

Federal Court



Cour fédérale

Date: 20110922

Docket: IMM-1851-11

Citation: 2011 FC 1086

Ottawa, Ontario, September 22, 2011

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

**CATHERINE SEVELINE JAMES
KYLIE CHIANNA PHILLIPS
DAVELINE KENYA BRUCE
KENT JUSTIN BRUCE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Principal Applicant, Ms. James, is a citizen of Saint Vincent and the Grenadines (“Saint Vincent”) who fears physical, sexual and psychological abuse at the hands of her stepfather, Peter Horne, who began to abuse her in approximately 1987, when she was 11 years old. The remaining Applicants are Ms. James’ children.

[2] Ms. James submits that the Refugee Protection Division of the Immigration and Refugee Board erred in various ways in the course of finding that:

- i. She was not credible with respect to her allegation that she would face no other option than to live with Mr. Horne should she and her children return to Saint Vincent.
- ii. She had not rebutted the presumption that she would likely be able to avail herself of adequate state protection should she return to Saint Vincent.

[3] For the reasons that follow, this application will be dismissed.

I. Background

[4] Mr. Horne became Ms. James' stepfather when she was 11 years old. From virtually the very beginning of his relationship with her family, he was violent with her, her mother and her five siblings. Her mother, who took drugs and drank heavily, was also abusive towards her.

[5] In 1991, when Ms. James was only 15 years old, she was raped by Mr. Horne for the first time. Approximately two years later, she left the family home and began a relationship with a man named Clyde. In 1995, after giving birth to a son, Clyde asked her to leave the house and she returned to live with her mother. Her son remained with Clyde's mother.

[6] Shortly after she returned to live with her mother, Mr. Horne, who had been working abroad for approximately two years, also returned to the family home. For the next four years, she allegedly was sexually abused and harassed on a daily basis by Mr. Horne.

[7] In 1999, Ms. James went to live in the United States, where she met a man named Justin Harvey. He fathered the minor Applicants Daveline Bruce and Kent Bruce. Her relationship with Mr. Harvey ended in approximately 2005, after which time Mr. Harvey refused to provide any support to Ms. James and their children. Ms. James then returned to live with her mother and stepfather in Saint Vincent, after allegedly determining that she had nowhere else to go.

[8] Upon returning to the family home, Mr. Horne allegedly told Ms. James that as long as she was under his roof he could do with her whatever he wanted. Her mother apparently was unsupportive to her, because she depended entirely on Mr. Horne for food, alcohol and drugs.

[9] Soon after returning to the family home, Ms. James became pregnant by Cedric Phillips. While pregnant, she allegedly was raped by Mr. Horne in March 2006. Soon thereafter, she went to live with Mr. Phillips, who supported her and the minor Applicant Kylie Phillips, until he left and stopped supporting them in November 2007.

[10] Ms. James then tried to support herself and her children. However, she apparently was not able to do so. She therefore sent her two American-born children to stay with a friend in the United States in October 2008, and sent her youngest daughter to stay with a friend in Saint Vincent. After unsuccessfully attempting to come to Canada in November 2008, she returned to Saint Vincent.

[11] She came to Canada on February 28, 2009 and claimed refugee protection in September of that year. The minor Applicants then joined her here between June 2010 and September 2010. It appears that her mother died in May 2009.

II. The Decision under Review

[12] The Board identified state protection as being the determinative issue and ultimately found that Ms. James had not demonstrated that she would be unable to avail herself of adequate state protection if she were to return to Saint Vincent and require such protection.

[13] In the course of reaching that conclusion, the Board accepted that Ms. James had been abused by her stepfather in the past and would likely continue in the future should she return to his home. However, the Board also determined that Ms. James was not credible when she claimed that she would have no other option but to live with her stepfather should she return to Saint Vincent. The Board proceeded to state that “the fact that she may have difficulty finding a place to live in Saint Vincent and support herself cannot justify a claim for refugee protection.”

[14] Based on the foregoing determinations, the Board rejected Ms. James’ application. Given that Kylie Phillips’ application was dependent on Ms. James’ application, it was also rejected. In addition, the Board rejected the applications of the remaining minor Applicants after noting that they are citizens of the United States and that no evidence had been presented in support of their claims.

III. The Standard of Review

[15] The conclusions reached by the Board with respect to the determinative issues of the adequacy of state protection and the credibility of the Principal Applicant are reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paras 51-55; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 46). In short, the Board’s decision will stand if it falls “within the range of possible, acceptable outcomes which are defensible in respect of the facts and law” and is sufficiently justified, transparent and intelligible (*Dunsmuir*, at para 47).

IV. Analysis

A. Did the Board err in rejecting the credibility of Ms. James' claim that she would have no other option than to live with Mr. Horne should she return to Saint Vincent?

[16] Ms. James submits that the Board unreasonably rejected this aspect of her claim after making arbitrary and erroneous findings of fact that were not supported by the evidence which she provided. Specifically, Ms. James submits that:

- i. In finding that it would be possible for her to place an advertisement in a local newspaper to share living accommodations with a similarly situated woman, the Board merely speculated and ignored her testimony that this “is not done” in Saint Vincent, because people there prefer to live alone.
- ii. In suggesting that she could benefit from the assistance of friends, as she had done in the past, the Board speculated once again.
- iii. In suggesting that she could count on the support of her brothers, the Board ignored her testimony that her brothers were not in any position to assist her and her children, because they themselves depended on the assistance of friends and lived on the street since being told to leave the family home by Mr. Horne.
- iv. In finding that she had other living options available to her in Saint Vincent, the Board (a) ignored her testimony that she had to separate from her children in late 2008 to avoid having to return to live with Mr. Horne, and (b) ignored documentary

evidence that abused women in Saint Vincent fail to report their abuse to the authorities or to pursue their reported complaints, because they are economically dependent on their abusers and thus unable to leave them.

- v. In reaching its findings, the Board failed to properly follow and apply its Guidelines, entitled *Women Refugee Claimants Fearing Gender-Related Persecution* (the “Guidelines”), particularly the statement in those guidelines that consideration should be given to an applicant’s economic situation, in assessing her past behaviour and future options.

[17] I agree that the Board seems to have merely speculated when it rejected Ms. James’ testimony that sharing an apartment is not something that is typically done by women in Saint Vincent.

[18] Nevertheless, I am satisfied that, on the particular facts of this case, it was reasonably open to the Board to reject the credibility of Ms. James’ claim that, if required to return to Saint Vincent, she would be forced to return to live with Mr. Horne for economic reasons.

[19] Contrary to Ms. James’ submissions, the Board did not suggest that Ms. James would be able to count on the assistance of her friends or her brothers. The Board simply noted that she had received the help of her friends in the past and that she also has five siblings. After specifically acknowledging her testimony that her siblings were not in a position to help her, the Board appropriately observed that they had all left the family home and were able to “manage one way or another.” The Board also specifically acknowledged Ms. James’ claims that “no one in Saint

Vincent would want to help her now considering that she has three small children to feed” and that “the people who helped her in the past in Saint Vincent are no longer there to help her.”

[20] Similarly, the Board did in fact note, after making its adverse credibility finding, that Ms. James “lived alone while she tried to support her children through the job she had selling baked goods.” In recognizing this point, I am satisfied that the Board did in fact consider Ms. James’ evidence that she was not able to support her children between October 2008 and her departure to Canada, in February 2009.

[21] As to the documentary evidence regarding the reluctance of abused women in Saint Vincent to report their abuse to the authorities or to pursue their reports once made, this was also specifically acknowledged by the Board at paragraph 29 of its decision, in its assessment of the issue of state protection. I am satisfied that it was not unreasonable for the Board to discuss this evidence in assessing state protection, rather than in assessing the credibility of Ms. James’ claim that she would have no alternative but to live with Mr. Horne, should she return to Saint Vincent.

[22] Turning to the Guidelines, contrary to Ms. James’ submissions, the Board did not in fact ignore Ms. James’ economic circumstances in assessing the options that would likely be open to her should she return to Saint Vincent. The Board specifically noted that she “has a limited education and three small children to support and that her medical report ... indicates that she is vulnerable to stress.” However, the Board proceeded to note that Ms. James testified that she earned approximately \$80 per day when she sold baked goods in Saint Vincent, and that, rental accommodations are approximately \$400 per month in Saint Vincent. Although the Board did not specifically perform the arithmetic, this suggests that Ms. James would be able to pay for her accommodations with only approximately 25% of her earnings, assuming a five day work-week.

[23] The Board also noted that Ms. James managed to live away from Mr. Horne from March 2006 until she came to Canada in February 2009, and that her siblings also have been managing to live apart from Mr. Horne.

[24] In addition, the Board found that, “while claiming not to have the money to make ends meet, the claimant was searching instead continually for ways to leave the country.” In this regard, the Board noted that she had traveled to Barbados to renew her daughter’s passport in January 2008 and had traveled to Barbados again in October 2008 to apply for a US visa for herself.

[25] Given all the foregoing, I am satisfied that it was not unreasonable for the Board to reject Ms. James’ claim that she would have no other option but to live with Mr. Horne should she be required to return to Saint Vincent. In my view, the Board’s conclusion on this point was well “within the range of possible, acceptable outcomes which are defensible in respect of the facts and law” and was sufficiently justified, transparent and intelligible (*Dunsmuir*, above at para 47).

[26] The Board’s assessment of the various particular aspects of Ms. James’ situation distinguishes the Board’s decision from the cases relied upon by Ms. James. For example, in *Daniel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 589, at para 13, it was determined that the Board had not performed a similarly contextualized assessment of the applicant’s circumstances, as contemplated by the Guidelines. Likewise, in *Isse v Canada (Minister of Citizenship and Immigration)*, 155 FTR 298, it was held that the Board had not cited any evidence in support of its conclusions, and had therefore relied upon its own speculation. The same is true with respect to several of the other cases to which Ms. James referred in her written submissions.

[27] I entirely concur with the Board's observation that the fact that a person may have difficulty finding a place to live in his or her country of origin cannot justify a claim for refugee protection. People of adult age around the world who are competent to support themselves, including those in much more destitute circumstances than Ms. James, typically are able to find places to live, even though it may be difficult for them to do so. While some of those people may have very few options, the claim that they only have one such option to exercise of their free volition should be recognized for what it is – a very extraordinary claim that is inconsistent with common experience. This is especially the case when such an option will involve living with a very abusive person from whom a claimant managed to live apart prior to coming to Canada. It will be reasonably open to the Board to reject such claims without substantially stronger supporting evidence than was provided by Ms. James.

[28] The Board's rejection of the credibility of Ms. James' claim that she would have no other option but to live with Mr. Horne should she return to Saint Vincent provided a sufficient basis upon which to reject her claim, and the dependent claims of the minor Applicants, particularly given Ms. James' testimony that Mr. Horne did not physically harm her in any way after she left his house in March 2006.

B. Did the Board err in concluding that Ms. James would likely be able to avail herself of adequate state protection?

[29] Given my conclusion above, it is not necessary to address Ms. James' submissions with respect to the Board's assessment of whether she would likely be able to avail herself of adequate state protection if required to return to Saint Vincent.

[30] That said, I am satisfied that it was reasonably open to the Board to find that her reasons for failing to seek state protection after she left Mr. Horne's home and continued to be harassed by him were not satisfactory. This conclusion was not unreasonable, particularly given that:

- i. Mr. Horne had "been arrested several times for cursing at police officers and for threatening one of his co-workers and some villagers";
- ii. Ms. James had only previously made one other report, as an adult, to the police against Mr. Horne, but was unable to produce a copy of that report at the hearing; and
- iii. the documentary evidence relied upon by the Board stated that victims can obtain copies of complaints by applying to the Commissioner of police in writing, yet Ms. James testified that she never personally sought to obtain a copy of the report, which she allegedly made after she was assaulted by Mr. Horne in 2006, only two years prior to the publication date of the evidence cited by the Board.

[31] Ms. James' failure to make a greater effort to avail herself of state protection in Saint Vincent was inconsistent with her obligation to take all reasonable available steps to seek domestic state protection prior to seeking international refugee protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, at 724; *Santiago v Canada (Minister of Citizenship and Immigration)*, 2008 FC 247, at para 23; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 66, at paras 11 to 13; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, at paras 9-10; *Peters v Canada (Minister of Citizenship and*

Immigration), 2011 FC 214, at para 26; *Dean v Canada (Minister of Citizenship and Immigration)*, 2009 FC 772, at paras 17-23).

[32] The burden was on Ms. James to adduce clear and convincing evidence to satisfy the Board, on a balance of probabilities, that adequate state protection would not likely be available to her if she were required to return to Saint Vincent (*Ward*, above, at paras 48-51; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 54; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at para 30). In this case, the Board reasonably found that Ms. James had failed to discharge that burden. Contrary to Ms. James' submissions, the Board did not ignore her explanation for why she did not make a greater effort to avail herself of state protection.

V. Conclusion

[33] The application for judicial review is dismissed. No question was proposed for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Paul S. Crampton”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1851-11

STYLE OF CAUSE: CATHERINE SEVELINE JAMES et al
v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: September 13, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Crampton J.

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