

Federal Court



Cour fédérale

Date: 20111221

Docket: IMM-3159-11

Citation: 2011 FC 1507

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, December 21, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MICHELLE PATRICIA FRANCIS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act), of a decision dated April 15, 2011, in which the Refugee Protection Division of the Immigration and Refugee Board (panel) found that the applicant was not a Convention refugee or a person in need of protection.

[2] The applicant is a citizen of Trinidad and Tobago. She left her country to escape the sexual abuse inflicted on her on several occasions by her two half-brothers.

[3] The applicant arrived in Canada in October 2000 on a visitor's visa. Because she was afraid of returning to her country, she filed an application for a visa exemption on humanitarian and compassionate grounds, which was rejected in May 2008. Shortly afterwards and on the recommendation of a social worker, she filed a refugee protection claim based on her fear of being the victim of sexual abuse by her half-brothers.

[4] The panel found that it was satisfied that the applicant was the victim of this abuse. It considered that the determinative issue was that of state protection.

[5] The panel noted that the applicant had made no effort to seek state protection, despite her level of maturity and independence. Although failure to seek state protection may be fatal to a refugee protection claim, the panel preferred examining whether adequate protection would today be available to the applicant.

[6] The panel acknowledged that there were serious problems; however, the documentary evidence shows that the authorities continue to make considerable efforts to fight violence against women, including passing legislation that would compel the police to take action when complaints are filed. In fact, these efforts have already paid off: the police underwent a reform to better manage cases of domestic violence, the number of complaints increased between 2004 and 2008, and the

courts have begun to impose stiffer sentences. In addition, non-governmental organizations have established several services to help women who are victims of violence.

[7] At the hearing, the applicant mentioned that she had to take care of her son, of Canadian nationality, who has special needs, which would require her to live in her deceased mother's home with her half-brothers. Consequently, the state would be unable to protect her. The panel found that it was implausible that the other family members who live in Trinidad and Tobago were unaware of her situation, considering that her half-sister had allowed her to live with her for several years in Canada. In any case, the applicant was able to find a job in the past in order to support herself, and there are organizations that offer shelter and services for women who are victims of violence.

[8] Did the panel err by finding that state protection was reasonably available to the applicant?

[9] In summary, although the panel acknowledged that the protection of the authorities was not perfect, it found that this protection was effective. In doing so, it relied in particular on documentary evidence that referred to specific legislation on spousal abuse, the possibility for magistrates to issue protection orders, the creation of a hotline for women who are victims of violence, and the existence of a few shelters for women, even though many of these documents discussed the problems encountered by women victims of violence and the ineffectiveness of the protection given them.

[10] The panel mainly referred to document P-7, “‘A critical analysis of the efficacy of law as a tool to achieve gender equality and to address the problem of domestic violence: the case of Trinidad and Tobago,’ by Nathalie Renée Beulah Persadie, October 2007”.

[11] However, this same document contains a number of elements that are contrary to these findings. Concerning the legislation, the document mentions that the law seems to operate better [TRANSLATION] “in theory than in practice”. As for the protection orders available for women victims of violence, it notes that “[t]his piece of paper cannot in reality stop the abuser from abusing”, finding that the institutional response is in fact very poor:

Institutionally, as mentioned previously, the response seems equally poor. State institutions, such as the Magistracy and the Police service, are poorly equipped and funded to deal with domestic violence and this is a mere reflection of TT’s lack of concern with the “softer” issues, such as protection of women. Government’s alleged commitment to dealing with domestic violence is not reflected in the amount of funding made available to state institutions to address the problem in a real way. The necessary human resource training for those who deal directly with women victims of domestic violence has been sporadic at best causing women to appear to prefer the least possible personally interactive route to protection - applying for a protection order. Insensitivity and apathy on the part of government officials have been general response, however, this would be due to their experience in dealing with family situations.

[12] Thus, the panel conducted only a partial review of the evidence, failing to mention the contradictory elements that supported the applicant’s position that state protection is ineffective, which constitutes an error that warrants the Court’s intervention (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35).

[13] In addition, regarding the possibility for the applicant to find adequate shelter, I believe that it was unreasonable for the panel to speculate without supporting evidence that the applicant’s family would agree to welcome a single mother with her son who suffers from autistic disorders requiring specific care or that she could find protection in a shelter when the evidence in the record

indicates that these shelters are subject to major restrictions concerning the age and gender of the children who can be accepted there.

[14] For these reasons, the application for judicial review is allowed and the matter is referred back for redetermination before a differently constituted panel.

ORDER

THE COURT ORDERS that the application for judicial review be allowed and the matter be referred back for redetermination before a differently constituted panel.

“Danièle Tremblay-Lamer”

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3159-11

STYLE OF CAUSE: MICHELLE PATRICIA FRANCIS
and MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 15, 2011

**REASONS FOR ORDER
AND ORDER:** TREMBLAY-LAMER J.

DATED: December 21, 2011

APPEARANCES:

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