Date: 20071221

Docket: IMM-3599-06

Citation: 2007 FC 1359

Ottawa, Ontario, December 21, 2007

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

JACINTHA MARIA HOOPER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is a citizen of Saint Vincent and the Grenadines (Saint Vincent). She claimed refugee protection because she was a victim of domestic violence in her home country. After a hearing before the Refugee Protection Division of the Immigration and Refugee Board (the Board), it was determined that she was not a Convention refugee or a person in need of protection. It is from this decision that she is now seeking judicial review.

FACTS

[2] The applicant began a common-law relationship with Michael Williams in 1991. She alleges that Mr. Williams began physically assaulting her two years later, after she gave birth to their

daughter. When she was beaten, he would claim that their daughter was not his child. In March 1994, Mr. Williams beat her so badly that she was hospitalized for two weeks. After she was released from the hospital, she reported the incident to the police but no action was taken. She then resumed living with Mr. Williams but she says that sometimes she had to move to her mother's house as a result of the beating and harassment.

[3] In November 1997, the applicant and Mr. Williams moved to Canouan, a small island off Saint Vincent, to work on a resort where they lived together for four years. Despite the warnings of the applicant's brother, a police officer, Williams continued his violent behaviour.

[4] While attending a Christmas party in December 1998, Mr. Williams brutally assaulted her and was eventually stopped by her co-workers. The incident was reported to the police and Mr. Williams was taken into custody. However, he was released within an hour after he told the police that he had been drunk. No charges were laid against him. When the applicant's brother reported the incident to the manager of the resort, Mr. Williams was fired. He found employment at another resort on the island and continued his harassment.

[5] The applicant says that Mr. Williams continued to beat her for the next two years. Neighbours and family members also reported the incidents to the police but no action was ever taken against him.

[6] In July 2001, the applicant fled to Canada with a six-month visitor visa. She applied for refugee protection in August 2004. She explained her delay in claiming refugee status by the fact that she was not aware of this possibility until she was advised by a social worker in a shelter.

[7] On June 9, 2006, the Board rejected her asylum claim based on the delay in claiming refugee protection and on the availability of state protection in Saint-Vincent.

[8] After having carefully reviewed the record and the submissions of the parties, I am of the view that this decision should be quashed.

THE IMPUGNED DECISION

[9] The Board accepted the applicant's identity as a citizen of Saint Vincent, but did not find her explanation for the delay in claiming refugee status to be either reasonable or credible. She stayed in Canada without any status once her visitor's visa expired, and she took no reasonable steps to legalize her status for three years (the Board mistakenly said four). The Board noted that she could have made enquiries at her church or consulted with her cousin with whom she stayed for some time.

[10] The Board then moved on to an analysis of the availability of state protection in Saint Vincent for abused women. It painted the situation in rather positive terms, stating that "the police of Saint Vincent respond to all calls of domestic violence", that they "are doing their job with regard to complaints of domestic violence", that they "respond adequately to the problem", that since 1992

victims of domestic violence “have access to legal redress” and that “[t]he judicial system is very effective in prosecuting perpetrators of domestic violence, and many of these offenders are sentenced to imprisonment”.

[11] Indeed, the Board seems to imply that if the system has not been working as well as it should have been in the past, it is because women tend to abandon their complaints and are not willing to seek judicial redress. It went as far as saying that “any failing of the legal system in such matters is almost at the request of the victims who ask not to proceed with the offences”.

[12] Fortunately, this trend is shifting according to the Board “although many still refuse to pursue their case once they have filed with the police”.

[13] The Board acknowledged, almost subliminally, that all is not well and that the documentary evidence is “mixed” with respect to domestic violence. But it is quick to point out that Marion House, a non-governmental social agency, can refer women seeking legal redress to lawyers who provide service *pro bono* and that police responses in such cases tends to be a referral of the parties to the Family Court to obtain a protection order.

[14] The Board concluded by saying that Saint Vincent does not have to provide infallible protection, but only needs to make serious efforts to protect victims of gender violence. It also speculated that had the applicant’s common law partner been serious about controlling her, as she testified, he would have used the child as bait and would have taken steps to file a custody claim in

the court. For all these reasons, the Board found that the applicant had failed to rebut the presumption of state protection and was therefore neither a Convention refugee nor a person in need of protection.

ISSUES

[15] Since both parties agreed that delay in claiming refugee status cannot, in and of itself, be a decisive factor and does not seem to have been treated as such by the Board itself, the only remaining issue is whether the Board erred in its assessment of state protection. Of course, the Court must first determine the appropriate standard of review for such a finding before embarking upon an analysis of the Board's reasoning.

ANALYSIS

[16] It is by now well established that the overall standard of review with respect to an issue of state protection is that of reasonableness *simpliciter*. Such an issue is clearly a mixed question of fact and law, as it involves the application of a legal standard (i.e. clear and convincing confirmation of a state's inability to protect) to a set of facts. This issue was thoroughly canvassed by my colleague Justice Tremblay-Lamer in *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, and I see no need to deviate from her reasoning.

[17] As a result, the decision of the Board will be set aside only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are

tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere.

[18] Counsel for the applicant essentially submitted three arguments. First of all, she argued that the Board took a very selective view of the evidence that it considered to reach its conclusion. Secondly, she submitted that the Board relied exclusively on one document and did not consider more recent evidence before it. Thirdly, she took the view that the Board misapplied the legal test for state protection. I shall deal with each one of these arguments in turn.

[19] A careful reading of the Board's decision shows that its main findings are taken almost word for word from a document entitled "Saint Vincent and the Grenadines: Domestic violence, including police responses to complaints (2002 to April 2003)" (VCT 41518.E) (T.R., p. 57). To be sure, this is one of the documents to be found in the National Documentation Package prepared by the Research Directorate of the Immigration and Refugee Board. The problem is that not only is this only one of the documents found in that Package (this is the second argument of the applicant, to which I will revert shortly), but that the Board conveniently skips over all of the contrary information found in that very same document.

[20] The positive feedback on the effectiveness of the police and of the judicial system in providing protection for battered women rely on information provided by the coordinator of the Saint Vincent and the Grenadines Human Rights Association (SVGHRA) and of the Family Court president and chief magistrate. But the same document relied upon by the Board also reports a

discordant voice, that of a coordinator and counsellor from Marion House. This is a non-governmental organization that provides assistance for abused women and children. Here is what the report of the Research Directorate states, on the basis of the information provided from that counsellor:

> She corroborated the information provided by the coordinator of the SVGHRA regarding shelters and legal aid clinics [they agree that there are no shelters or legal aid clinics in the country], but provided contrasting information regarding the police response to complaints of domestic violence by stating that they are "very poor". She added that many officers are "unhelpful" in providing information to victims of domestic violence about their legal rights. According to the coordinator, most cases are not taken seriously and are met with indifference. The general attitude tends to marginalize the problem of domestic violence; moreover, given that the country is small, there is a feeling among victims that there is no protection available and that there is "no place to go".
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> Few perpetrators of domestic violence are arrested, and when they are, they are soon after released. Many of the perpetrators are police officers themselves. Cases that make it to the judicial level are often thrown out either for lack of evidence or for technical reasons. Services for victims are "minimal". For those women seeking legal redress, Marion House can refer them to lawyers who provide services pro-bono.
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> Tribunal Record, p. 57

[21] Of course, the respondent is correct in stating that a panel need not refer to every piece of evidence in its decision. But it is also well established that if it fails to discuss important contradictory evidence, the Court may conclude that it ignored or misapprehended key facts and came to an erroneous decision. As Mr. Justice Evans wrote in an oft-quoted passage from *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35:

> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a

> court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment & Immigration)* (1993), 63 F.T.R. 312 (T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[22] The respondent argued that the Board did turn its mind to the existence of contradictory evidence, as evidence by its statement that the "documentary evidence is mixed" in the matter relating to domestic violence. But this is not enough, for a number of reasons. First of all, the contradictory evidence was contained in the very same document that the Board relied upon, and it came from a credible source, a non-governmental organization that provides direct service to abused women. If the Board saw fit to refer to Marion House in its endeavour to establish that women are not left to themselves when assaulted by a violent partner, it should also have paid attention to the assessment of the situation by that same organization.

[23] Previous decisions from this Court as to the situation in Saint Vincent are not binding on this Court, as each case turns on its own facts and is based on the material that was filed. That being said, counsel for the applicant referred me to a number of decisions where this Court, on the basis of the very same document considered by the Board in this case, came to the conclusion that the authorities in Saint Vincent may be willing to protect victims of domestic abuse but are not capable

of doing so: see, for example, *Myle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 871; *Henry v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1060.

[24] Even more to the point is the decision of Mr. Justice O'Keefe in *King v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 774. In that case, the Board had concluded that there was no compelling evidence of inadequate state protection, and had relied on the exact same document on which the Board referred to in this case, without ever noting the contrary information contained in that document. After having quoted the exact same passage found in paragraph 18 of my reasons, my colleague found that the failure of the Board to refer to this contrary evidence constituted a reviewable error and allowed the application for judicial review without dealing with the other issue raised by the applicants.

[25] On that basis alone, I could come to the same conclusion than my colleague and return the decision to the Board for redetermination. But there is more. This contradictory evidence that the Board failed to discuss directly corroborated the applicant's specific experience with the police. Since the plausibility of the assaults and of her complaint to the police was not questioned by the Board, there was all the more reason to explain why the documentary evidence tending to confirm her experience could be dismissed.

[26] Indeed, she testified that on the one occasion when her abuser was taken into police custody, he was released within one hour. This is precisely what the coordinator from Marion House is reported to be saying in the document prepared by the Research Directorate on which the Board

relied: “Few perpetrators of domestic violence are arrested, and when they are, they are soon after released”.

[27] The applicant also testified that she was not aware of any steps the government had taken to address domestic violence, including the existence of protection orders. Again, this lack of awareness of victims of domestic violence of their legal rights is corroborated by the evidence not cited by the Board. The coordinator from Marion House stated that “many officers are “unhelpful” in providing information to victims of domestic violence about their legal rights”. This statement is consistent with the applicant’s testimony that, despite making complaints to the police, she was never advised of the option of seeking a protection order.

[28] Not only did the Board appear to have read selectively the 2003 report from its Research Directorate, it also failed to take into consideration the most recent evidence before it, namely the Research Directorate’s report dated October 27, 2005, regarding the application and effectiveness of the domestic violence act (VCT 100755.E, at p. 68 of the T.R.). This report provides statistics on the number of Protection Orders filed, granted and dismissed. The report goes on as saying:

> Regarding police effectiveness, the gender affairs official claimed that police response to domestic violence was sometimes inconsistent and inadequate. For example, while in some cases the police “refer the matter to the Family Services Division or the Family Court”, in other cases the police “task the woman to try to reconcile with her partner”. Without providing any examples about police inadequacy, the gender affairs official stated that the police were “often accused of not dealing with domestic violence in the most satisfying manner”.
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> (…)

> However, with regard to police effectiveness, the NGO representative stated that, in her opinion, the police did not follow through effectively on enforcing the law, especially with regard to protection orders. Because Saint Vincent is a "small society" where everyone knows each other, it is sometimes difficult for officers who may know the abuser to be sensitive towards the victim of domestic violence…

[29] This information was critical because the Board suggested that the applicant could have obtained a protection order from the Family Court. This report contains information that suggests that a protection order was not an effective remedy for the applicant as they are not enforced by the police. One cannot take for granted that the Board consulted all the relevant evidence from the simple fact that it quoted the National Documentation Package in footnote 6 of its reasons. When the evidence that is omitted is directly contradictory to the Board's finding, more will be required than a passing reference to a bundle of documents in a footnote to counter the inference that it came to its conclusion without proper regard to the evidence, especially when that evidence is more recent than the one explicitly referred to.

[30] On the basis of the foregoing, I need not say much with respect to the applicant's third argument. It is no doubt true, as the Board stated, that the authorities of Saint Vincent need not provide one hundred per cent effective protection; but it is equally true that good intentions are not enough and that actual effective protection must be provided for state protection to exist. As my colleague Justice Tremblay-Lamer stated in *Bobrik v. Canada (Minister of Citizenship and Immigration)* (1994), 85 F.T.R. 13:

> [13] Thus, even when the state is willing to protect its citizens, a claimant will meet the criteria for refugee status if the protection being offered is ineffective. A state must actually provide protection,

> and not merely indicate a willingness to help. Where the evidence reveals that a claimant has experienced many incidents of harassment and/or discrimination without being effectively defended by the state, the presumption operates and it can be concluded that the state may be willing but unable to protect the claimant.

[31] Here, the Board relied on the fact that the perpetrator was taken into police custody, presumably warned, and then released shortly afterwards to conclude that state protection had been forthcoming. This is clearly not sufficient. The applicant sought police protection on two occasions after serious assaults by Mr. Williams. The first time, the police took no action even though she was hospitalized. As a result of the applicant's second complaint, Mr. Williams was taken into custody, but released after an hour without charges. There was also undisputed evidence before the Board that the applicant's partner continued to abuse her after these assaults, and that the police took no further action despite reports by neighbours and relatives. This is certainly not illustrative of effective state protection. It may be that Saint Vincent took steps to address the issue of domestic violence. But the Board omitted to consider whether those steps respond adequately to the problem.

[32] For all these reasons, I am of the view that the decision of the Board cannot stand. As a result, the matter will be remitted to a differently constituted panel of the Board to redetermine, in light of these reasons, whether the applicant is a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. No questions were proposed by counsel for certification, and none will be certified.

ORDER

THIS COURT ORDERS that this application for judicial review be allowed and the matter be remitted for redetermination by a differently constituted panel.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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