

Federal Court



Cour fédérale

Date: 20130111

Docket: IMM-9800-11

Citation: 2013 FC 25

Ottawa, Ontario, January 11, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

CATHERINE CINDY CHARLES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) rendered orally on November 7, 2011, wherein it determined that Ms. Catherine Cindy Charles (Ms. Charles) is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *IRPA*.

[2] For the following reasons, this application for judicial review is dismissed.

II. Facts

[3] Ms. Charles is a citizen of Grenada.

[4] She entered Canada with a temporary visa in 1999. She filed a permanent residence application on humanitarian and compassionate considerations [H&C] in 2005. Her application was refused in 2010 by an immigration officer who told her that she should have applied for refugee protection upon her arrival to Canada.

[5] Ms. Charles subsequently filed a refugee claim in December of 2010 on the basis that she had suffered some 11 years of physical and emotional abuse in Grenada at the hand of her common-law husband, Mr. Roger Jeremiah.

[6] The Board rejected Ms. Charles' claim due to her lack of credibility and the availability of state protection in Grenada. It specifically determined that Ms. Charles had failed to adduce evidence to support her claim and to claim refugee protection in time, thereby undermining her credibility. It finally concluded that adequate state protection is available for her in Grenada.

III. Legislation

[7] Sections 96 and 97 of the *IRPA* provide as follows:

Convention refugee

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,

(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

(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.

Person in need of protection

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

(a) to a danger, believed on substantial grounds to exist,

Définition de « réfugié »

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) 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) 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.

Personne à protéger

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) soit au risque, s'il y a des motifs sérieux de le

of torture within the meaning of Article 1 of the Convention Against Torture; or

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

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

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

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

(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

Personne à protéger

(2) A person in Canada who is a member of a class of persons

(2) A également qualité de personne à protéger la personne

prescribed by the regulations as being in need of protection is also a person in need of protection.

qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issues and standard of review

A. Issues

1. *Did the Board err in finding that Ms. Charles was not credible?*

2. *Did the Board err in determining that Ms. Charles failed to rebut the presumption that state protection would be available in Grenada?*

B. Standard of review

[8] Questions on credibility findings are reviewable on the standard of reasonableness (see *Khatun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 159 at para 45; and *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 [*Aguebor*]). As for the second issue, the Federal Court of Appeal determined, in *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36 [*Carillo*], that the standard of review on the availability of state protection is reasonableness.

[9] When reviewing a decision on the standard of reasonableness, the Court is concerned with "the existence of justification, transparency and intelligibility within the decision-making process

[and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59.

V. Parties' submissions

A. Ms. Charles' submissions

[10] Ms. Charles submits that she suffered physical and mental abuse at the hand of Mr. Jeremiah over several years prior to her arrival in Canada. She also argues that the State of Grenada never provided any assistance as she was regularly beaten and assaulted by her common law partner. She notes that domestic violence is still an enormous problem and claims that her removal to Grenada would put her in danger.

[11] Ms. Charles adduced evidence before the Board to support her position. She provided a letter from Officer Cleveland Clement from the Criminal Records Office of the Grenada Police Force explaining that she did complain to the police station on several occasions but failed to press charges against Mr. Jeremiah. Officer Clement also writes that medical forms were issued to Ms. Charles to proceed with charges against Mr. Jeremiah.

[12] She also provided a letter from Nurse Morgan Llewellyn demonstrating that the alleged abuse actually occurred.

[13] She filed a letter from Mr. Josh Colle, councilor for the City of Toronto. The letter demonstrates Ms. Charles' contribution to her community of Lawrence Heights.

[14] Ms. Charles argues that the Board's decision was unreasonable and is asking this Court to quash the decision and remit the matter back for determination before a differently constituted panel.

[15] With respect to the delay in filing her claim for refugee protection, Ms. Charles explained that she had received inappropriate legal advice from two different lawyers she consulted in Ontario. Both would have stated that she had to wait five years before making a claim.

B. Respondent's submissions

[16] The Respondent alleges that a delay in claiming protection at the first opportunity undermines Ms. Charles subjective fear of persecution. He also submits that the failure to claim protection at the first opportunity is an important consideration in assessing credibility and in determining whether an applicant has a well-founded fear of persecution (*Antrobus v Canada (Minister of Citizenship and Immigration)*, 2012 FC 3 at para 10 [*Antrobus*]).

[17] In the case at hand, according to the Respondent, the Board reasonably found that Ms. Charles had delayed more than eleven years before claiming refugee protection in Canada. In *Aslam v Canada (Minister of Citizenship and Immigration)*, 2006 FC 189 at para 25, the Court held that the Board is not required to accept an applicant's explanation for not filing an application in due

time. In its decision, the Board rejected Ms. Charles' explanation as to why she failed to file a refugee claim at the first opportunity. It found Ms. Charles' explanation not credible. Given the fact that Ms. Charles was involved with a number of Community services, during her time in Canada, and given the length of time she was in Canada before filing a refugee claim, it was open to the Board to make such determination, according to the Respondent.

[18] The Board concluded that Ms. Charles failed to rebut the presumption of state protection in Grenada. The Respondent submits that a state is presumed capable of protecting its citizens absent a situation of complete breakdown of the state's apparatus (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689; *Carillo* cited above and *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171).

[19] The Respondent further alleges that Ms. Charles sought protection in Grenada and the police responded adequately and detained Mr. Jeremiah and underlines that Ms. Charles failed to press charges. The failure to pursue state protection in a functioning democracy will usually be fatal to a refugee claimant, according to the Respondent (see *Martinez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 13 at para 84).

[20] As for the prospective fear of persecution at the hand of Mr. Jeremiah, the Respondent claims that the Board reasonably determined, on the basis of the documentary evidence concerning the country conditions, that the situation of battered women in Grenada is different today because significant new legislation criminalizing domestic violence is now in force.

VI. Analysis

1. *Did the Board err in finding that Ms. Charles was not credible?*

[21] It is trite law that when it comes to assessing the credibility of an Applicant:

“There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review...” (see *Aguebor* cited above at para 4).

[22] The Board determined that Ms. Charles had adduced evidence demonstrating that she had been abused in the past by Mr. Jeremiah. However, it also found Ms. Charles not to be credible. The Board found that, even though she heard from her sons in Grenada that their father had threatened to kill her if she ever returned, no evidence was adduced to corroborate her statement. It noted that there was no letter from the grandmother, with whom the children are presently residing, to support Ms. Charles’ allegations. Considering the fact that Mr. Jeremiah is living with his children and mother in Grenada, the Court finds that it would be practically impossible for Ms. Charles to obtain such a letter from her mother-in-law. That part of the Board’s finding is unreasonable.

[23] However, the Board underlined that Ms. Charles waited at least 11 years before applying for refugee protection in Canada and submitting an H&C application. Ms. Charles explained that she consulted two different lawyers and both informed her that she had to wait five years before filing an H&C application. The Board found this explanation not to be credible.

[24] While a delay in formulating a claim for refugee protection is not a determinative factor in assessing the claim, it is relevant in the Board's assessment of the applicant's credibility (*Huerta v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 271 (FCA)). The Board may also consider an applicant's conduct when assessing credibility, and such conduct may, in itself, be sufficient to dismiss a refugee claim (*El Balazi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 38 at para 6). In this instance, it was open for the Board to make such a credibility finding.

[25] In *Antrobus* cited above, the applicant argued that he did not know homosexuality was a Convention Ground and thought he had to wait five years before making a claim on H&C grounds. The Board consequently determined that the applicant lacked credibility because of his failure to file his claim earlier. Justice Pinard found the Board's conclusion to be reasonable in that case.

[26] The Court finds the Board's conclusion reasonable in this instance as "it is a well-recognized principle that ignorance of the law is no excuse" (see *Taylor v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at para 93). Also, there was no evidence to substantiate Ms. Charles' allegations that she had received erroneous legal advice from two different lawyers. Ms. Charles should have provided some evidence in support of that aspect of her claim (see *Rueda v Canada (Minister of Citizenship and Immigration)*, 2009 FC 984 at para 56).

2. *Did the Board err in determining that Ms. Charles failed to rebut the presumption that state protection would be available in Grenada?*

[27] The Board did not err in determining that Ms. Charles failed to rebut the presumption of the availability of state protection in Grenada.

[28] The Supreme Court of Canada held in *Ward* cited above that in order to rebut the presumption of state protection, “clear and convincing confirmation of a state's inability to protect must be provided” (*Ward*, p 724). The Board noted, amongst other things, that “Grenada is a parliamentary democracy with a bicameral legislature... the ... Royal Grenada Police Force (RGPF) is headed by the police commissioner and encompasses the Coast Guard, the Special Services Unit, the Fire Fighting Unit and other specialized units. The RGPF is supplemented by 260 rural constables. The RGPF generally was effective at responding to complaints and maintained a community policing program” (see paras 49 and 50 of the Board’s decision). It also underlined that “...the evidence that the claimant provided was that in fact the police did attend to her complaint, but the evidence also shows from the claimant’s own documents that she did not pursue her complaint with the police” (see para 51 of the Board’s decision).

[29] The Board affirmed that Ms. Charles had left Grenada 11 years ago and that the situation for women who are victims of domestic violence is different today. It writes “the law criminalizes rape, including spousal rape, and stipulates a sentence of flogging or up to 15 years’ imprisonment for a conviction of any non-consensual form of sex... Further documentary evidence refers to the *Domestic Violence Act*. This new *Act* came into force in 2001” (see paras 54 and 55 of the Board’s decision). It also found that the authorities are making legal recourses available to victims of domestic violence by reducing or waiving legal fees (see para 56 of the Board’s decision).

[30] These findings were reasonable as the objective documentary evidence supports the contention that state protection is available in Grenada. It is also noteworthy that police forces were involved in Ms. Charles' case before she fled Grenada in 1999. However, she never filed charges against Mr. Jeremiah, fearing she would face reprisal.

[31] Furthermore, "the Board made a reasonable finding in relation to the length of time since the applicant had last sought protection" (see *Williams v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1412 at para 20). This conclusion does not suggest that Ms. Charles must have sought state protection on a regular basis. Rather, the Board concludes that the situation on domestic violence has evolved significantly over the years and that state protection would be forthcoming for Ms. Charles if she returns to Grenada.

[32] The Board's conclusion on state protection is reasonable. Therefore, the application for judicial review is dismissed.

VII. Conclusion

[33] The Board reasonably determined that Ms. Charles' failure to file a refugee claim in time indicates a lack of subjective fear of persecution. The Board also reasonably concluded that Ms. Charles failed to rebut the presumption of state protection in Grenada and that country conditions have changed significantly since 1999.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed; and
2. There is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9800-11

STYLE OF CAUSE: CATHERINE CINDY CHARLES
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**MOTION HELD VIA VIDEOCONFERENCE ON DECEMBER 3, 2012 FROM
OTTAWA, ONTARIO AND TORONTO, ONTARIO**

REASONS FOR JUDGMENT: SCOTT J.

DATED: January 11, 2013

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