



**Date: 20130311**

**Docket: IMM-7462-12**

**Citation: 2013 FC 259**

**Ottawa, Ontario, March 11, 2013**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**BERNADETTE SYMPHORIEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Ms. Symphorien challenges a Pre-Removal Risk Assessment [PRRA] decision that found that she would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to St. Lucia.

[2] Ms. Symphorien is a failed refugee claimant who has suffered past sexual assaults, and fears future violence, by two former boyfriends and another man. She says that two of the three sexually assaulted her in Canada, although all three of the men are from St. Lucia. She fears that she will be targeted by these men, their families, and/or somebody they might hire to harm her, if

she is returned to St. Lucia. Specifically, with respect to the third man, she says that he sexually assaulted her in December 2010, that she testified against him in court in Ontario, and that he was convicted. Letters from the Ministry of the Attorney General corroborate her testimony. She fears this man's family in St. Lucia, who she says have made threats against her and her family.

[3] Her refugee hearing was joined with those of her mother and her two siblings. The Refugee Protection Division [RPD] rendered a negative decision on April 29, 2011. The determinative issues were credibility, generalized risk, and state protection. Regarding the latter, the RPD held that “[t]he claimants have not provided clear and convincing evidence that state protection would be inadequate.”

[4] Similarly, the PRRA officer found that the determinative issue in the PRRA application was state protection. The officer found “that the applicant has not provided sufficient clear and convincing evidence of the state’s inability to protect the applicant in St. Lucia against the threats of the three men.”

[5] The applicant raises two issues in addition to her challenge to the reasonableness of the state protection finding: (1) whether the officer breached procedural fairness by failing to convoke an oral hearing, and (2) whether the officer misapprehended the evidence. Given my finding, as set out below, that the state protection finding was reasonable, there is no need to explore these other issues as the application must be dismissed on that basis alone.

[6] As noted, the RPD held that the applicant had failed to rebut the presumption of state protection – a finding not departed from by the PRRA officer. The applicant submits that the officer’s finding of state protection is unreasonable because he or she did not consider whether state protection was adequate in St. Lucia for those, like Ms. Symphorien, who are victims of and witnesses to crime. That was the new risk alleged in her PRRA application; the RPD never conducted a state protection analysis for that scenario. She says that the officer ignored the following evidence in particular – Response to Information Request- LCA103495.E dated July 6, 2010:

#### Witness and Victim Protection

According to the Minister for Home Affairs and National Security, Saint Lucia is developing a witness protection program and facilities for witnesses to give statements and video evidence in court, rather than appear in person (Saint Lucia 17 Mar. 2010). Modification of the witness protection program is reportedly one of the RSLPF’s priorities (ibid 1 Feb. 2010).

The Assistant Police Commissioner, as reported by St. Lucia Star, indicated that the RSPLF does not have the resources to assign officers to protect every witness (St. Lucia Star 21 May 2010). He stated that witnesses are reluctant to come forward and testify for fear of retaliation, but that in reality there have not been any known repercussions for witnesses who came forward (ibid.). This information could not be corroborated by the Research Directorate.

In 22 June 2010 correspondence with the Research Directorate, an inspector at the RSPLF stated that witness protection is a “burning issue” in the region and that the Caribbean Community (CARICOM) ... is working towards developing a unified protection program whereby witnesses and judiciary members from one CARICOM country could go to another when in need of protection (RSPLF 22 June 2010). However, he noted that this plan was only in the discussion stage, with nothing certain about when or if it will be implemented (ibid.). He stated that Saint Lucia is informally protecting witnesses through safe-houses when necessary, but that it is not a “sustainable method” (ibid.). [emphasis added]

[7] The applicant submits that the man against whom she testified is dangerous, as proven by the fact that she was relocated in Toronto pending his trial. She further says that the fact that St. Lucia is modifying its state protection program shows there is a need there to protect persons such as her from those against whom they testify.

[8] The difficulty with her submission is that the report on which she relies contains an express statement that “there have not been any known repercussions for witnesses who came forward” which supports the officer’s finding that state protection is available for persons like the applicant. It is admittedly a statement made by the authorities and perhaps they have an interest in suggesting that they have matters well in hand; however, there is no evidence to the contrary other than the fact that a program is being modified. That evidence, at best, hints that the statement may not be fully accurate, but that is not a sufficient basis for this Court to find that the decision is unreasonable within the meaning set out by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9. Accordingly, the application must fail.

[9] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7462-12

**STYLE OF CAUSE:** BERNADETTE SYMPHORIEN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 28, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** ZINN, J.

**DATED:** March 11, 2013

**APPEARANCES:**

Richard Odeleye FOR THE APPLICANT

Christopher Ezrin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

BABOLA, ODELEYE FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

WILLIAM F. PENTNEY FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario