Date: 20080618

Docket: IMM-5175-07

Citation: 2008 FC 762

Toronto, Ontario, June 18, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

JULIA VANESSA SAMUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 21, 2007, wherein the applicant was found not to be "Convention refugee" nor a "person in need of protection" under sections 96 and 97 of the Act.

I. Facts

[2] The applicant is a citizen of Saint Vincent who has suffered abuse, both physical and sexual, at the hands of her ex-husband, who is the father of her son. As a result, she asked for, and obtained, a divorce.

[3] On September 24, 2002, the applicant was raped and beaten by her ex-husband. She went to the police and to get a doctor's report. The following day, her ex-husband was arrested and charged with assaulting her, which charges he denied. At a court appearance on October 4, 2002, the charges were dropped as a result of a lack of evidence. The applicant was told by a police officer that he believed the evidence had been destroyed by family members of her ex-husband who worked at the police station.

[4] The applicant's ex-husband continued to threaten her and her new boyfriend from the beginning of their relationship in 2003, until they decided to flee St. Vincent. They arrived in Canada on December 28, 2005, and sought refugee protection.

[5] The three claims for refugee protection were disjoined after the applicant's boyfriend, now ex-boyfriend was determined to be HIV-positive, and the Children's Aid Society became involved in the care of the applicant's son.

II. The Impugned Decision

[6] The refugee claim was heard and rejected by the Board by decision dated November 21, 2007. The Board found that the applicant had not rebutted the presumption of state protection, as her ex-husband had been arrested, charged and brought to trial for his attack on her. The Board also found that the documentary evidence showed "that she could make a public complaint against any police misconduct" for the alleged destruction of evidence and that "the police oversight committee would actively investigate". He finally found that there was not persuasive evidence that the applicant would "suffer the stigma and discrimination that would be experienced by a person with HIV/AIDS even though she is not HIV positive" amounting to persecution due to the perception of people in St. Vincent, because of her ex-boyfriend has been diagnosed HIV-positive.

III. Issue

[7] The only issue is whether the panel member erred in his finding that state protection was available to the applicant.

IV. Standard of Review

[8] The Board's findings with respect to an available IFA in Saint Vincent are findings of fact reviewable on the standard of reasonableness (*Dunsmuir v.New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9; (*Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449,

[2008] F.C.J. No. 571); *Eler v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 418, 2008 FC 334, at paragraph 6). This is a deferential standard which recognizes that certain questions before administrative tribunals do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions.

[9] Therefore, the Court will review the Board's decision with regard to "the existence of justification, transparency and intelligibility within the decision-making process [and also] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra*, at paragraph 47).

[10] Further, the Court will keep in mind that the Board is not required to establish the existence of state protection. The onus to rebut the presumption of state protection remains at all time on the refugee claimant (*Canada (Attorney General) v. Ward*, [1993] 2. S.C.R. 689, [1993] S.C.J. No 74).

V. Analysis

[11] The applicant submits that she was under no obligation to pursue action against any police misconduct, as suggested by the Board. She also contends that the Board did not adequately assess the documentary evidence, which she claims shows the inadequacy of state protection for abused women in St. Vincent and the Grenadines. She argues that the appropriate assessment is one of the effectiveness of police protection, including the capacity and will to effectively implement

legislative initiatives, citing *Garcia v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 79.

[12] However, state protection can be found on the applicant's own account, as the authorities did not ignore her claim despite the presence of family members of her persecutor on the police force. Instead, the case was investigated and her ex-husband was arrested, charged and brought to trial. The applicant should have sought the help of other government agencies, and her failure to do so has not displaced the strong presumption of state protection, since steps taken by the government to protect women in St. Vincent are, in the absence of evidence to the contrary, presumed to be effective.

[13] As for the question of whether the appropriate test for assessing state protection is one of adequacy or effectiveness, the Court finds that the former is the correct approach. To require full effectiveness of foreign police and judicial systems would be to insist on a standard for other states which we, in Canada, are not always able to achieve ourselves. Where there is strong evidence to show that the police and judicial systems of democratic states are so ineffective as to be inadequate, that might be a reason for finding that state protection is not available. Such is not the case here.

[14] The applicant has invited, more or less, the Court to weight the evidence differently, and to substitute its own conclusion and opinion for those of the Board. The Court will resist this invitation since it is the role of the Board to do so, while this Court has only to verify the reasonableness of the Board's decision.

[15] Having reviewed the evidence, the Court concludes that the applicants have failed to show that the impugned decision is unreasonable, or falls outside the range of acceptable outcomes which are defensible in respect of the facts and law. Therefore, this application for judicial review will be dismissed.

[16] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS, THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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