

Federal Court



Cour fédérale

Date: 20191219

Docket: IMM-4562-18

Citation: 2019 FC 453

Ottawa, Ontario, December 19, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**CHARMAINE FIRSTINA JEANTY
VINCE JROME SIMILIE
SENYAH KEYRAH C D JEANTY
VICTOR SHANNON RAYNALDO SIMILIE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] Charmaine Firstina Jeanty and her three children seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB that the Applicants

are neither Convention refugees nor persons in need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Two of Ms. Jeanty's children, Senyah Keyrah Jeanty and Victor Shannon Raynaldo Similien, are citizens of the United States of America. Their counsel concedes that they do not fear persecution in that country, and their refugee claims are no longer being advanced. The applications for judicial review of Senyah Keyrah Jeanty and Victor Shannon Raynaldo Similien are therefore dismissed.

[3] The RAD acknowledged that there is a serious problem in the Bahamas regarding domestic violence and police impunity. However, the RAD found that Ms. Jeanty was not at risk of domestic violence because she is no longer married to her former husband. This finding was inconsistent with country condition reports and the uncontradicted testimony of Ms. Jeanty and her children, and was therefore unreasonable. The applications for judicial review of Ms. Jeanty and Vince Jrome Similien are allowed.

II. Background

[4] Ms. Jeanty is a citizen of the Bahamas. She married a man named Volvick in 2000 or 2001, when she was still a teenager. Her eldest son was born in the Bahamas in 2001. Volvick abused Ms. Jeanty physically, sexually and mentally. She went to the police many times, but they refused to get involved in domestic disputes. Ms. Jeanty sent her son to live with her mother in the United States in 2002 or 2003.

[5] Shortly afterwards, Ms. Jeanty discovered she was pregnant. She left Volvick and went to live with her aunt. Volvick continued to harass her. In 2004, Ms. Jeanty gave birth to a second son. They both moved to the US later that year.

[6] Ms. Jeanty began a relationship with a US citizen. They had a daughter in 2007. Ms. Jeanty divorced Volvick in 2009 and married her new partner. The relationship did not last, and she returned to the Bahamas with her three children later that year.

[7] Volvick resumed his harassment and abuse. He assaulted Ms. Jeanty in June 2009. She went to the police and showed them her divorce papers. They again refused to get involved in what they considered to be a domestic dispute. Ms. Jeanty then sent her children to live with her mother in the US.

[8] Volvick is a citizen of Haiti and has no immigration status in the Bahamas. In 2010, he assaulted his then girlfriend, causing her to be hospitalized for two months. Volvick was deported to Haiti. He returned to the Bahamas illegally by boat.

[9] Volvick continued to harass Ms. Jeanty. She reported him to the Bahaman immigration authorities in 2015, and he was again deported to Haiti. Ms. Jeanty does not know whether this was the result of her report, or just a coincidence.

[10] In January 2016, Ms. Jeanty's children returned to live with her in the Bahamas. Volvick would sometimes make threatening telephone calls. She says there were incidents that suggested

he may be back in the country, and she felt unsafe. She and her children travelled to Canada in April 2017, and made refugee claims.

[11] The refugee claims were denied by RPD on September 18, 2017. The Applicants' appeals to the RAD were dismissed on August 17, 2018.

III. Decision under Review

[12] The RAD accepted the RPD's assessment that Ms. Jeanty was a credible witness.

[13] The RPD did not consider whether there may be compelling reasons under s 108(4) of the *IRPA* not to return Ms. Jeanty to the Bahamas, given the trauma she experienced in that country. The RAD conducted its own analysis, and concluded that the provision did not apply. The RAD noted her voluntary return to the Bahamas from the US in 2009.

[14] Ms. Jeanty disputed the RPD's finding that Volvick was deported to Haiti in 2015 because she contacted the immigration authorities. She argued that the Bahaman police were responsible for ensuring state protection, and they had demonstrated an unwillingness or inability to fulfil this duty. The RAD held that state protection is not the sole domain of the police. It didn't matter whether Volvick was deported because Ms. Jeanty contacted immigration authorities. What mattered was that he was found to be in violation of Bahaman law and was deported.

[15] The RAD acknowledged that there is a serious problem in the Bahamas regarding domestic violence and police impunity. The RAD nevertheless concluded that the Applicants had failed to demonstrate that state protection was inadequate. The RAD found insufficient evidence that Volvick was in the Bahamas. The RAD was also satisfied that the Bahaman police take assault and sexual assault seriously, and Ms. Jeanty was not at risk of domestic violence because she was no longer married to Volvick. The RAD noted that the Bahamas adopted a “Strategic Plan to Address Gender-Based Violence” in 2015.

IV. Issue

[16] The sole issue raised by this application for judicial review is whether the RAD’s decision was reasonable.

V. Analysis

[17] The RAD’s assessment of the Applicants’ refugee claims is subject to review by this Court against the standard of reasonableness. Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] The Applicants challenge the reasonableness of the RAD's decision on numerous grounds. One is determinative: the RAD's assessment of the adequacy of state protection.

[19] The RAD acknowledged that "there is a serious problem in the Bahamas regarding domestic violence and police impunity", and that "adequate state protection is not available to women in need of protection from domestic violence." However, the RAD concluded that Ms. Jeanty was not at risk of domestic violence because she is no longer married to Volvick. The RAD also expressed doubt about whether he had returned to the Bahamas, although two of Ms. Jeanty's children said they thought they had seen him there shortly before their departure for Canada in 2017.

[20] The RAD considered the question of state protection with regard to gender-based violence generally. It concluded that the Bahaman police take assault and sexual assault seriously, and noted that Volvick was deported twice from the Bahamas following incidents of domestic violence.

[21] I have considerable difficulty with the proposition that the Bahaman police would not regard an altercation between Volvick and Ms. Jeanty as a domestic dispute unworthy of their attention. They declined to investigate the assault that occurred in June 2009, even after Ms. Jeanty showed them her divorce papers. Furthermore, the definition of domestic violence contained in the National Documentation Package for the Bahamas (Item 5.2) encompasses violence between partners who have formerly lived together in domestic relationships.

[22] I therefore conclude that the RAD's assessment of the adequacy of state protection was unreasonable. The RAD acknowledged that there is a serious problem in the Bahamas regarding domestic violence and police impunity. Its finding that Ms. Jeanty is not at risk of domestic violence because she is no longer married to Volvick is contradicted by her previous experience and country condition reports. Its finding that Volvick is no longer in the Bahamas is inconsistent with the uncontradicted testimony of two of Ms. Jeanty's sons that they believe they saw him there as recently as 2017. There is no dispute that Volvick has demonstrated a capacity to return to the Bahamas with relative ease, despite having been deported to his native Haiti.

VI. Conclusion

[23] The applications for judicial review of Charmaine Firstina Jeanty and Vince Jerome Similien are allowed, and the matters are remitted to a differently-constituted panel of the RAD for reconsideration.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review of Charmaine Firstina Jeanty and Vince Jrome Similien are allowed, and the matters are remitted to a differently-constituted panel of the RAD for reconsideration.

2. The applications for judicial review of Senyah Keyrah Jeanty and Victor Shannon Raynaldo Similien are dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4562-18

STYLE OF CAUSE: CHARMAINE FIRSTINA JEANTY
VINCE JROME SIMILIE
SENYAH KEYRAH C D JEANTY
VICTOR SHANNON RAYNALDO SIMILIE *v* THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: FOTHERGILL J.

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