

Federal Court



Cour fédérale

Date: 20120614

Docket: IMM-8657-11

Citation: 2012 FC 736

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 14, 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Arlene Glendy GREAVES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by Anna Brychcy, a member of the Refugee Protection Division of the Immigration and Refugee Board (the panel) submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act). The panel rejected the claim for refugee protection of Arlene Glendy Greaves (the applicant), finding that she is not a refugee or a person in need of protection under the Act.

[2] The applicant is a citizen of St. Vincent and the Grenadines. She left her country on January 23, 2010, to come to Canada and made this claim for refugee protection on February 23, 2010. She claims to fear for her life as a result of the abuse that she experienced in Saint-Vincent at the hands of her former spouse, Cleophas Lorraine.

[3] In its decision dated October 21 2011, the panel accepted the applicant's story, finding it credible. The panel also noted that it took into account the Guideline – Women Refugee Claimants Fearing Gender-Related Persecution (the Guideline). However, the determinative issue was that of the availability of state protection in Saint-Vincent. The panel determined that the applicant had not rebutted the presumption of state protection because she had not reported the majority of the incidents of abuse, that she had withdrawn her complaint and that she had not waited for the Court's decision before leaving for Canada.

[4] In my view, the issues may be stated as follows:

1. Did the panel err in failing to consider the Guideline – Women Refugee Claimants Fearing Gender-Related Persecution?
2. Did the panel err in finding that state protection was available in Saint-Vincent, basing its finding on erroneous findings of fact that it made arbitrarily without regard to all the evidence?

[5] The standard of review applicable in this case is reasonableness. The determination of state protection by the panel is a question of mixed fact and law (*Myle v Minister of Citizenship and Immigration*, 2006 FC 871, at para 12 (*Myle*); *Henry v Minister of Citizenship and Immigration*, 2006 FC 1060, at para 20; *Song v Minister of Citizenship and Immigration*, 2008 FC 467, at para 6 (*Song*); *Campos v Minister of Citizenship and Immigration*, 2010 FC 842, at para 23 (*Campos*)) and

the assessment of the evidence is entirely within the purview of the panel (*Akhter v Minister of Citizenship and Immigration*, 2006 FC 914, at para 22). This Court must therefore determine whether the panel's decision and findings are justified, transparent and intelligible and 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 SCR 190, at para 47).

* * * * *

1. Did the panel err in failing to consider the Guideline – Women Refugee Claimants Fearing Gender-Related Persecution?

[6] The applicant claims that the panel did not take into account the Guideline, neglecting to specify which elements of the Guideline it relied on.

[7] I am of the view that, although the panel is not bound by the Guideline (*Ayub v Minister of Citizenship and Immigration*, 2004 FC 1411, at para 19), it did not fail to consider it. First, the panel states that explicitly at the beginning of its decision. Further, the panel found that the applicant was credible, trusting her story. This situation is clearly different from that found in *Myle*, above, to which the applicant referred. The submissions on the applicability of the Guideline in this decision referred to the knowledge, understanding and sensitivity required by the panel to assess the credibility of a woman claimant who is a victim of abuse (*Myle* at para 31). These submissions look rather at the assessment of the applicant's testimony, which is not at issue in this case. In addition, it is important to note that each case is a case unto itself (*Myle* at para 27).

2. Did the panel err in finding that state protection was available in Saint-Vincent, basing its finding on erroneous findings of fact that it made arbitrarily without regard to all the evidence?

[8] The parties agree on the law regarding state protection, the presumption of state protection and the burden placed on the applicant. However, the applicant felt that she had succeeded in rebutting this presumption. I disagree. It is for the panel to assess the evidence, including the appellant's testimony and the documentary evidence. The panel did not have any obligation to refer to each document regarding domestic violence in Saint-Vincent and it did not deny that the problem existed. Rather, considering the applicant's efforts and the actions of the police, the panel reasonably found that state protection was available. The panel's statements as to the situation in Saint-Vincent are based on the documentary evidence and it bears repeating that each case is a case unto itself (*Myle*, above, at para 27). In my view, the applicant has not established that the panel failed to consider excerpts of evidence that painted a different picture from the situation in Saint-Vincent.

[9] It should be noted that the police reacted promptly both times when the applicant filed a complaint, as the panel explained. Also, the applicant chose to leave Saint-Vincent before obtaining a final decision against her former spouse, instead claiming refugee protection in Canada. However, the applicant had to exhaust every possible avenue available to her in Saint-Vincent before seeking protection in Canada (*Song*, above, at paras 13 and 14; *Campos*, above, at para 34). While it is understandable that, in the circumstances, the applicant could have feared reprisals from her aggressor if she made a complaint, she had to establish with "clear and convincing" evidence that the state was unable to adequately protect her (*BM (I) v Minister of Citizenship and Immigration*, 2004 FC 399, at para 6). As explained by the panel, the applicant had not discharged her burden of

proof. Thus, given the presumption of state protection, the actions taken by the authorities in Saint-Vincent and the Grenadines following the two complaints by the applicant and her reluctance, it was reasonable for the panel to find that state protection was available. Since the applicant did not establish that the panel ignored the evidence on record, this Court's intervention is not warranted.

* * * * *

[10] For the above-noted reasons, the application for judicial review is dismissed.

[11] I agree with counsel for the parties that this is not a case for certification.

JUDGMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board that the applicant was not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, is dismissed.

“Yvon Pinard”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8657-11

STYLE OF CAUSE: Arlene Glendy GREAVES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 6, 2012

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

DATED: June 14, 2012

APPEARANCES:

Serge Silawo FOR THE APPLICANT

Margarita Tzavelakos FOR THE RESPONDENT

SOLICITORS OF RECORD:

Serge Silawo FOR THE APPLICANT
Montréal, Quebec

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