

Federal Court



Cour fédérale

Date: 20130419

Docket: IMM-6978-12

Citation: 2013 FC 390

Toronto, Ontario, April 19, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

LESLIE ANNETTE HOLDER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

AMENDED REASONS FOR ORDER AND ORDER

[1] The present Application concerns a May 2012 decision in which the Applicant's request for permanent residence on Humanitarian and Compassionate grounds was rejected. A principal ground advanced by the Applicant is that she suffered sexual and non-sexual violence from her uncle and brother, respectively, in St. Vincent. As a result, she holds a strong subjective fear of returning.

[2] In August 2009, the Applicant's claim for protection based in part on the violence was rejected by the Refugee Protection Division on a finding of state protection. With respect to the decision presently under review, the H&C Officer considered the RPD's decision on the violence issue. Key paragraphs from the RPD's decision on this issue are as follows:

[2] The claimant alleges that beginning when she was ten years of age her father's cousin, John Warren ("Warren"), sexually abused and assaulted her. She says that when she became a teenager she realized that what was happening to her was wrong and she started to try to resist Warren. She states that he then began to threaten her saying that if she told her mother or anyone else he would kill her. She states that on one occasion he raped her and cut her vagina with a knife. She alleges that the abuse, including rapes, continued into and throughout her adult life until she left a St. Vincent at age 41, although it occurred less frequently as she grew older.

[3] She states that she never went to the police because Warren threatened to kill her if she did. She also states that Warren was friendly with members of the police force. She maintains that he would meet with them regularly and have drinks with them. The fact that he had connections within the police force strengthened her fear that he could easily have been granted bail if he was arrested for sexually assaulting her. She believes that he would then kill her.

[4] The claimant alleges that she also faced abuse from her brother Paul, a leader of a Rasta gang. She maintains that he brought gang friends, who had drugs and guns, to the family home. She states that she witnessed criminal activities but was unable to do anything about them. She alleges that her brother would hit her and on one occasion he threw hot milk on her face.

[...]

[20] In her revised Personal Information Form (PIF) narrative for this hearing, the claimant stated that Warren used to hang out with the police and drink with them. She stated that she also did not want to go to the police because of Warren's friendship with the police. When she was asked why Warren's friendship with the police was not in her previous PIF, she stated that her former lawyer did not ask her with whom Warren associated. I do not accept this explanation. If one of the reasons that the claimant did not go to the police was that Warren was friendly with them she would have put this in her

original PIF without being prompted by a lawyer's question about Warren's friends.

[21] There was no persuasive evidence that the claimant continued to fear her brother Paul or his friends because of their Rasta gang activities. There was no persuasive evidence that Paul continued to abuse her before she left St. Vincent.

(Tribunal Record, pp. 337 – 338; pp. 343 – 344)

[3] In its decision the RPD made no negative finding of credibility with respect to the Applicant's evidence of the violence endured. Thus, while her evidence of the violence was accepted, her claim for protection was rejected on the basis of a finding that she failed to rebut the presumption of the availability of state protection in St. Vincent.

[4] However, as set out in the following passages from the decision under review, the H&C Officer states a different conclusion on the Applicant's evidence of violence:

Considering the availability of protection, I find that Ms. Holder's reasons for not reporting physical and sexual assaults that occurred for over 3 decades to be unreasonable. Objective evidence has not been provided to support that the incidences occurred with respect to her uncle, her brother and his friends. As a result, I find she has not provided sufficient evidence in support of the hardships as cited by her with respect to her uncle, her brother and his friends. I find that her comments regarding her fears that they are going to treat her badly again if they find out she is a lesbian to be speculative. She has not presented evidence-to support why after her absence from St. Vincent for over eight years that they would presently seek to cause her harm.

[Emphasis added]

(Decision, p. 6)

[5] Two considerations arise from the quoted findings: either the H&C Officer misunderstood the RPD's decision as summarized in paragraph [3] of these Reasons; or a negative credibility

finding was made against the Applicant's interests without a proper analysis being provided. Either way, the effect of the findings was to erroneously remove the Applicant's subjective fear of violence from H&C consideration. In my opinion, the result is a serious reviewable error that renders the H&C Officer's decision unreasonable.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination by a different H&C officer on the direction that the redetermination be conducted on the facts that exist on the date of the redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6978-12

STYLE OF CAUSE: LESLIE ANNETTE HOLDER V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 16, 2013

**AMENDED REASONS FOR
ORDER AND ORDER:** CAMPBELL J.

DATED: April 19, 2013

APPEARANCES:

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Ms. Teresa Rammarine FOR THE RESPONDENTS

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