Federal Court  Cour fédérale

Date: 20101108

Docket: IMM-675-10

Citation: 2010 FC 1077

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ROSE HERVIE CYRIAQUE
YVES-ANDREE LORY CYRIAQUE
(A.K.A YVES-ANDREE CRIAQUE)
AND ROSERLIE ANGIE CYRIAQUE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division (the Board), dated January 14, 2010, where Rose Hervie Cyriaque (the applicant), Yves-Andree Lory Cyriaque, and Roserlie Angie Cyriaque (the minor applicants) were found not to be Convention refugees or persons in need of protection.

[2] The application for judicial review shall be dismissed for the following reasons.

[3] The applicant is a 30-year old citizen of Haiti and is the mother of the two minor applicants who are both citizens of the United States (the US).

[4] In November 2001, she moved to the U S. While in the U.S., the principal applicant did not file a claim for asylum. She alleges that Lavalas robbed her home in Haiti after she left and beat her brother Marc. She contends that the Lavalas partisans were after her documents and notes from the Lavalas meetings she had attended over the years.

[5] On November 12, 2007, the applicants entered Canada and made claims for protection. However, at the hearing, counsel for the minor applicants withdrew their claim for refugee protection.

[6] The Board found that the determining factor was that the applicant did not demonstrate that she faced persecution in Haiti. The Board found that her stated fear was from criminal elements and as such, she is subject to the same risks faced generally by other individuals in or from Haiti.

[7] In coming to its decision, the Board considered the Chairperson's Guideline 4 (Women Refugee Claimants Fearing Gender-Related Persecution).

[8] The Board found that on a balance of probabilities, there was no evidence that the applicant's subjective fear was based on her gender. Furthermore, she did not give any reasons for why the Lavalas partisans would still be interested in her if they were indeed the cause of the incidents attributed to them.

[9] The applicants rely on *Dezameau v. Canada (Citizenship and Immigration)*, 2010 FC 559, where Justice Pinard states at paras 19 and 20 that:

> 19 Since the applicant claimed that she feared that as a woman she would be targeted for rape in Haiti, the Board is expected to have considered the evidence with respect to her membership in a particular social group, namely women in Haiti or more specifically, Haitian women returning to Haiti from abroad. Failure to evaluate the evidence in this way constitutes a reviewable error: *Bastien v. Minister of Citizenship and Immigration*, 2008 FC 982. In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at paragraph 70, the Supreme Court of Canada explicitly recognized that gender can provide the basis for a "social group".
>
> 20 In *Bastien, supra*, the Court overturned a decision of the Board because the member failed to consider the applicant's claim in light of her membership in a particular group, namely, "her status as a Haitian woman and as an individual returning to Haiti from abroad". The Board had ended the inquiry after determining that the applicant's allegation of past persecution was not credible. The Court analyzed the Board's reasons as follows:
>
> > [11] Given that there is no dispute about the fact that Ms. Bastien is indeed a Haitian woman, or that she would in fact be returning from abroad if she went back to Haiti, the question for the Board at this juncture in its analysis was not whether her story of past persecution was credible.
> >
> > [12] Rather, the questions that the Board ought to have addressed in relation to this aspect of Ms. Bastien's claim included determining whether there was documentary or other evidence before it as to the

> generalized persecution of women in Haiti. In addition, the Board ought to have considered whether women in Haiti generally, as well as those returning to Haiti from abroad, constituted particular social groups.

[10] The Board's consideration of evidence is a matter of fact which attracts a deferential standard (*Villicana v. Canada (Citizenship and Immigration)*, 2009 FC 1205, 357 F.T.R. 139 at paras 35 to 39). When the question is whether the oral and documentary evidence points to particularized or generalized risk, then the standard of review is reasonableness, since this is a question of mixed fact and law (*De Parada v. Canada (Citizenship and Immigration)*, 2009 FC 845, [2009] F.C.J. No. 1021 (QL) at para. 19). Accordingly, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

[11] The applicant here is claiming refugee status based on two different grounds: first, she alleges that she fears persecution based on her political beliefs or perceived beliefs. Second, she alleges that she fears persecution as a part of the social group of Haitian woman, or as a Haitian woman coming from abroad.

[12] With regards to her political beliefs, I find that it was reasonable for the Board to conclude that based on the evidence, the harm feared is not a result of political opinion, but rather, that it was criminal in nature. The Board's reasons being, the gap in time (9 years) between the first incident, and the second string of incidents, which were more harassment than persecution, as well as the fact

that there was no evidence that the local Lavalas would still be interested in her after the passage of time.

[13] Regarding the applicant's fear as a Haitian woman or as a Haitian woman returning to Haiti, the Board referred to *Cius v. Canada (Citizenship and Immigration)*, 2008 FC 1, and *Prophète v. Canada (Citizenship and Immigration)*, 2008 FC 331, 70 Imm. L.R. (3d) 128 and concluded in the present case there was no evidence that her subjective fear was based on her gender. It was of criminal gangs that she believed may attack her.

[14] After having read the transcript, the Court is of the opinion that such a conclusion was open to the Board.

[15] As a result, the Court's intervention is not warranted.

[16] The applicant proposed the following question for certification:

> Can an assumption that rape is not a crime predicated on gender and reflecting gender imbalances be applied in an evidentiary vacuum, without regard to evidence demonstrating the contrary with respect to conditions in a refugee claimant's country of nationality?

[17] The respondent opposes such a question because the claim in the present case is not about rape but about political opinion. I agree.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-675-10
STYLE OF CAUSE:	ROSE HERVIE CYRIAQUE YVES-ANDREE LORY CYRIAQUE (A.K.A. YVES-ANDREE CRIAQUE) AND ROSERLIE ANGIE CYRIAQUE AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 2, 2010
REASONS FOR JUDGMENT:	BEAUDRY J.
DATED:	November 8, 2010

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