Federal Court  Cour fédérale

**Date: 20141222**

**Docket: IMM-6318-13**

**Citation: 2014 FC 1229**

**Ottawa, Ontario, December 22, 2014**

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

**BETWEEN:**

**TERRENCE CORNELIUS GLASGOW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

### I. Nature of the Matter and Background

[1] Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*], the Applicant seeks judicial review of a pre-removal risk assessment [the PRRA] that denied his request for a stay of removal under section 112(1) of the *Act*. The Applicant asks the Court to set aside the PRRA decision and return the matter to a different officer for re-determination.

[2] The Applicant is a citizen of Saint Lucia who came to Canada on October 31, 2011. Upon arrival, the Canada Border Services Agency [the CBSA] discovered marijuana and cocaine in the Applicant's suitcase and he was charged by the RCMP with importing a prohibited substance contrary to section 6(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19. The Applicant maintained that the suitcase had been given to him by a childhood friend as his suitcase was ripped and he did not know about the drugs. The Applicant was acquitted of the importation charge on August 20, 2012.

[3] Subsequently, on September 25, 2012, the Applicant applied for refugee protection, claiming that he feared that the man who gave him the drugs would murder him for cooperating with Canadian authorities. In his refugee protection application, the Applicant disclosed that in 2008 he had pled guilty to a charge of assault causing bodily harm in Saint Lucia, for which he was fined $1,500.00, and hence the Applicant was referred to an admissibility hearing. On March 13, 2013, the Immigration Division of the Immigration and Refugee Board [the IRB] decided that the Applicant was inadmissible under section 36(1)(b) of the *Act* for serious criminality. His application for leave and for judicial review of the IRB decision was dismissed by this Court on August 13, 2013, because he did not file his record (*Glasgow v Minister of Citizenship and Immigration*, IMM-2017-13 (FC)).

[4] Since the Applicant was inadmissible for serious criminality, paragraph 101(1)(f) of the *Act* made him ineligible for referral to the Refugee Protection Division of the IRB. Thus, the Applicant's only recourse was to seek a stay of removal by applying for a PRRA pursuant to

section 112(1) of the *Act*, and he did so by way of an application received by Citizenship and Immigration Canada [CIC] on May 1, 2013.

[5] Although the Applicant had been scheduled for removal on October 10, 2013, his motion for a stay of his removal, until this judicial review application was finally determined, was granted by this Court on October 8, 2013.

## II. Decision under Review

[6] On August 8, 2013, a senior immigration officer [the Officer] rejected the Applicant's PRRA application.

[7] After summarizing the background facts, the Officer dismissed some of the Applicant's arguments as being irrelevant. Although the Applicant had mentioned a number of sympathetic circumstances in his narrative, including his daughter's attempted suicide, the Officer determined that, while such circumstances may be compelling grounds for humanitarian and compassionate consideration, they were not risk factors and so were not within the purview of the PRRA. For a similar reason, the Officer also rejected the Applicant's challenges to the decision of the IRB, stating that a PRRA is not an appeal from an inadmissibility determination.

[8] The Officer then assessed the allegations of risk. Although the Applicant claimed that his friend would kill him for telling the Canadian authorities about him, at no time in the interview with the CBSA did the Applicant actually disclose his friend's identity. The identity of the

intended recipient of the suitcase was disclosed by the Applicant, though there was no evidence about whether this information led to any arrest.

[9] The Officer assigned little weight to letters from the Applicant's cousin, brother and sister since they all had a personal interest in the outcome of the Applicant's case, and none of such letters disclosed the basis for their belief that someone wanted to kill the Applicant. The letter from the Applicant's fiancée, Ms. Valery, however, did say that someone had called her in September 2012 and threatened to kill the Applicant, but the Officer also assigned this letter little weight. Ms. Valery's letter did not give any details about the phone call, such as the place, date or time when it occurred, and there was no indication as to how the caller found out what the Applicant told the CBSA. Moreover, Ms. Valery did not state in her letter whether she did anything as a result of this phone call, such as file a police report. Given that the Applicant's fiancée also had a personal stake in the outcome, the Officer assigned little weight to her statements.

[10] Thus, the Officer was not convinced that the person or persons responsible for the drug smuggling plot had made any threats against the Applicant. In the Officer's view, this was not a matter of credibility but, instead, a failure by the Applicant to provide sufficient and reliable evidence to establish the existence of a risk on a balance of probabilities.

[11] Even if there was a risk to the Applicant's life, the Officer was not convinced that Saint Lucia would be unable or unwilling to protect the Applicant if he was returned there. The Officer found that the government of Saint Lucia was making efforts to reduce its high crime rate by, for

example, increasing patrols in problematic areas and updating their surveillance technology. Also, there was little evidence that the alleged threat made against the Applicant was ever reported to the police, and thus no evidence that they would not take it seriously. Saint Lucia is a democracy with a functioning judiciary, and the Officer said that the Applicant needed to supply clear and convincing evidence to rebut the presumption of adequate state protection and he had not done so. The Officer therefore decided that the Applicant was neither a Convention refugee under section 96 of the *Act* nor a person in need of protection under section 97(1) of the *Act*.

## III. The Parties' Submissions

### A. *The Applicant's Arguments*

[12] The Applicant argues that while it may have been reasonable for the Officer to discount the evidentiary letters from his cousin, brother and sister, it was unreasonable not to accept the letter from the Applicant's fiancée since that letter alone contained the death threat made against him. According to the Applicant, it was not reasonable for the Officer to discount and assign little weight to this letter on the basis that it did not have enough detail and that the Applicant's fiancée had a direct interest in the outcome. The Applicant submits that supporting evidence cannot be dismissed just because it comes from someone interested in the outcome of the Applicant's application.

[13] Furthermore, the Applicant argues that the letter from the fiancée cannot be dismissed on irrational grounds, and that not knowing how the caller found out about the disclosure is not only irrelevant but irrational. This cannot serve, the Applicant says, as grounds to reject the evidence

provided by the fiancée's letter. Also, the Applicant says that whether the fiancée reported the death threat to the police is not germane to the matter at hand. According to the Applicant, the Officer's decision with respect to the evidence before him was not transparent, was unintelligible and was not justified.

[14] On the issue of state protection, the Applicant submits that the Officer did not determine whether state protection was objectively and likely available to the Applicant. The Applicant argues that the Officer had a duty to analyze the availability of state protection vis-à-vis the Applicant and that the Officer did not do this.

[15] The Applicant says that it was not unreasonable for the Applicant not to seek state protection because the fact of the matter is that he is in Canada and his claim to protection is *sur place* since the death threat was made after his arrival in Canada. The Applicant submits that the Officer overlooked this fact.

[16] The Applicant argues that the Officer did not conduct a proper analysis of the state protection issue and ignored the dictates in this regard from the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1 [*Ward*]. In particular, the Applicant states that the Officer did not determine whether state protection would be objectively likely to be forthcoming if the Applicant sought state protection upon return to Saint Lucia. There is an inadequate analysis of state protection here by the Officer, the Applicant says, since he did not assess whether state protection was lacking on an operational level.

[17] The Applicant states that the duty of the Officer was to look further given the death threat made to the Applicant. According to the Applicant, the evidence before the Officer was not inadequate. The Officer knew what the risk faced by the Applicant was and at no point did the Officer doubt the Applicant's credibility. The evidence of inadequate state protection was before the Officer but, according to the Applicant, the reasons for his decision do not analyse this inadequacy. The Applicant submits that the Officer's failure in this regard makes the decision unreasonable.

B. *The Respondent's Arguments*

[18] The Respondent states that the Applicant did not provide sufficient evidence of any risk faced by him. The only evidence of the risk faced by the Applicant was his fiancée's letter, the Respondent says, and this was insufficient for the Officer to consider that the Applicant faced any risk. The Respondent notes that this letter has no precise date as to the date of the phone call, and it would be reasonable for the fiancée to recall the specific date, time and place of the claimed death threat.

[19] According to the Respondent, any claim of a death threat to the Applicant was sketchy at best and the evidence in this regard was reasonably found by the Officer to be insufficient. In this case, there was only an unsigned letter as to any death threat to the Applicant and the Officer's discounting of this evidence was reasonable in view of *Sayed v. Canada (Citizenship and Immigration)*, 2010 FC 796, paragraphs 21-22, and *Jiang v. Canada (Citizenship and Immigration)*, 2009 FC 794, paragraphs 16-17. In the Respondent's view, the Officer did not discount the fiancée's letter merely because it was from an interested party but, rather, he looked

to the contents of the letter and found them to be insufficient evidence of the risk faced by the Applicant.

[20] On the issue of state protection, the Respondent states that it was not unreasonable for the Officer to determine or inquire as to why the fiancée did not contact the police. The Applicant, according to the Respondent, needs to show clear and convincing evidence to rebut the presumption of state protection. Without evidence that the police could or would not assist him upon his return to St. Lucia, the Applicant's claim of inadequate state protection there is not founded. In short, the Respondent states that the Applicant failed to satisfy the onus upon him to show an absence of state protection for him.

## IV. Analysis

### A. *What is the standard of review?*

[21] The Applicant argues that the Officer's assessment of the evidence was unreasonable. With regard to the state protection analysis, the Applicant frames the issue in his memorandum of argument as being whether the Officer's analysis was "unreasonable and/or wrong in law". The Respondent argues that the standard of review is reasonableness for every issue raised by the application now before this Court.

[22] The Officer's assessment of the evidence before him is entitled to deference and such assessment is a pure question of fact which usually, if not automatically, attracts the reasonableness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1

SCR 190 [*Dunsmuir*]). Moreover, the Officer's assessment of the evidence should not be disturbed so long as it was justifiable, intelligible, transparent and defensible in respect of the facts and the law (*Dunsmuir* at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

[23] Determining the test for state protection is a legal question about the interpretation of sections 96 and 97(1)(b)(i) of the *Act*, while the application of that test to the facts of a case is a question of mixed fact and law (*Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748 at para 35, 144 DLR (4th) 1). In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 3, 289 DLR (4th) 675 [*Raza*], the Federal Court of Appeal accepted that questions of law decided by a PRRA officer should be reviewed on the correctness standard, while questions of mixed fact and law should attract the reasonableness standard.

[24] This Court has consistently held, even after *Dunsmuir* and *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654 [*Alberta Teachers*], that officers must apply the correct test for state protection when deciding PRRA applications (see: e.g., *Conka v Canada (Citizenship and Immigration)*, 2014 FC 984 at para 4 (available on CanLII); *GM v Canada (Citizenship and Immigration)*, 2013 FC 710 at para 27 (available on CanLII)). In *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at paragraphs 20-22 (available on CanLII) [*Ruszo*], Chief Justice Crampton stated that since the

jurisprudence has already settled on a clear test for state protection, it should be excepted from the general rule set out in *Alberta Teachers*, such that the question of whether the Officer here erred in interpreting the test for state protection is reviewable on a standard of correctness. Nevertheless, if the Officer's decision turned instead on the application of that test to the facts, then it is entitled to deference and to be assessed on a standard of reasonableness (*Ruszo* at para 22).

B. *Did the Officer err by dismissing the letter from the Applicant's fiancée?*

[25] In order to attract the protection of paragraph 97(1)(b), the Applicant had to prove "that it is more likely than not that [he] would be subjected, personally, to a risk to his life or to a risk of cruel and unusual treatment or punishment if [he] was returned to his country of nationality" (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 38, [2005] 3 FCR 239 [*Li*]).

[26] The only evidence that the Applicant's life would be at risk in Saint Lucia was a letter from his fiancée, Ms. Valery, dated May 7, 2013, stating that someone had called her and threatened to kill the Applicant in September, 2012. The Officer assigned little weight to this letter, since it offered little information about when or where she received the call, did not say how the caller had found out that the Applicant told Canadian authorities who gave him the suitcase, did not say whether she reported this call to the police and, as the Applicant's fiancée, she had a personal stake in the outcome of the Applicant's PRRA.

[27] The Applicant argues that it is not reasonable and defies common sense "to expect that a caller delivering an anonymous death threat would embark on an explanation as to how he had obtained the information which led to the death threat". Furthermore, the Applicant says, Ms. Valery's failure to report the threat to the police is irrelevant as to whether the threat was made. The Respondent says that this letter raises unanswered questions that implicate the probative value of it as evidence.

[28] The Officer considered the fiancée's letter unreliable because it was authored by someone who has a personal relationship with the Applicant. This can be a relevant consideration because, typically, this sort of evidence requires corroboration if it is to have probative value (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067, 74 Imm LR (3d) 306) [*Ferguson*]. As my colleague Mr Justice Zinn stated in *Ferguson* (at para 27):

> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[29] In this case, the Officer made a similar assessment in respect of the fiancée's letter (and, for that matter, the other letters provided by the Applicant with his supplementary letter to CIC dated May 14, 2013). Not only was this letter hearsay in nature, but its content was not verified

by way of any sworn statement or declaration as were the statements from the family members considered in *Rendon Ochoa v Canada (Citizenship and Immigration)*, 2010 FC 1105 at para 10.

[30] Also, in this case, the fact of whether the Applicant was threatened with death was critical to his PRRA application, and it was open and reasonable for the Officer to require more evidence or some corroboration to satisfy the onus of proof upon the Applicant. The only evidence tendered by the Applicant in support of that fact was his fiancée's letter. This letter is not a sworn affidavit or declaration, and other cases have held that it is reasonable to reduce the weight assigned to evidence for such defects when accompanied by other indications of unreliability (see: e.g. *Garcia Cruz v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 853 at para 11, 393 FTR 286; also see: *Ram v Canada (Citizenship and Immigration)*, 2010 FC 548 at para 19 (available on CanLII)). Furthermore, the Applicant did not support his application with his own statutory declaration or a sworn affidavit as to the death threat.

[31] As in *Ferguson*, the Officer assessed the evidence and its probative value and neither believed nor disbelieved the Applicant, but was simply not satisfied that the Applicant had provided sufficient probative evidence of the critical fact of the death threat. In my view, it was reasonable for the Officer to determine that the Applicant did not meet the legal burden of proving this critical fact on a balance of probabilities.

C. *Did the PRRA officer err in assessing state protection?*

[32] After observing that the Applicant bore the onus to prove inadequate state protection and analyzing the country conditions on crime in Saint Lucia, the Officer stated the following:

> Given the lack of evidence of a complete collapse of the St. Lucian state, and given the lack of evidence that the applicant had made any attempt to seek state protection from the St. Lucian authorities, I am unable to conclude that the applicant provided clear and convincing evidence to rebut the availability of adequate state protection.

[33] The Applicant contends that the Officer failed to conduct a proper assessment of whether state protection was available to the Applicant in accordance with the Supreme Court's directions in *Ward*. According to the Applicant, the Officer was wrong to rely on the fact that he had not sought state protection; the threat to his life only occurred while he was in Canada, so that was something he never had any opportunity to do. According to the Applicant, the Officer never seemed to realize that and did not articulate the nature of the inquiry required in these circumstances; thus, the Applicant submits, that even the brief analysis of the country conditions conducted by the Officer before the conclusion above cannot save the decision. In the Applicant's view, the Officer never considered whether protection would objectively be available to the Applicant.

[34] The Respondent disagrees, saying that state protection need only be adequate, and it is the Applicant who must prove that it is not. In this case, the Respondent says the Applicant did not supply any objective evidence to show that the state would be unable or unwilling to protect him, even though the death threat was allegedly received in Saint Lucia and could have been reported. Furthermore, the Respondent says the Officer acknowledged that there was a crime problem in Saint Lucia, but the Officer found that the state was acting to fix it. The Respondent says that it was reasonable to conclude that the Applicant had not proven on a balance of probabilities that state protection was inadequate.

[35] It is useful to briefly set out the test for state protection. Paragraph 97(1)(b) of the *Act* is only engaged if "the person is unable or, because of that risk, unwilling to avail themself of the protection of that country" (*Act*, s 97(1)(b)(i)). Unless there has been a complete breakdown of the state apparatus, "it should be assumed that the state is capable of protecting a complainant" (*Ward* at 725). As such, complainants bear the burden of proving inadequate state protection and their claims should fail unless they provide "clear and convincing confirmation of a state's inability to protect" (*Ward* at 724). This will usually require a claimant to show "that they sought, but were unable to obtain, protection from their home state, or alternatively, that their home state, on an objective basis, could not be expected to provide protection" (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 37, 282 DLR (4th) 413).

[36] Perfect protection is not required (*Canada (Minister of Employment and Immigration) v Villafranca*, 1992 CarswellNat 78 (WL Can) at paragraph 7, 99 DLR (4th) 334, 150 NR 232 (FCA)), but a state's attempts to protect a person will not be enough if an "objective assessment established that they are not able to do this effectively" (*Ward* at 724). Consequently, "it is not enough that a government is willing to provide protection and is making efforts to do so. In order for state protection to be present, the efforts made must adequately protect citizens in practice" (*Koky v Canada (Citizenship and Immigration)*, 2011 FC 1407 at para 63, [2011] FCJ No 1715 (QL)). In other words, "when examining whether a state is making serious efforts to protect its citizens, it is at the operational level that protection must be evaluated" (*Toriz Gilvaja v Canada (Citizenship and Immigration)*, 2009 FC 598 at para 39, 81 Imm LR (3d) 165).

[37] The Applicant does not argue that the Officer misstated the test for state protection in any of the foregoing respects. On the contrary, the Officer accurately recited several elements of the test in the first paragraph of page 7 of the decision. What the Applicant is instead asking the Court to do is to infer that the Officer misunderstood or misapplied the test from the conclusions that were drawn and, hence, failed to conduct a proper analysis of state protection in light of the *Ward* formulation.

[38] In my view, the Officer's conclusions with respect to state protection were reasonable in this case. The Applicant does not fear drug-related violence generally; at best, he fears a specific person that he has known since childhood and there is no evidence that this person is involved with a larger organization. The Applicant would be safe if this individual was arrested, and he and his fiancée have knowledge of at least two crimes that this individual committed: (1) he arranged for the Applicant to smuggle drugs out of the country; and (2) the Applicant's fiancée said that sometime around September, 2012, she "received a private call informing me that if Terrence was to return to Saint Lucia he would be killed, for giving up names to the Canadian authorities". Although the death threat was anonymous, the Applicant states in his written arguments that the source was obvious; it was the person who set him up. Despite this, neither the Applicant nor his fiancée ever reported either of these crimes to the Saint Lucian police, who could have investigated the matters and potentially arrested the person responsible for the alleged threat to the Applicant's life. While it is true that the Applicant was in Canada at the time of the alleged death threat, the fact that neither he nor his fiancée made any effort to report the crimes against them that occurred in Saint Lucia was still a relevant fact for the Officer to consider.

[39] As stated by the Supreme Court, it is "only in situations in which state protection 'might reasonably have been forthcoming', will the claimant's failure to approach the state for protection defeat his claim" (*Ward* at 724). The Officer thus analyzed the country conditions and said the following at page 7 of his decision:

> High rates of violence in Saint Lucia are largely attributed to gang-related crimes, such as drug trafficking, drive-by shootings, and armed robbery. At the same time, sources confirm that the government of St. Lucia is making serious efforts to curtail the violence. In 2012 the government of St. Lucia announced new strategies to combat crime, including replacing the Commissioner of Police and starting 24-hour police patrols in problematic areas. The Prime Minister of St. Lucia has started a cabinet task force on crime, which he chairs, as part of the national strategy to address crime. Sources report other plans to improve Saint Lucia's capacity to fight crime, including: installing closed circuit televisions in Castries, acquiring new vehicles and boats for the RSLPF [Royal Saint Lucia Police Force], developing a program to monitor returned criminal deportees, and upgrading police equipment. The RSPLF reports that they installed a digital video recorder in one police vehicle, enabling police officers to view and record suspicious activities; the RSPLF plan to install them in all police vehicles.

[40] Most of the foregoing details as found by the Officer were derived from a Response to Information Request LCA103495.E, "Saint Lucia: Statistics on Crime and Crime Reporting; Availability of State Protection for Victims and Witnesses" (6 July 2010). Admittedly, some of the measures, such as a plan to monitor returned deportees, do not necessarily demonstrate adequate protection at an operational level. However, it was not the Officer who had to prove that state protection is adequate; it was the Applicant who had to prove the opposite, and he supplied no evidence that the Saint Lucia police would not have investigated the crimes of drug trafficking or uttering death threats, or that it lacks the ability to protect people specifically targeted by such crimes.

[41] In view of the foregoing, it is understandable why the Officer decided that the Applicant had not provided clear and convincing confirmation of Saint Lucia's inability to protect him. The Officer's decision in this regard was reasonable and should not be disturbed by this Court.

[42] As a whole, I find the Officer's decision reasonable and defensible in respect of the facts and law, and within the range of acceptable outcomes.

## V. Conclusion

[43] In the result, therefore, the Applicant's application for judicial review is dismissed and there shall be no award of costs. No serious question of general importance is certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed and there shall be no award of costs. No serious question of general importance is certified.

"Keith M. Boswell"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6318-13 |
| **STYLE OF CAUSE:** | TERRENCE CORNELIUS GLASGOW v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | OCTOBER 23, 2014 |
| **JUDGMENT AND REASONS:** | BOSWELL J. |
| **DATED:** | DECEMBER 22, 2014 |

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