Federal Court  Cour fédérale

Date: 20210720

Docket: IMM-6781-19

Citation: 2021 FC 762

Ottawa, Ontario, July 20, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

SOPHIE ILLUMINATA PHILOMINA ALEXANDER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Sophie Alexander, is a citizen of Saint Lucia. She has sought protection in Canada on the basis of her alleged fear of her former spouse, who still lives in Saint Lucia.

[2] Ms. Alexander first applied for refugee protection in 2015 after she was apprehended for having remained in Canada without status. The Refugee Protection Division ("RPD") of the

Immigration and Refugee Board ("IRB") rejected the claim, finding that it was clearly fraudulent. After she was apprehended again in August 2019 while evading removal, Ms. Alexander applied for a pre-removal risk assessment ("PRRA") under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). A Senior Immigration Officer with Immigration, Refugees and Citizenship Canada rejected the application in a decision dated November 5, 2019.

[3] Ms. Alexander now applies under subsection 72(1) of the *IRPA* for judicial review of this decision. She submits that the decision was made in breach of the requirements of procedural fairness and that it is unreasonable. The respondent submits that the decision is fair and reasonable. The respondent also submits that the application for judicial review should be dismissed because Ms. Alexander does not have clean hands.

[4] There is considerable force to the respondent's position regarding Ms. Alexander's lack of clean hands. Ms. Alexander wilfully disregarded her obligations under Canadian law. Her misconduct threatened the integrity of Canada's immigration and refugee protection systems and a reviewing court should not simply turn a blind eye to this. At the same time, especially because of the interests implicated in the PRRA decision, the clean hands doctrine does not preclude – and arguably requires – an assessment of the merits of the grounds for judicial review. Doing so, however, should not be seen as in any way minimizing, condoning or excusing Ms. Alexander's misconduct.

[5] As I will explain in the reasons that follow, this application will be dismissed not because Ms. Alexander lacks clean hands but, rather, because she has failed to establish any shortcomings in the PRRA decision that would warrant intervention.

II. BACKGROUND

[6] Ms. Alexander was born in Saint Lucia in February 1964. She began a relationship with TF in 1981. The couple had four children together. The family lived in Castries. Ms. Alexander claims that TF was physically abusive towards her and their children. The couple separated in 2002 but TF continued to threaten, harass and assault her. Ms. Alexander claims that, after a particularly severe assault, in early 2005 she obtained a Protection Order against TF from the Family Court in Castries. The order was valid until March 3, 2006.

[7] Ms. Alexander claims that TF continued to harass and threaten her even after she obtained the Protection Oder. She claims that she had to move out of her home to evade him but she has given different accounts of where she went. She stated in her Basis of Claim form that she moved away from Castries and went to live with her mother; however, in her submissions in support of her PRRA application she stated that she stayed for four years (from 2006 until 2010) with a friend who is a police officer in the latter's home in Castries. There is no mention of this in connection with the refugee claim. (As discussed below, the friend with whom she stayed later provided a letter supporting Ms. Alexander's PRRA application.) On the other hand, in an affidavit filed in support of her appeal to the Refugee Appeal Division ("RAD"), Ms. Alexander simply stated that, before coming to Canada, she was living with TF "since 1981."

[8] Ms. Alexander claims that, fearing for her life, she left Saint Lucia for Canada in September 2010. She did not seek protection here at that time; instead, she stayed as a visitor and hoped to find work here. She returned to Saint Lucia for two weeks in March 2012 so that she could apply for a Canadian work permit. She returned to Canada and was granted a work permit that was valid until March 2015.

[9] After her work permit expired, Ms. Alexander remained in Canada without status. She was arrested by the Canada Border Services Agency ("CBSA") on December 4, 2015, and was released on bond approximately two weeks later.

[10] Ms. Alexander made a claim for refugee protection on December 29, 2015. A hearing before the Refugee Protection Division ("RPD") took place on February 29, 2016. The RPD rejected the claim in a decision dated March 8, 2016. The RPD found, on a balance of probabilities, that Ms. Alexander's allegations were false and that "her story is entirely a fabrication." The RPD specifically found that the document purporting to be the Family Court Protection Order "is a fake" because of discrepancies on the face of the document and because of Ms. Alexander's lack of knowledge of its contents. Being of the opinion that the claim was clearly fraudulent, the RPD stated in accordance with section 107.1 of the *IRPA* that the claim was manifestly unfounded.

[11] Ms. Alexander appealed the RPD's decision to the RAD but the appeal was dismissed for lack of jurisdiction: see *IRPA* paragraph 110(2)(c). Ms. Alexander did not seek judicial review of the RPD's decision.

[12] Following the rejection of the refugee claim, arrangements were made for Ms. Alexander's removal from Canada. However, she did not report for her scheduled departure on October 25, 2016. A warrant was issued for her arrest.

[13] Ms. Alexander was not apprehended by the CBSA until nearly three years later, on August 13, 2019. When she was arrested, Ms. Alexander initially identified herself with a false name. She later admitted to having used a friend's driver's license and social insurance number to obtain employment.

[14] Following her arrest, Ms. Alexander was offered the opportunity to apply for a PRRA. In her application, she claimed that she feared that TF would kill her if she had to return to Saint Lucia. She also submitted that there would not be effective state protection for her there. Further, she submitted that she required mental health treatment which Saint Lucia was not equipped to provide. The PRRA application was supported by evidence that had not been presented to the RPD, including an amended copy of the Family Court Protective Order and two letters from the Director, Department of Justice, Family Court, in Castries, Saint Lucia.

[15] The PRRA application was rejected on November 5, 2019. Ms. Alexander was then scheduled to be removed on November 14, 2019, but her removal was stayed pending the determination of this application for judicial review.

III. DECISION UNDER REVIEW

[16] The Senior Immigration Officer rejected the PRRA application for two main reasons: first, Ms. Alexander had not presented sufficient evidence to substantiate the risk she alleged she faced from TF; and second, even if it were the case that Ms. Alexander is at risk of harm from TF, Saint Lucia is able to provide her with adequate state protection.

A. *The "New" Evidence*

[17] As noted, Ms. Alexander submitted evidence on her PRRA application that had not been presented to the RPD. Paragraph 113(a) of the *IRPA* provides that a PRRA applicant whose claim for refugee protection has been rejected "may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection." The Officer appears to have accepted, without any analysis, that all the new evidence submitted by Ms. Alexander met this test. However, the Officer concluded that none of this evidence was sufficient to displace the RPD's conclusions concerning Ms. Alexander's lack of credibility about the risks she alleged or to demonstrate, on a balance of probabilities, that TF continued to be interested in harming her.

(1) Letter from Mary Charles

[18] Mary Charles is the friend and (now retired) police officer with whom Ms. Alexander claims to have lived from 2006 until 2010. Ms. Charles provided a letter dated August 21, 2019,

confirming that this was the case, describing TF's abusive conduct towards Ms. Alexander in the past, and relating recent incidents involving TF (including one occurring on the very day she wrote the letter in which he told Ms. Charles he would "deal with" Ms. Alexander when she came back to Saint Lucia).

[19] The Officer noted that no evidence from Ms. Charles had been presented to the RPD. The Officer also noted the inconsistency between Ms. Alexander's claim to have lived with Ms. Charles for four years (as supported by the letter) and her other accounts. The Officer concluded that, given the credibility findings of the RPD, the letter deserved "little weight in establishing a personalized risk for the applicant upon her return to St. Lucia."

(2) Affidavits from Ms. Alexander's Children

[20] At the RPD hearing, Ms. Alexander filed letters from two of her children. According to the RPD decision, the letters were "essentially a recounting of the abuse the children and the Claimant allegedly faced at the hands of Mr. Flavius." The RPD concluded as follows regarding the letters: "The letters from the Claimant's children also bear little weight because they are unsworn and it is extremely easy for anyone to produce such letters. Since they were not called in person or by phone there is no way to verify or test the evidence of the authors." (These letters are not part of the record on this application. It is not possible to determine from the record which children provided them.)

[21] In support of her PRRA application, Ms. Alexander provided sworn affidavits from three of her children. All three (now adult) children describe the abuse they suffered at the hands of

their father growing up. They also describe the abuse inflicted on their mother by their father and their fears for their mother's safety if she returns to Saint Lucia. None of the affidavits describe events that post-date the March 2016 RPD decision except for recent incidental contacts of the children with their father in which he continues to threaten their mother. Apart from this, all of the events described appear to have occurred before Ms. Alexander left Saint Lucia in 2010.

[22] The Officer concluded as follows with respect to these affidavits:

> I have read the affidavits from the applicant's children. The three children recall their own experiences with their father [. . .] and the abuse their mother faced. They each add at the end of their affidavits that their mother, the applicant, is in danger at the hands of their father as he is still obsessed with her. I note these affidavits were written by individuals who have a vested interest in the outcome of this decision; given the credibility findings of the RPD and that little documentary evidence [was] provided in support of these affidavits, I give them little weight in establishing personalized, forward-looking risk for the applicant.

(3) Amended Family Court Protection Order

[23] The Family Court Protection Order submitted by Ms. Alexander to the RPD was dated February 16, 2004; however, it also stated that the application for the order had been heard on February 16, 2005. As the RPD pointed out in its decision, the two dates were mutually inconsistent; indeed, the RPD went so far as to describe the dates on the order as "impossible". As well, the RPD did not find it believable Ms. Alexander "never noticed that the order purports to be issued a year before the proceedings in court" or that it had expired when she claimed to have urged the police to enforce it between 2008 and 2010. As noted above, the RPD considered

the protection order to be fraudulent. The RPD found that the filing of a fraudulent document had a significant detrimental effect on Ms. Alexander's credibility.

[24] It appears that, after the RPD rejected her claim, Ms. Alexander immediately took steps to address the discrepancy on the face of the order. On April 11, 2016, she was provided with a letter from the Director, Department of Justice, Family Court, in Castries, Saint Lucia. The letter confirmed that Ms. Alexander "has been a client of the Family Court." It also described three orders made by the Family Court relating to Ms. Alexander and TF:

- On October 11, 2004, both Ms. Alexander and TF were placed on bond for two years, in default $1000.00 or 2 months in prison. Both parties were ordered to go to counselling.

- On January 14, 2005, the order for counselling was discontinued, the children were ordered to go to anger management, TF was fined $500.00, in default one month in prison, and an interim Protection Order was granted.

- On February 16, 2005, TF was ordered to pay $500.00, in default one month in prison, the interim Protection Order was made final for one year (until March 3, 2006), and the children were ordered to go to family counselling.

No information about what gave rise to the orders (or the fines against TF) was provided.

[25] It would appear that it was the last of these orders that Ms. Alexander submitted to the RPD. The letter of April 11, 2016, stated the following regarding that order:

> A copy of the final order was requested from the Family Court Office and given to Ms. Sophie Alexander; however, it was later

> observed that the date of the Order on file was inadvertently inserted as 2004 when it should have been 2005.

[26] Finally, the letter stated that the error had been corrected and a copy of the corrected order was enclosed. On the corrected Protection Order, the year 2004 in the date of the order is crossed out and 2005 has been added in its place. These handwritten changes were initialled by someone but there is no indication of who this was.

[27] Ms. Alexander also obtained a second letter from the Director dated August 23, 2019. It simply confirmed that the April 11, 2016, letter had been provided to her and that its contents were "true and correct."

[28] Ms. Alexander submitted these letters along with the corrected Protection Order in support of her PRRA application. The Officer assessed this evidence as follows:

> While the order may have been dated incorrectly, the RPD found the applicant's "non-credible testimony" to be one of the two deciding factors when giving this Protection Order little weight. Therefore, this evidence does not lead me to a different conclusion than that of the RPD and I afford it little weight in establishing a forward-looking, personalized risk for the applicant.

B. *Mental Health Issues*

[29] Ms. Alexander had submitted evidence to support her contention that she required treatment for mental health issues and that Saint Lucia was unable to provide this. The Officer did not analyze this evidence at all but simply stated that paragraph 97(1)(b)(iv) precludes a

finding a person to be in need of protection on the basis of the inability of their country of nationality to provide adequate medical care.

C. *State Protection*

[30] The Officer's consideration of the issue of state protection consists almost entirely of quotations (some very lengthy) from country condition reports relating to how the problem of domestic violence is being dealt with in Saint Lucia. The passages quoted in the Officer's decision indicate that domestic violence is a significant problem in Saint Lucia but that there are police and judicial services in place to address them. One report deemed police response to domestic violence as "generally effective." Nevertheless, there are impediments to effective police response, including a lack of resources and transportation for police, which can cause delays in responding to incidents, and sometimes a lack of understanding of the dynamics of domestic violence. The evidence also notes that protection orders are available from the Family Court in cases of domestic abuse and describes the process for obtaining them.

[31] After setting out this country condition evidence, the Officer then simply concluded, on the basis of a "review" of this evidence, that if TF were "interested" in Ms. Alexander on her return, Saint Lucia would be "able to provide adequate state protection." The Officer also adds that "unless the state has been completely broken down an applicant for protection must provide 'clear and convincing' evidence of the state's unwillingness or inability to provide protection. The applicant has not satisfied this requirement."

D. *Conclusion*

[32] In sum, the Officer concluded that the applicant had "provided little evidence to support her claim that she will be sought out and harmed by her ex-spouse [. . .] upon her return." In the event that her former spouse were interested in harming Ms. Alexander, Saint Lucia would be able to protect her.

IV. STANDARD OF REVIEW

[33] The parties agree, as do I, that the substance of the Officer's decision should be reviewed on a reasonableness standard: see *Demesa v Canada (Citizenship and Immigration)*, 2020 FC 135 at paras 9-10.

[34] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). An administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96).

[35] The onus is on the applicant to demonstrate that the Officer's decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the

requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The errors must be "sufficiently central or significant to render the decision unreasonable" (*ibid*.)

[36] With regard to whether the requirements of procedural fairness were met, the reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the process was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31. This is functionally the same as applying the correctness standard of review: see *Canadian Pacific Railway Co* at paras 49-56 and *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 at para 35. The burden is on the applicant to demonstrate that the requirements of procedural fairness were not met.

V. ISSUES

[37] I would frame the issues arising in this application as follows:

(a) Should the application be dismissed because the applicant does not have clean hands?

(b) Did the Officer breach the requirements of procedural fairness by not convening a hearing?

(c) Is the decision unreasonable?

VI. ANALYSIS

A. *Should the application be dismissed because the applicant does not have clean hands?*

[38] There is no question that Ms. Alexander has misconducted herself. Most significantly, while on bond, she failed to report for removal on October 25, 2016, and then evaded apprehension for nearly three years. Such wilful disregard for her legal obligations threatens the integrity of the Canadian immigration and refugee protection systems: see *IRPA* paragraphs 3(1)(f.1) and 3(2)(e). The respondent submits that this disentitles Ms. Alexander from relief from this Court. Without in any way minimizing, condoning or excusing Ms. Alexander's misconduct, I do not agree.

[39] Relief by way of judicial review is a discretionary remedy (*Homex Realty and Development Co v Wyoming (Village)*, [1980] 2 SCR 1011 at 1034-35) and it is often said that one must have "clean hands" to be entitled to such relief. While this is a familiar idea, it is not always a particularly helpful one. In his text *Injunctions and Specific Performance* (Toronto: Thomson Reuters, 2018 (looseleaf updated November 2018)), R.J. Sharpe observes:

> The maxim that one "who comes to equity must come with clean hands" is colourful but potentially misleading in so far as it suggests a general power to scrutinize all aspects of the plaintiff's behaviour and refuse relief if it offends. The "clean hands" maxim is best understood as a very general catch-all phrase encompassing many discretionary factors better considered in more precise terms. By itself, it has really no analytical value, although, as will be seen, it has sometime been employed as if it did.
>
> (at §1.1030, footnotes omitted)

[40] The Federal Court of Appeal has provided some precision to this concept that may be lacking elsewhere. In *Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67, it stated that "clean hands" is "an equitable doctrine, under which a party may be disentitled to relief to which it was otherwise entitled as a consequence of past conduct or bad faith. Importantly," the Court continued, "for past conduct to justify a refusal of relief, the conduct must relate directly to the very subject matter of the claim" (at para 37, references omitted).

[41] The leading authority on the clean hands doctrine in the immigration and refugee context is still *Canada (Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14. Writing for the Court, Evans JA held that, "if satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court may dismiss the application without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief" (at para 9, emphasis in original). As Evans JA went on to explain, in exercising this discretion, a reviewing court "should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights" (at para 10).

[42] Evans JA suggested several factors to consider in the exercise of this discretion:

- the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question;
- the need to deter others from similar conduct;
- the nature of the alleged administrative unlawfulness and the apparent strength of the case; and

> • the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.
>
> (at para 10)

[43] As Evans JA also noted, this is not an exhaustive list, nor are all the considerations necessarily going to be relevant in every case.

[44] Applying these considerations, I am not persuaded that Ms. Alexander's misconduct warrants either not considering her application for judicial review on its merits or dismissing it even if a reviewable error in the PRRA decision were established. As I have already said, the misconduct was serious. However, it does not undermine or otherwise impair this Court's ability to determine this application for judicial review on its merits. While such conduct must be deterred, there are other mechanisms for achieving this (e.g. the detention review process under the *IRPA* and related regulations, as Ms. Alexander herself undoubtedly learned after her arrest in August 2019). Since the reviewing Court must engage with the merits of the underlying judicial review in any event to assess "the apparent strength of the case," a full assessment of those merits would come at little extra cost to the administration of justice. Most importantly, serious issues were at stake in the decision under review, including Ms. Alexander's allegation that she is at risk of violence at the hands of her former spouse if she returns to Saint Lucia. This is a case in which fundamental human rights are at stake. In such circumstances, it is incumbent on the reviewing Court to assess the fairness and legal soundness of a decision that, if it is allowed to stand, will facilitate Ms. Alexander's return to Saint Lucia.

B. *Did the Officer breach the requirements of procedural fairness by not convening a hearing?*

[45] Ms. Alexander submits that the Officer breached the requirements of procedural fairness by making adverse credibility findings without first providing her with an opportunity to address the concerns about her credibility in an oral hearing. I do not agree.

[46] Under paragraph 113(b) of the *IRPA*, an officer considering a PRRA application may hold a hearing if they are of the opinion, on the basis of the prescribed factors, that a hearing is required. The prescribed factors are set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

(b) whether the evidence is central to the decision with respect to the application for protection; and

(c) whether the evidence, if accepted, would justify allowing the application for protection.

[47] Ms. Alexander submits that she provided "extensive evidence" in support of her application and the Officer's determination that that evidence was insufficient is actually a veiled credibility finding which should not have been made without a hearing. I do not agree with this characterization of the Officer's reasoning or, more fundamentally, with the framing of the issues in this case that underlies it.

[48] The right to a PRRA under subsection 112(1) of the *IRPA* is grounded in Canada's domestic and international commitments to the principle of non-refoulement: see *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 10. Where there has been a delay between the rejection of a refugee claim and removal from Canada, the question of risk may need to be assessed anew since circumstances may have changed in the interim or the individual may face a new risk. Thus, the purpose of a PRRA "is to determine whether on the basis of a change in country conditions or on the basis of new evidence that has come to light since the RPD decision, there has been a change in the nature or degree of risk" (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 116; see also *Shaka v Canada (Citizenship and Immigration)*, 2019 FC 798 at paras 40-47).

[49] A PRRA application is not an appeal or a reconsideration of an earlier decision to reject the claim for refugee protection; it is an assessment of the risk an individual faces at the time of removal. However, the latter assessment may require consideration of some or all of the same factual and legal issues that were considered in the earlier, unsuccessful claim.

[50] *Raza* notes that this potential for overlap creates "an obvious risk of wasteful and potentially abusive relitigation" in a PRRA application (at para 12). Paragraph 113(a) of the *IRPA* attempts to mitigate this risk by limiting the evidence that a failed refugee claimant may rely on in support of a PRRA application. *Raza* explains that this provision is "based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD" (at para 13). Similarly, in the context of

a discussion of the rules of admissibility of evidence on appeals to the RAD, the Federal Court of Appeal stated with respect to PRRA applications that "the PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk" (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 47).

[51] In the present case, the Officer took a very generous approach to the evidence Ms. Alexander provided in support of her PRRA application. The Officer appears to have been willing to consider all of that evidence without determining (or, at least, without expressly determining) whether any or all of it met the test under paragraph 113(a) of the *IRPA*. Be that as it may, the question before the Officer was whether any of that evidence justified a different conclusion about the risk Ms. Alexander faces in Saint Lucia than the one drawn by the RPD. Since the RPD's rejection of the claim turned on adverse findings with respect to Ms. Alexander's credibility, the key question before the Officer was whether any of that evidence was capable of displacing the RPD's adverse credibility findings. Given the nature of the evidence relevant to the issue of risk that was before the Officer (it being mostly statements from third-parties and nothing genuinely new from Ms. Alexander herself), the Officer properly focused on its sufficiency as opposed to its credibility: see *Ponniah v Canada (Citizenship and Immigration)*, 2013 FC 386 at paras 37-41. Consequently, none of the factors that would otherwise trigger the need for a hearing under paragraph 113(b) of the *IRPA* were engaged.

[52] The Officer did not make any veiled adverse credibility findings with respect to Ms. Alexander. Rather, finding that none of the new evidence was sufficient to displace the

RPD's finding that Ms. Alexander's narrative was not credible, the Officer relied on the RPD's earlier determinations, as the Officer was entitled to do: see *Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 at para 20, and *Kuba v Canada (Citizenship and Immigration)*, 2019 FC 1298 at para 22. Doing so did not trigger the right to a hearing as a matter of procedural fairness.

[53] Whether the Officer's assessment of the evidence – including the reliance on the RPD's adverse credibility findings – is unreasonable is another question. I turn to it now.

C. *Is the decision unreasonable?*

[54] Ms. Alexander submits that the decision is unreasonable because of flaws in the Officer's assessment of four aspects of her PRRA application: her need for mental health diagnosis and treatment; state protection; the Family Court Protection Order; and the evidence from her children. I do not agree that there is any error in the Officer's assessment of the mental health issue or state protection. On the other hand, I do agree that the Officer's assessment of the Family Court Protection Order and of the evidence from Ms. Alexander's children is flawed. However, I am not persuaded that these errors are so significant as to warrant setting aside the decision.

[55] The issue of Ms. Alexander's mental health needs can be disposed of easily. Ms. Alexander submitted evidence suggesting that she suffered from mental health conditions requiring diagnosis and treatment that would be unavailable to her in Saint Lucia. She argues that the Officer erred by ignoring this evidence. While the Officer's treatment of this issue is

very brief, nothing more needed to be said. The Officer was entirely correct that Ms. Alexander would not be entitled to protection on this basis: see *IRPA* paragraph 97(1)(b)(iv).

[56] Turning to the issue of state protection, Ms. Alexander challenges the Officer's conclusion on two grounds. First, she submits that the Officer should have assessed the issue through the lens of the IRB Chairperson's Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution. Second, she submits that the conclusion is unreasonable because the Officer failed to address evidence in the record suggesting that state protection for victims of domestic abuse in Saint Lucia is inadequate.

[57] I begin by noting that the Senior Immigration Officer who decided the PRRA application is not a decision maker under authority of the IRB and, as a result, the Chairperson's Guidelines do not apply directly to PRRA applications. Even accepting that Guideline 4 sets out general principles that may be relevant to a PRRA application based on the risk of domestic violence, these principles are at best tangential to the issues that were before the decision maker in this case. This may explain why Guideline 4 was not mentioned in counsel's extensive written submissions in support of the PRRA application. Most importantly, Ms. Alexander has not persuaded me that the state protection analysis is untenable in light of Guideline 4. There is nothing to suggest that the Officer's assessment of state protection is inconsistent with any of the principles set out in Guideline 4 (to the extent that any of them even apply).

[58] Second, Ms. Alexander has not persuaded me that the Officer overlooked material evidence relating to the issue of state protection. She points to evidence relating to the

challenges Saint Lucia faces in dealing with domestic abuse but evidence to this effect is set out in the very extracts from country reports the Officer includes in the decision. There is no need to rely on the presumption that the Officer considered this evidence because it is found somewhere in the record; this evidence is found in the decision itself and was obviously considered. Unless the Officer's assessment of that evidence is unreasonable, it is not open to a reviewing court to intervene (cf. *Vavilov* at para 85). The burden was on Ms. Alexander to rebut the presumption of state protection. While the Officer's actual analysis of the country condition evidence could certainly have been more extensive, Ms. Alexander has not persuaded me that it was unreasonable for the Officer to conclude that she had not rebutted the presumption that Saint Lucia would protect her if necessary.

[59] On the other hand, I do agree with Ms. Alexander that the Officer erred in two other respects.

[60] First, I agree with Ms. Alexander that the Officer's assessment of the Family Court Protection Order is unreasonable.

[61] To repeat for ease of reference, the Officer concluded as follows regarding the Protection Order:

> While the order may have been dated incorrectly, the RPD found the applicant's "non-credible testimony" to be one of the two deciding factors when giving this Protection Order little weight. Therefore, this evidence does not lead me to a different conclusion than that of the RPD and I afford it little weight in establishing a forward-looking, personalized risk for the applicant.

[62] In my view, the Officer's assessment of the Protection Order is simply unintelligible. The RPD did not rely on the discrepancy in the dates on the Protection Order or on Ms. Alexander's non-credible testimony about the contents of the Protection Order (the two "deciding factors" alluded to by the Officer) merely to give that document "little weight." Rather, the RPD relied on those factors to find that the Protection Order itself was fraudulent. This, in turn, led to a significant adverse finding with respect to Ms. Alexander's credibility generally. (The RPD wrote: "The submission of a fraudulent document damages a claimant's credibility because it suggests that the allegation supported by the document is false. In addition, the general believability of any witness is diminished when they show that they are prepared to produce or obtain a false official document and offer false testimony in support thereof.") However, the new evidence relating to the Protection Order necessarily calls the RPD's conclusion about the genuineness of the document into question. According to this evidence, the discrepancy in the dates resulted from an inadvertent mistake that has been corrected. Moreover, and most importantly, this evidence is strong *prima facie* evidence that the Protection Order is genuine. It is simply incomprehensible why this evidence did not lead the Officer to a different conclusion than the RPD about the weight to be given to the Protection Order.

[63] Second, I also agree with Ms. Alexander that the Officer's assessment of the evidence from her children is unreasonable.

[64] Ms. Alexander submits that it was unreasonable for the Officer to give the evidence from her children little weight because they "have a vested interest in the outcome of this decision": see *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at paras 4-7. The

respondent counters that this was not the only reason the Officer gave for giving the affidavits little weight. The Officer also considered the credibility findings of the RPD and that "little documentary evidence [was] provided in support of the affidavits." In my view, neither of these additional considerations supports the reasonableness of the Officer's determination.

[65] Looking first at the issue of "vested interests," there can be no doubt that, as a matter of common sense and common experience, a witness's interest in the outcome of a proceeding can be a relevant factor in assessing the weight that should be given to that witness's evidence. However, this Court has found it necessary to intervene when decision makers have diminished the value of evidence for this reason alone and without meaningful consideration of other factors potentially affecting the weight of the evidence (e.g. being under oath or solemn affirmation, being consistent with other credible evidence, being corroborated in material respects, and so on). See *Tabatadze* at paras 4-7 and the cases cited therein; see also *Aisowieren v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 305 at paras 15-16 and the cases cited therein.

[66] I agree with the respondent that the Officer did not rely on this factor alone in giving little weight to the affidavits from Ms. Alexander's children. However, on closer examination, neither of the other considerations mentioned by the Officer reasonably supports the Officer's assessment of that evidence. Given the flaw in the Officer's assessment of the Family Court Protection Order discussed above, is was unreasonable for the Officer simply to cite "the credibility findings of the RPD" – or at least, to do so without any further analysis of why those findings were still sound even if the Protection Order is genuine. Further, merely citing the absence of "documentary evidence" supporting the affidavits adds nothing to the transparency,

intelligibility or justification of the determination. For this to be a salient consideration, there must be some explanation of what sort of documentary evidence would reasonably have been expected to be provided in support of the affidavits and why such "support" was required in the first place. The Officer provided neither. What is left, then, is simply the alleged "vested interest" of Ms. Alexander's children in the outcome of the application. Standing on its own, and without any analysis of other factors capable of affecting the value of that evidence, this is an unreasonable basis on which to give the affidavits "little weight".

[67] This brings me, finally, to the question of whether these errors are sufficiently central or significant to render the decision as a whole unreasonable. I find that they are not. While the Officer's assessment of the affidavits from Ms. Alexander's children is flawed in the way I have just described, I have serious doubts about whether the bulk of that evidence was properly before the Officer given the requirements of paragraph 113(a) of the *IRPA*. Apart from a few generic references to more recent events, the affidavits deal almost entirely with evidence that pre-dates the rejection of the refugee claim, that would have been available to Ms. Alexander at the time of her refugee hearing, and that would reasonably be expected to have been presented to the RPD. (Recall that Ms. Alexander submitted letters from two of her children to the RPD.) An error with respect to inadmissible evidence is at best peripheral to the merits of the decision. In any event, both of the errors I have identified go only to the Officer's assessment of the sufficiency of the evidence that Ms. Alexander would be at risk of harm from TF if she returned to Saint Lucia. Neither affects the Officer's determination that state protection would be available to Ms. Alexander in the event that TF continued to pose a risk to her, a determination that I have found to be reasonable. This is a sufficient basis on which to uphold the decision.

Consequently, neither of these errors renders the decision as a whole unreasonable or otherwise warrants setting the decision aside.

VII. CONCLUSION

[68] For these reasons, the application for judicial review is dismissed.

[69] The parties did not suggest any serious questions of general importance for certification under subsection 74(d) of the *IRPA*. I agree that none arise.

[70] Finally, the original style of cause names the Minister of Immigration, Refugees and Citizenship Canada as a respondent. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, subsection 5(2) and *IRPA*, subsection 4(1). The original style of cause also named the Minister of Public Safety and Emergency Preparedness as a respondent. The parties agree that the Minister of Citizenship and Immigration should be he only respondent. Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration and to remove the Minister of Public Safety and Emergency Preparedness.

JUDGMENT IN IMM-6781-19

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent and to remove the Minister of Public Safety and Emergency Preparedness.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6781-19
STYLE OF CAUSE:	SOPHIE ILLUMINATA PHILOMINA ALEXANDER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 19, 2021
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JULY 20, 2021

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