Date: 2008022

Docket: IMM-2149-07

Citation: 2008 FC 262

BETWEEN:

MARLON EARLON WOODS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] These reasons follow the hearing of an application for judicial review of a decision of the Refugee Protection Division (the "RPD") of the Immigration and Refugee Board wherein the RPD determined the applicant not to be a Convention refugee or a person otherwise in need of Convention refugee-like protection in Canada. The decision under review is dated the 8th of May, 2007.

BACKGROUND

[2] The Applicant is, according to his passport, a citizen of St. Vincent and the Grenadines. That being said, entries in that passport indicate that he exercised a right of return from time to time

to Trinidad and Tobago, more specifically, Trinidad[1]. It was not in dispute before the Court, that prior to coming to Canada, the Applicant lived almost all of his life in Trinidad.

[3] The Applicant is now 26 years of age. He alleges a well-founded fear of persecution at the hands of his father who has been abusive to the Applicant's mother, to the Applicant and his brother and to his mother's three children of a second marriage. Indeed, the Applicant's mother and her three children by her second marriage had been, at the time the Applicant instituted his claim to protection here in Canada, granted Convention refugee status in Canada based on the same fear alleged by the Applicant.

[4] The Applicant came to Canada at his mother's expense and in the company of his brother. At the time of the decision here at issue, the Applicant's brother's claim to Convention refugee status or like protection here in Canada remained outstanding.

[5] The Applicant has a daughter who remains in Trinidad in the company of her mother.

[6] The Applicant alleges that he fears his father and his father's associates. Yet despite violent encounters that he has experienced with his father over the years, he has not sought state protection in Trinidad and Tobago since sometime in the 1980s. Further, before coming to Canada, the Applicant on three separate occasions left Trinidad and on each occasion voluntarily returned.

[1] See the Applicant's Application Record, pages 131 – 136.

THE DECISION UNDER REVIEW

[7] The Decision under review is brief, extending to three pages only. It opens by identifying the claimant before the Board who is described as "….a citizen of Trinidad and Tobago". No acknowledgement is made throughout the brief reasons of the Applicant's actual citizenship, that being of St. Vincent and the Grenadines.

[8] After describing the allegations underlying the Applicant's claim, the Board's brief analysis is in the following terms.

> Relying on the independent documentary evidence, I find that although there are problems with generalized criminality in Trinidad, the government in that parliamentary democracy is making strong efforts to provide adequate state protection for its citizens. I am not satisfied within the preponderance of probability category, as I must be, that the state of Trinidad would not be reasonably forthcoming with serious efforts to protect a citizen who returned and approached the state for protection. I find that Canada's protection is not necessary.
>
> The evidence of the claimant is that he last went to the authorities in the 1980s and has never again sought state protection because none was forthcoming more than 20 years ago when he was a very young child. I am not persuaded that the claimant, an experienced man of 25 years of age who was employed in Trinidad and able to travel abroad with a band representing the culture of Trinidad, would not be able to live independently and seek state protection if Randolph [his father] assaulted him.
>
> Further, I find that the problems experienced in Trinidad by the claimant were neither so appalling nor atrocious that he could be found in need of refugee protection based on compelling reasons.
>
> The RPD does not have a mandate to consider family reunification so that the claimant can be reunited with his mother who left Trinidad in 2000 or with his half-siblings who are Convention refugees in Canada. Further, I am not persuaded by the particulars of the mother's claim that included her minor children, that this adult male claimant is a person who could not avail protection in Trinidad today if he were threatened by Randolph.
>
> The claimant's allegations that there is no adequate state protection available in Trinidad was not supported by any clear and convincing evidence. Therefore, the presumption of adequate state protection being available in the parliamentary democracy of Trinidad has not been rebutted.
>
> There was no evidence provided that the government is in chaos or disarray and unable to protect its citizens and the claimant's burden of proof is directly

> proportional to the level of democracy. No government is expected to be able to protect all of its citizens at all times nor is it expected to provide perfect protection.
>
> [footnoted references to documentary evidence before the Board and citations omitted]

THE ISSUES

[9] At hearing, counsel for the applicant identified the issues on this application as standard of review, failure to consider an identified country of reference, the adequacy or inadequacy of the RPD's state protection analysis and the failure of the RPD to give weight to a Canadian refugee protection decision in favour of similarly situated individuals, namely the Applicant's mother and his siblings by his mother's second marriage. Apart from the issue of the standard of review, I am satisfied that all of the issues raised on behalf of the Applicant can be considered under the broad category of "adequacy of reasons".

ANALYSIS

1. Standard of Review

[10] Generally speaking, decisions of the RPD based on adequacy of state protection are reviewed on a standard of reasonableness *simpliciter*[2] although pure determination of fact within the context of a state protection analysis are reviewable on a standard of patent unreasonableness or on the basis that they were made in a perverse or capricious manner or without regard for the material before the decision-maker. In *Law Society of New Brunswick v. Ryan*[3], the Court wrote at paragraph 55:

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[2] See *Chaves v. Canada (Minister of Citizenship and Immigration*), 2005 FC 193, Feb. 8, 2005.
[3] [2003] 1 S.C.R. 247.

> A decision will be unreasonable 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… .This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling… .
>
> [citations omitted]

[11] That being said, as earlier noted, each of the three substantive issues identified on behalf of the Applicant can be encompassed within an overall concern on the part of the Applicant that the reasons given by the RPD in rejecting his claim to protection are simply inadequate. If such were the case, the RPD's decision would have been made in breach of natural justice or fairness. Put another way, to withstand scrutiny by this Court, reasons of the RPD for rejecting a claim must be "adequate" against a standard of correctness.

2. Adequacy of Reasons

a) Ignoring a Country of Reference

[12] The opening paragraphs of the RPD's reasons is in the following terms:

> These are the reasons for the negative decision of the Refugee Protection Division (RPD) with respect to the claim by Marlon Earlon Woods, the claimant, who is a citizen of Trinidad and Tobago (Trinidad). The hearing for this claim was held pursuant to sections 96 & 97(1) of the *Immigration and Refugee Protection Act* (IRPA).
>
> [emphasis added]

[13] As indicated earlier in these reasons, the identification o the Applicant as a citizen of Trinidad and Tobago is simply incorrect. He is a citizen of St. Vincent and the Grenadines with some form of right of residence in Trinidad and a long history of residence on that Island.

[14] The foregoing being said, the Applicant himself should be identified as much of the source of the RPD's confusion. Reference has earlier been made to a photocopy of the Applicant's passport which was in the record before the RPD which, indeed, was footnoted to the above quoted paragraph of the RPD's reasons. In his affidavit filed in support of this application, the Applicant attests "I am from St. Vincent, though I am a permanent resident of Trinidad and Tobago."

[15] By contrast, in the Applicant's Personal Information Form that was before the RPD, the Applicant, in response to a request to list each country of which he is or had been a citizen, responded that he was both a citizen of St. Vincent and the Grenadines by birthright through his mother, and a citizen of Trinidad and Tobago "by birth". Further, in a document entitled "Information on Individuals Seeking Refugee Protection"[4] an unsigned document, the citizenship of the Applicant is indicated to be "St. Vincent and Trinidad", his last country of permanent residence is indicated to be Trinidad in which it is indicated he is a citizen, and his nationality is indicated to be "St. Vincentian and Trinidadian."

[16] While the failure on the part of the RPD to examine the Applicant's claim against St. Vincent and the Grenadines is indeed an important oversight, I am satisfied that it is not, in and of itself, fatal to the RPD's decision if the finding by the RPD that state protection exists for the Applicant in Trinidad withstands this review. Put another way, if the Applicant can return to Trinidad with reasonable impunity, as the RPD concluded, then whether or not he could return to St. Vincent and the Grenadines with impunity becomes irrelevant. His claim must fail.

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[4] See Tribunal Record, page 99.

b) The State Protection finding

[17] The RPD based its state protection finding, in a very cursory way, on the independent documentary evidence before it. Its citations in support of the finding were equally generalized.

[18] In *Florea v. Canada* (*Minister of Employment and Immigration*)[5], Justice Hugessen, in a one paragraph judgment, for the Court, wrote:

> The fact that the Division [here the RPD] did not mention each and every one of the documents entered in evidence before it does not indicate that it did not take them into account: on the contrary, a tribunal is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown. As the tribunal's findings are supported by the evidence, the appeal will be dismissed.
> [original delivered in French].

[19] In *Hinzman v. Canada (Minister of Citizenship and Immigration*)[6], the Court cited (*Canada Attorney General v. Ward*)[7] for the proposition that in refugee law, there is a presumption of state protection:

> …nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.

[20] The Court continued by citing *Kadenko v. Canada (Solicitor General*)[8] for the proposition that:

> …the more democratic a country, the more the claimant must have done to seek out the protection of his or her home state:
>
> > When the state in question is a democratic state, as in the case at bar, the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful.

[5] [1993] F.C.J. No. 598 (F.C.A.), June 11, 1993.
[6] [2007] F.C.A. 171, April 30, 2007.
[7] [1993] 2 S.C.R. 689.
[8] (1996), 143 D.L.R. (4th) 532. (F.C.A.)

> The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.
>
> [emphasis added in *Hinzman*]

[21] On the facts of this matter, the Applicant made no efforts to overcome the presumption of state protection in Trinidad and Tobago, undoubtedly a democratic nation albeit a nation affording substantially less than "perfect" state protection to its citizens and residents.

[22] While it undoubtedly would have been preferable for the RPD to provide a more fulsome analysis in support of its state protection conclusion, the Applicant provided the RPD with little to work with that was personalized to his particular profile and experience. At the time the Applicant came before the RPD, he was in his mid-twenties. He had been a resident of Trinidad for virtually all of his life. He feared his father who had acted out violently against his mother, against himself and his brother and against his mother's children by her second marriage. That being said, he had not lived with his father since 1990, he had not sought state protection since sometime in the 1980s, and he had thrice left Trinidad and voluntarily returned.

[23] In all of the circumstances, and in particular in the circumstances of this Applicant, I am satisfied that the RPD's conclusion with regard to state protection if the Applicant were required to return to Trinidad was reasonably open.

c) Ignoring of the Protection Decision in favour of the Applicant's Mother and Her Children by her Second Marriage

[24] Counsel for the Applicant relied heavily on the decision of this Court in *Siddiqui v. Canada (Minister of Citizenship and Immigration)*[9] where my colleague Justice Phelan wrote at paragraph 18 of his reasons:

> What undermines the Board's decision is the failure to address the contradictory finding in the *Memon* decision. It may well be that the member disagreed with the findings in *Memon* and may have had good sustainable reasons for so doing. However, the Applicant is entitled, as a matter of fairness and the rendering of a full decision, to an explanation of why this particular member, reviewing the same documents, on the same issue, could reach a different conclusion.

[25] With great respect, counsel's reliance on the foregoing passage is misplaced. While, once again in an ideal world, it might have been preferable for the RPD here to explain why it found the situation of the Applicant's mother and her children by her second marriage to be different from that of the Applicant, the reasons for doing so, I am satisfied, are obvious: the Applicant was in his mid-twenties when his application for protection came before the RPD; his mother was obviously substantially older and her children by her second marriage were infants; and the Applicant's mother and her infant children were substantially more vulnerable than the Applicant, particularly in a nation where spousal violence and violence against children is prevalent and sometimes regarded as an internal family matter. The Applicant was not economically dependant on this father. Quite possibly, the Applicant's mother and her young children were before they fled to Canada. The Applicant could be presumed to be able to be better take care of himself and, in circumstances where he could not, to be competent to seek out state protection. In short, the profile of the Applicant's mother and her young children was simply dramatically different from that of the Applicant.

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[9] 2007 FC 6, Jan. 3, 2007.

CONCLUSION

[26] The RPD's reasons for its decision, while succinct to the point of inviting criticism, were, I am satisfied, adequate in all respects. They allowed the Applicant, his counsel and others impacted by the decision at issue to understand how and why the RPD justified its conclusion.

CERTIFICATION OF A QUESTION

[27] For the foregoing reasons, at the close of the hearing before me, I advised counsel that this application for judicial review would be dismissed. Counsel for the Applicant recommended certification of a question in the following terms:

> Where a refugee claimant has citizenship in one country and mere resident status in another, does the RPD err if it only considers the risk of return in the country of residence and not the country of citizenship?

Counsel for the Respondent did not agree to certification of the proposed question and proposed no alternative question.

[28] No question will be certified. This matter turns on its very specific facts, not on facts that can be said to produce a decision of general importance. Further, the question proposed is sufficiently general in nature that it invites a response reaching far beyond the parameters of this particular decision. Put another way, the proposed question is more in the nature of a reference question than in the nature of a certified question.

"Frederick E. Gibson"
JUDGE

Ottawa, Ontario
February 28, 2008

EDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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