Date: 20080521

Docket: IMM-4933-07

Citation: 2008 FC 637

Toronto, Ontario, May 21, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

CECILE YOUNG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (the Board) dated September 26, 2007, in which it determined that the applicant is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, ch. 27 (the Act).

I. Facts

[2] The applicant is a citizen of Saint Vincent and the Grenadines ("St. Vincent"), who came to Canada in 2001. The applicant claims in her Personal Information Form (PIF) that she fears returning to St. Vincent because she is frightened of her abusive former common law spouse, and two other men. However, at the hearing she testifies that she does not fear her ex-husband, only the other two men – a man named Jevon, and Jevon's cousin. The applicant describes in her PIF that Jevon has raped her, and when she reported the rape to the police, he was convicted and sent to jail for 15 years. Some time later, Jevon's cousin, whose name the applicant does not know, came to her mother's house and told the applicant that Jevon would soon be released from jail and that she should expect him. The applicant did not report this threat to the police.

[3] The applicant also claims to fear returning to St. Vincent because she can not be treated there for her Rheumatoid Arthritis. That claim was rejected by the RPD, and although this conclusion has not been challenged in the written application the applicant insisted in his oral presentation to contest this conclusion and make it her main argument.

II. The decision of the RPD

[4] At the hearing the Board member pointed out that it had no problem with the applicant's credibility, but that there was concern about the availability of state protection. In its decision, the Board states that protection was available to the applicant, noting first that there was no evidence that "the government of St. Vincent is in chaos or disarray and unable to govern." The Board notes that the documentary evidence indicates that domestic violence is a serious problem in St. Vincent,

but that serious efforts are being made to address the problem, with the involvement of human rights groups and an independent agency called Marion House. Furthermore, the Board points to other documentary evidence indicating that the police respond to calls concerning domestic violence. Finally the Board is " …not persuaded that the claimant, a woman who successfully sought police protection in 1994 should be exempted from making a diligent effort to resolve her problems in St. Vincent and informing herself of the steps being taken by the government to address gender violence as set out in the documentary evidence. (The Board is not also) satisfied within the preponderance of probability category, as (he) must be, that the St.Vincentian authorities would not be reasonably forthcoming with serious efforts to protect the claimant if she were to return to St. Vincent and seek protection". The Board concludes, therefore, that the applicant is not a refugee or a person in need of protection.

III. Issues

[5] The applicant presents this application as raising twelve separate issues. However, essentially, the applicant submits that the Board erred by failing to properly consider the evidence, misinterpreting the definition of a Convention refugee as established in the Act, and making unfounded findings regarding the applicant's credibility. The applicant also claims to fear returning to St. Vincent because she can not be treated properly there for her Rheumatoid Arthritis. That claim was rejected by the Board, and although this conclusion has not been challenged in the written application the applicant insisted in her oral presentation to contest the Board's conclusion on this issue to the point to make it her principal argument.

[6] The issues presented by the applicant can be regrouped as follows:

(1) Did the RPD err in its assessment of the applicant's evidence?
(2) Did the RPD err when it concluded that state protection was available, by improperly assessing the documentary evidence?
(3) Did the Board err when it rejected the applicant's claim that she is a person in need of protection because she could not receive if returned to St. Vincent adequate treatment for her Rheumatoid Arthritis condition?

IV. Analysis

(1) Did the Board err in its assessment of the applicant's evidence?

[7] According to the applicant, the Board erred by making negative credibility findings and failing to accept the applicant's testimony concerning her subjective fear.

[8] However, the Board did not make any credibility findings concerning the applicant, nor did the Board conclude that the applicant did not subjectively fear returning to St. Vincent. As the Supreme Court of Canada has pointed out, a refugee claimant must demonstrate a well-founded fear of persecution, which involves a bipartite test: "(1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense" (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph. 47, [1993] S.C.J. No. 74 (QL)). In the present affair, the Board did not address the issue of subjective fear, but simply concluded that the elements of objective fear are not present, based on the ability of St. Vincent to provide protection to the applicant. The Court sees no error in the Board's finding on this issue.

(2) Did the Board err when it concluded that state protection was available, by improperly assessing the documentary evidence?

[9] The applicant submits that the Board failed to mention any of the documentary evidence cited by the applicant's counsel at the hearing before the Board, or to address any of counsel's submissions concerning the existence of state protection.

[10] As noted above, a refugee claimant must demonstrate both a subjective fear and that the fear is objectively well-founded. The state's inability to protect is crucial in addressing the latter issue (*Ward, above* at paragraph. 45). However, in the absence of a complete breakdown of the state apparatus, there is a presumption that the state is able to provide adequate protection to its citizens (*Ward, above*). "If a state is able to protect a claimant, then his fear is not, objectively speaking, well-founded" (*Rodriguez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 153 at paragraph. 22, [2005] F.C.J. No. 223 (T.D.) (QL)).

[11] The Board's conclusion concerning the existence of state protection is to be reviewed on the standard of reasonableness (*Song v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 467 (T.D.); *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232 (T.D.) (QL)). However, judicial intervention is not warranted simply because the Board did not refer to each piece of evidence before it, so long as it demonstrates an understanding of the issues involved (*Manorath v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 134 (T.D.) (QL); *Cupid v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 176, [2007] F.C.J. No. 244 (T.D.) (QL); *Gavoci v. Canada (Minister of Citizenship and*

Immigration), 2005 FC 207, [2005] F.C.J. No. 249 (T.D.) (QL)). According to the Supreme Court of Canada, in *Dunsmuir* v. *New Brunswick*, 2008 SCC 9:

> In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. (at paragraph 47)

[12] In this case, the documentary evidence indicates that, although violence against women remains a problem in St. Vincent, the government and the police take the problem seriously and are making efforts to respond to it (United States Department of State, *Country Reports on Human Rights Practices for 2006*, March 6, 2007, Tribunal Record, page 50). This was specifically recognized by the Board, which took account of both the negative and positive aspects indicated in the documentary evidence.

[13] Although the Board referred to documentary evidence concerning domestic violence, rather than gender-based violence more generally, this was the focus of the evidence presented by counsel for the applicant at the hearing before the Board, and the applicant has not argued that the government of St. Vincent has a different response to gender-based violence. The applicant has not pointed to any documentary evidence in the Tribunal Record indicating that government efforts to respond to gender-based violence were not effective, nor was this Court able to find any.

[14] The applicant's fear results from the eventual release of her rapist from jail. But when applicant reported her rape to the police of St. Vincent, her rapist was arrested, convicted and sent to jail for 15 years. Therefore the police and the St. Vincent authorities made sure her rapist would be

punished and kept at distance from the applicant. There is no proof that the police would not protect the applicant once again once her rapist is released from jail. The applicant did not even report the threat allegedly received to the effect that she should expect him to look for her after his release. Before alleging fear that she would not receive protection, one would at least expect that the applicant reports her rapist's threat to the police and request its protection. Having received from the police's protection after her rape, there is no reason to believe that the applicant would not receive the same protection against the threat of her rapist to go after her once released from jail? The applicant admittedly did not even report this threat to the police. Maybe she should start there before looking for protection in Canada?

[15] For these reasons the Court finds the Board's conclusion on this issue more than reasonable and surely within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

(3) Did the Board err when it rejected the applicant's claim that she is a person in need of protection because she could not receive if returned to St. Vincent adequate treatment for her Rheumatoid Arthritis condition?

[16] The applicant's oral argument that the Board erred on this issue is ill founded in fact and in law for the following reasons.

[17] The Board and the respondents do not contest the fact that the applicant is in need of adequate treatment for her Rheumatoid Arthritis condition. However, the proof offered by the

applicant does not contest the availability and adequacy of treatment for her condition in St. Vincent, it contests only the “poor management or limited access to medical care” in St. Vincent.

[18] It may be true that the applicant’s condition has remained untreated for more than 10 years in St. Vincent, but no proof was offered to show that the applicant made any serious effort during that period to receive treatment, and no proof also was offered by her to show that the treatment was unavailable in her country. In addition, at her hearing before the Board in September 2007, the applicant admitted that her condition then still remained untreated since her arrival in Canada. She submits now that the treatment of her condition in Canada is more available and more accessible, and this is probably true. But still, after more than 5 years in Canada the applicant remains untreated, and she has shown little effort to received treatment since. Therefore and considering only the facts, her argument appears to be a very poor excuse to remain in Canada, since she has not shown yet a real desire to receive treatment here.

[19] In law, her argument on this issue is even worse and does not stand, and this is precisely due to the wording of section 97(1) (b) (iv) of the *Law* she relies on and which reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally (a)…	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i)… (ii)… (iii) …	(i)… (ii)… (iii)…
(iv) the risk is not caused by the inability of that country to provide adequate health or medical car	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[20] Properly understood, this section of the Law does not support the applicant's argument on this issue, since "a risk to life under section 97(1) does not include having to assess whether there is appropriate health and medical care available in the country in question" (*Singh v. Canada (Minister of Citizenship and Immigration*, [2004] 3 F.C.R. 323).

[21] Therefore, the Court will dismiss this application for judicial review.

[22] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the applications.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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