Federal Court  Cour fédérale

Date: 20090731

Docket: IMM-155-09

Citation: 2009 FC 772

Montréal, Quebec, July 31, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

GILDA OUSTRID A DEAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant is seeking, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), judicial review of a decision dated December 4, 2008, by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, finding that the applicant was neither a ‘‘refugee’’ nor a ‘‘person in need of protection’’, and consequently denying her claim for refugee protection on the principal ground that the applicant had failed to show that the protection available in her country of origin was inadequate.

II. Facts

[2] A citizen of Saint Vincent and the Grenadines, the applicant alleges having been raped and sexually abused by her stepfather three times between December 1996 and January 1997.

[3] She claims to have tried, without success, to tell her mother about the abuse she had suffered at the hands of her stepfather, before finally, in May 1997, confiding to a nun who was principal of the school she attended.

[4] The applicant stated that she went back to live with her mother in December 2002. After having been beaten by her stepfather, and on the advice of her mother, the applicant left to live with a friend in a neighbouring village. The applicant was apparently threatened five or six times by her stepfather, after requesting the help of the pastor of her church to try and resolve the family's problems.

[5] After having worked at several jobs and still fearing her stepfather, the applicant left her country on September 11, 2004, to join a friend's sister in Canada. She applied for refugee protection in Canada on November 29, 2006.

III. Impugned decision

[6] Given the presumption that the state is able to protect its citizens, the RPD found that the applicant ''ha[d] not provided clear and convincing evidence, based on a preponderance of

probabilities, of the inadequacy of state protection, and that, consequently, she is not a Convention refugee or a person in need of protection.''

IV. Issue

[7] Was the RPD's decision concerning state protection unreasonable? Was its decision based on erroneous findings of law or on findings of fact made in a perverse or capricious manner without regard for the evidence before it?

V. Analysis

Standard of judicial review

[8] The panel's decision is based on the presumed ability of the government of Saint Vincent and the Grenadines to provide the applicant with the necessary protection; according to the RPD, she failed to provide sufficiently clear and convincing evidence that would rebut this.

[9] This proceeding raises questions of mixed fact and law; therefore, the applicable standard is reasonableness, as defined in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir).* The RPD has expertise in the area within its jurisdiction; accordingly, the Court must show deference with regard to its decision and avoid intervening without just cause (*Dunsmuir*, above; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12).

[10] Given this standard, the Court, in the context of this application for judicial review, cannot intervene in the manner sought by the applicant: in effect, Ms. Dean is asking this Court to re-examine the evidence and thus accept her argument. The Court must limit itself to verifying whether the impugned decision appears reasonable, with regard to the facts revealed by the evidence and the pertinent law.

The RPD's reasons concerning state protection were not unreasonable

[11] The applicant contends that the RPD committed a reviewable error in its assessment of the situation with regard to protection provided by the state. She noted that the RPD should have considered the reasons why she had not sought the protection of her country.

[12] The applicant stated that she had never filed a complaint with the authorities in her country because of the agreement not to do so between her parents and her school's principal; furthermore, having been threatened with death by her stepfather, she feared how he would react and did not want to endanger her mother, especially since, according to her, filing a complaint would yield no results.

[13] The RPD noted that, for the applicant, ''in light of the documentary evidence, it would [have] be[en] objectively reasonable … to ask for state protection'' and ''that the reasons given … for not filing a complaint [did] not constitute clear and convincing evidence of the inadequacy of state protection. Rather, they demonstrate[d] a subjective reticence to file a complaint''.

[14] At the time these incidents occurred, the applicant was thirteen years old. Her stepfather had threatened her with death if she reported him; and, when she found the courage to tell her mother about it, her mother did not believe her and did not help her. The only person in a position to help her, namely, her school principal, did not encourage her to file a complaint; on the contrary, she had promised the applicant's parents that she would keep quiet in exchange for her agreeing to have de facto guardianship of the applicant.

[15] In such a context, and considering the applicant's young age when the incidents of 1996-1997 occurred, it might have been unreasonable to conclude, at the time, that she should have filed a complaint against her stepfather, especially since he had threatened her with death and that her mother still lived with him and still suffered his abuse.

[16] However, the applicant has grown up since then. When she finished her studies in 2002 and returned to live with her mother and stepfather, she was no longer the young girl she once had been, but was now a young woman capable of making her own decisions. Thus, following new advances and threats from her stepfather, and on her mother's advice, she decided to move in with a friend, where she would live until she left for Canada in September 2004.

[17] In spite of the allegations of threats and fear for the safety of her mother, brother and sister because of the influence her stepfather purportedly enjoyed as a producer and dealer of drugs, the applicant never filed a complaint with the authorities before leaving Saint Vincent and the Grenadines to come to Canada to claim refugee protection.

[18] The granting of international protection must only be an ancillary measure of last resort. Consequently, the RPD was entitled to presume that a foreign state was capable of protecting its citizens. The burden was on the applicant to establish, through clear and convincing evidence, her country of origin's inability to provide protection for her. Except in situations where the state apparatus has broken down completely, it should be presumed that it is capable of protecting its citizens (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 725-726; *Mendivil v. Canada (Secretary of State)* (1994), 167 N.R. 91, 95 (F.C.A.); *Roble v. Minister of Employment and Immigration* (1994), 169 N.R. 125, 130 (F.C.A.); *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (F.C.A.) (QL), at paragraphs 6-7).

[19] The RPD weighed the documentary evidence before concluding that the protection provided by the government of Saint Vincent and the Grenadines was adequate. It also examined the reasons why the applicant never filed a complaint with the police regarding the assaults by her stepfather, but did not find them to be satisfactory. The RPD found that the applicant's explanations did not constitute clear and convincing evidence of inadequate state protection.

[20] When an applicant comes from a democratic state such as Saint Vincent and the Grenadines, it is even more incumbent upon them to seek the protection of that state first. Accordingly, the applicant must show that he or she exhausted all reasonable courses of action available in his or her country to obtain the necessary protection of the national authorities, before contemplating seeking protection from a foreign country (*Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376 (F.C.A.) (QL)). While the applicant may very well cite incidents which

occurred during her youth to justify not having sought the protection of her country, nothing, however, prevented her from claiming such protection when the incidents occurred after she had reached adulthood, before she chose to leave for Canada.

[21] In this case, the applicant did not establish the ‘‘complete breakdown of the state apparatus’’ in her country of origin. As the RPD rightly noted, the applicant demonstrated only a subjective reticence to file a complaint but did not show any denial or lack of state protection.

[22] Moreover, the RPD relied on objective documentary evidence indicating that the country has an independent judiciary that enforces the law in cases of spousal violence and violence against minors. It is not the Court’s place to substitute its opinion for that of the RPD, a specialized administrative tribunal with all the necessary expertise to analyze the evidence and make the appropriate findings.

[23] Under the circumstances, it was not unreasonable for the RPD to find that the applicant had failed to establish, even though it was incumbent on her to do so, that she would not be protected by Saint Vincent and the Grenadines if she were to return there. The exception under subsection 108(4) of the Act that she refers to in her memorandum does not bolster her argument, as the applicant could have claimed and can still claim the protection of her country.

[24] The fact that the applicant may have difficulty finding a place to live cannot justify intervention by the Court. In fact, the applicant has several brothers and sisters still living in Saint

Vincent and the Grenadines, not to mention her friends and family who could help her in the event she were to return.

[25] The RPD was entitled to assign greater weight to the documentary evidence to which it referred in its decision than to the applicant's less objective testimony and to state whether the applicant's testimony was satisfactory (*Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.) (QL); *Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.) (QL)).

VI. Conclusion

[26] The applicant has therefore not succeeded in persuading the Court that the RPD based its decision on erroneous findings of law or on findings of fact made in a perverse or capricious manner, without regard for the evidence submitted by the applicant. The RPD's decision is entirely reasonable, both in terms of the facts and law.

[27] No serious question of general importance was proposed or merits being proposed. Accordingly, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT DISMISSES the application for judicial review**.**

''Maurice E. Lagacé''
Deputy Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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