

Federal Court



Cour fédérale

Date: 20110517

Docket: IMM-5801-10

Citation: 2011 FC 559

Ottawa, Ontario, May 17, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**SEWCHAND PRASAD
HEMWANTIE PRASHAD
KEITH PRASAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2008, Mr. Sewchand Prasad, along with his wife and son, applied for refugee protection in Canada after leaving their home in Guyana. They claimed to be at risk from criminals who had beaten and robbed Mr. Prasad in 2007.

[2] In 2010, a panel of the Immigration and Refugee Board found the family not to be in need of protection given the availability of state protection in Guyana. The applicants maintain that the Board erred by failing to make a finding about the credibility of their claim of being afraid of further attacks. They also submit that the Board's analysis of state protection was faulty. They ask me to overturn the Board's decision and order a new hearing.

[3] I cannot find any basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review. In my view, it was unnecessary for the Board to make findings about the applicants' subjective fear. In addition, its finding that state protection was available was not unreasonable.

[4] The issues are:

1. Did the Board err by not assessing the applicants' credibility?
2. Was the Board's conclusion on state protection unreasonable?

II. The Board's Decision

[5] The Board recognized the basis on which the applicants made their claim for protection – Mr. Prasad had been robbed and beaten in 2007. The attackers knew where Mr. Prasad lived, and he feared further attacks.

[6] The Board went on to consider whether state protection was available in Guyana, noting first that Mr. Prasad had not gone to the police after the attack. He explained that the assailants were wearing masks, so there was nothing the police could do. Further, some of his neighbours had sought, but had not received, police protection in similar circumstances.

[7] The evidence relating to state protection referred to by the Board included newspaper articles describing other crimes in Guyana. The Board noted that the articles also described the response of police to those events, including investigations and follow-up. The applicants themselves testified that they were aware that the police did respond to crimes. The documentary evidence showed that crime is a serious problem in Guyana, but the state has deployed considerable resources to respond to the situation.

[8] In conclusion, the Board found that the applicants, having not gone to the police, had not shown that state protection was unavailable to them.

[9] The Board also went on to find that the risk faced by the applicants was a generalized one, not personal to them. Accordingly, they did not fall within s 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex for statutory provisions cited.).

III. Issue One - Did the Board err by not assessing the applicants' credibility?

[10] The applicants argue that the Board was obliged to make a definitive finding about the nature of the risk they faced before addressing the issue of state protection. They rely on two

decisions of Justice Robert Mainville: *Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 503, and *Jimenez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 727. In

Jimenez, Justice Mainville stated:

A decision with regard to the subjective fear of persecution, which includes an analysis of the refugee claimant's credibility and the plausibility of his or her account, must be made by the Immigration and Refugee Board to establish an appropriate framework for an analysis, where necessary, of the availability of state protection that takes into account the individual situation of the refugee claimant in question. (Para 4.)

[11] In *Flores*, Justice Mainville noted that s 97 of IRPA, like s 96, imports both subjective and objective components (para 26), but the issue of state protection is only relevant to the objective component (para 27). Based on these conclusions, the applicants argue that the Board erred by addressing state protection without analyzing their credibility on the issue of their subjective fear of harm even though their claim was based solely on s 97.

[12] In my view, Justice Mainville's observation about s 97 was not essential to his conclusion. In *Flores*, both s 96 and s 97 were in issue. Justice Mainville's principal assertion that objective factors should be addressed after a claimant's subjective fear has been identified was clearly relevant to s 96 and led him to conclude that the Board had erred in that case by dealing with state protection without identifying the risk to which the state was called upon to respond. The proper approach in a case where, as here, only s 97 is in play, was not before him.

[13] Given that the Federal Court of Appeal has clearly found that s 97 contains only an objective component (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 33), I cannot conclude that the Board erred by not making a definitive finding about the credibility of the

applicants' subjective fear. At the same time, I agree with Justice Mainville that state protection should not be analyzed in a vacuum. The nature of the applicant's fear should be at least identified and the capacity and the will of the state to respond to the applicant's circumstances should be then analyzed.

[14] Here, I am satisfied that the Board had identified the nature of the risk the applicants feared and went on to consider the question whether state protection was available to them. I see no error in its approach.

IV. Issue Two - Was the Board's conclusion on state protection unreasonable?

[15] The applicants argue that the Board failed to consider Mr. Prasad's reasons for not seeking state protection: He was not able to identify his assailants and knew that others in his circumstances had not received state protection.

[16] In my view, the Board did take account of Mr. Prasad's testimony but concluded that his evidence did not rebut the presumption of state protection, given the existence of documentary evidence showing the capacity and will of the state of Guyana to respond to criminal acts. A person's subjective belief that the state is unable to protect him or her is not sufficient.

[17] Accordingly, I cannot conclude that the Board's analysis of state protection was unreasonable.

V. Conclusion and Disposition

[18] In my view, the Board's approach and its conclusions were not unreasonable in light of the evidence before it. Therefore, I must dismiss this application for judicial review. No question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Convention refugee

Définition de « réfugié »

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

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

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 :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(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) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the

(ii) elle y est exposée en tout lieu de ce

person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Exclusion — Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Exclusion par application de la Convention sur les réfugiés

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5801-10

STYLE OF CAUSE: SEWCHAND PRASAD, ET AL
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 5, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 17, 2011

APPEARANCES:

Joseph S. Farkas FOR THE APPLICANTS

Kareena R. Wilding FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joseph S. Farkas FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario