statement. I do not agree. The police warning to Mr. Arthur was a significant event and a fact central to Ms. Bishop's claim for refugee protection. By stating that the police warning was made jokingly, Ms. Bishop was not solely adding more detail, she was instead modifying her story and creating a material inconsistency. This is a situation clearly distinguishable from the cases cited by Ms. Bishop in support of her position. In sum, I

do not find that, in its analysis of Ms. Bishop's inconsistency on the police warning, the RAD created a "false dilemma" in the Decision that warrants the intervention of this Court (*Vavilov* at para 104).

[23] Under the substantive review framework clarified by *Vavilov*, a reasoned explanation by an administrative decision maker has two related components: (i) adequacy, and (ii) logic, coherence and rationality (*Vavilov* at paras 96, 103–104). The logic, coherence and rationality of a decision may be called into question if its reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or absurd premises (*Vavilov* at para 104). These logical fallacies must affect the "critical points" of the decision, points that are shaped, in part, by "the central issues and concerns raised by the parties" (*Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at para 13, citing *Vavilov* at paras 127–128). In short, a decision will be unreasonable if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (*Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 34).

[24] In Ms. Bishop's case, I do not find that the Decision exhibits any logical fallacy. Even if the reasons on the police warning are short, I had no difficulty understanding the importance that the inconsistency between Ms. Bishop's narrative and her testimony had in the context of the RAD's state protection analysis. In analyzing an administrative decision, the reviewing judge must seek "to understand the reasoning process followed by the decision maker" in arriving at its conclusions, and must read its reasons "holistically and contextually" (*Vavilov* at paras 84, 97). As underscored by the Minister in his written submissions, Ms. Bishop's narrative implies that

her complaint to the police was taken seriously, while her testimony before the RPD indicates it was not, which suggests that the authorities might not have had the capacity or the willingness to provide adequate response. Additionally, Ms. Bishop was unable to offer an explanation for this omission in her narrative. In the circumstances, I find it was reasonable for the RAD to rely on this omission in concluding that Ms. Bishop's credibility was undermined with regard to her sole interaction with the Saint Lucia police.

[25] At the hearing before this Court, counsel for Ms. Bishop insisted on the fact that the RAD failed to provide sufficient information on its analysis of this police warning and that the Decision somehow lacked justification. I acknowledge that the reasons given by the RAD on Ms. Bishop's inconsistencies are brief, but it is incorrect to say that the RAD did not respond to Ms. Bishop's arguments. It expressly did at paragraph 31 of the Decision, and the errors alleged by Ms. Bishop do not lead me "to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 122). True, the RAD could have elaborated further on this issue in its Decision. However, the reasons for an administrative decision need not be perfect or even comprehensive. They only need to be comprehensible. The reasonableness standard of review is not concerned with the Decision's degree of perfection but rather its reasonableness (*Vavilov* at para 91). The standard requires the reviewing court to start with the decision and recognize that the administrative decision maker has the primary responsibility for making factual determinations. The reviewing court examines the reasons, the record and the outcome with respectful attention and, if there is an explanation for the result obtained, it refrains from intervening. This is the situation here.

**B. *Did the RAD rely on peripheral details regarding the occupation of Mr. Arthur's father and engage in a microscopic review?***

[26] Ms. Bishop also submits that the RAD unreasonably concluded to her lack of credibility by placing too much emphasis on peripheral details of her narrative regarding the occupation of Mr. Arthur's father as a police officer, and by engaging in a microscopic review. In her initial Basis of Claim submitted on November 14, 2017, Ms. Bishop made no mention of the fact that Mr. Arthur's father was a police officer in Saint Lucia. Ms. Bishop amended her Basis of Claim on December 4, 2017, and added that information. However, she could not provide any evidence showing that Mr. Arthur's father was indeed a police officer, and she could not claim having had any personal contact with him since meeting Mr. Arthur. At the hearing before the RPD, Ms. Bishop explained that she did not tell the police about the full extent of Mr. Arthur's abuse because "his father was in the police force."

[27] Ms. Bishop submits that it was unreasonable for the RAD to draw a negative inference of credibility from her initial omission given that an applicant's Basis of Claim "should contain the significant events that give rise to an applicant's claim" (*Zhang* at para 6). She adds that her omission is merely technical in nature and that the father's occupation is a minor or elaborative detail that cannot in itself justify an adverse credibility finding (*Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 868 at paras 31–32; *Karaoglan v Canada (Citizenship and Immigration)*, 2008 FC 749 at para 16).

[28] With respect, Ms. Bishop's case again differs from the precedents she cites, as the elements relied upon by the RAD to dismiss her claim were not merely technical. They were

rather critical in the context of her particular story and for the purpose of the RAD's state protection analysis. I am not persuaded that the RAD's analysis of this Basis of Claim omission can be described as "microscopic," given that the occupation of Mr. Arthur's father (i.e., a police officer) is directly linked to Ms. Bishop's decision to seek protection in Canada. In her own words, Ms. Bishop did not divulge to the police the fact that Mr. Arthur was physically violent toward her because she thought her complaint would not be taken seriously in light of the father's occupation – thus shedding doubt on the police's ability to protect her. It cannot be said that the RAD clung to irrelevant considerations by relying on this omission in its analysis, as it lies at the core of Ms. Bishop's refugee claim (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 59–60).

[29] Additionally, the RAD's reliance on this omission and on the fact that Ms. Bishop was unable to corroborate her claim before the RPD were taking place in a context where other elements of her claim raised suspicion on their truthfulness. In the absence of clear and convincing evidence on which to ground a refugee protection claim, it was reasonable for the RAD to determine that Ms. Bishop had failed to rebut the presumption of state protection (*Macias v Canada (Citizenship and Immigration)*, 2010 FC 598 at para 30).

[30] With respect to the police, it is well-established law that local failures to provide effective policing do not automatically amount to a lack of state protection. Moreover, a single refusal by the authorities to assist will typically not meet the high threshold necessary to rebut the presumption of state protection. It is simply insufficient for an applicant to give up trying merely because of a single bad experience with local police officials (*Kadenko v Canada (Solicitor*

*General*) (1996), 143 DLR (4th) 532 at p 534 (FCA); leave to appeal to SCC refused, [1996] CSCR no 612; *Morales Lozada v Canada (Citizenship and Immigration)*, 2008 FC 397 at paras 27–28; *Sanchez v Canada (Citizenship and Immigration)*, 2008 FC 134 at paras 9, 12).

[31] In sum, I am not persuaded that the RAD's credibility findings were unreasonable and thus unreasonably distorted its state protection analysis. As pointed out by the Minister, the RAD concluded that Ms. Bishop did not give the police authorities in Saint Lucia a sufficient opportunity to provide protection as she failed to tell them about the extent of the physical assault suffered at the hands of Mr. Arthur. Moreover, she did not continue to approach the police despite the continuing assaults and physical violence by Mr. Arthur. In light of the country condition documentation indicating that mechanisms exist at the operational level for the protection of women from domestic violence in Saint Lucia, and the absence of sufficiently reliable evidence from Ms. Bishop regarding her own situation, it was open to the RAD to conclude that Ms. Bishop had failed to rebut the presumption of state protection.

[32] I make one last comment on Ms. Bishop's complaint that the RAD failed to take her own experience and personal circumstances into account in its state protection analysis. Further to my reading of the Decision, I am not convinced that the RAD ignored Ms. Bishop's circumstances. On the contrary, the RAD specifically paid attention to Ms. Bishop's personal situation in overturning some of the RPD's adverse credibility findings. Moreover, it is precisely because of Ms. Bishop's particular behaviour with respect to her limited, single approach to the Saint Lucia police authorities and her failure to fully disclose the extent of Mr. Arthur's physical violence that the RAD determined Ms. Bishop had not provided sufficiently clear and convincing

evidence to rebut the presumption of state protection. In my view, a continuous concern for Ms. Bishop's personal circumstances transpires from the RAD's reasons.

#### **IV. Conclusion**

[33] For the above-mentioned reasons, Ms. Bishop's application for judicial review is dismissed. The Decision constituted a reasonable outcome based on the law and the evidence, and it has the requisite attributes of transparency, justification and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an inherently coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. This is the case here with respect to the RAD's conclusions on state protection.

[34] There are no questions of general importance to be certified.



**JUDGMENT in IMM-3527-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

"Denis Gascon"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3527-21

**STYLE OF CAUSE:** LOURALE BISHOP v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 13, 2022

**JUDGMENT AND REASONS:** GASCON J.

**DATED:** APRIL 21, 2022

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