

**Date: 20080911**

**Docket: IMM-525-08**

**Citation: 2008 FC 1020**

**Toronto, Ontario, September 11, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**DECA IGNATHA LESMOND (a.k.a. Lesmond, Ignatha Deca)  
KERDEJHA MARISSA EDOLE (a.k.a. Edole, Kerdejha Mariss)  
(by her litigation guardian Deca Ignatha Lesmond)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns the principal applicant (Applicant), a citizen of St. Lucia, who claims refugee protection on the ground of fear of gender based persecution should she be required to return to St. Lucia. The Refugee Protection Division (RPD) rejected the Applicants' claim. For the reasons which follow, I find that the decision is in fundamental reviewable error.

[2] There are two factually based findings which require the RPD's decision to be set aside: a negative inference drawn against the Applicant because of the perception that the Applicant's claim

was late-filed; and there is insufficient persuasive evidence to substantiate the Applicant's fear of return to St. Lucia.

[3] The negative inference conclusion is based on the following uncontested facts: the Applicant and her daughter, and her partner who is the father of the child, came to Canada in May 2001 and November 2000 respectively on short term visitor visas and overstayed; while in Canada the partner was violent against the Applicant, and as a result was arrested in 2003 and placed on a protection order; the ex-partner was deported to St. Lucia in March 2006 as a failed refugee claimant; and, on learning of the deportation and the fact that her ex-partner blamed her for the deportation, the Applicant applied for refugee protection in August 2006 in fear of her forced return to St. Lucia. The Applicant claims refugee protection on the basis of subjective fear that, should she return to St. Lucia, she would suffer further violence at the hands of her ex-partner.

[4] The RPD's negative inference conclusion reads as follows:

The panel believes that even if the claimants were ignorant of the opportunity to claim refugee protection, if the claimants were fearful of returning to St. Lucia, they would have made some attempt to normalize their status to avoid removal from Canada, if they feared persecution and were in fear for their lives. The principal claimant knew how to turn to the Canadian authorities for protection from her husband while he was in Canada.

Delay in making a claim to [sic] refugee status is not in itself a decisive factor. However, it is a relevant, and potentially important, consideration where the claimant delayed in making a claim upon arrival in Canada.

The panel draws a negative inference from the timing of the claimant's refugee claim and draws an adverse inference that the

claimant's actions are not consistent with the actions of a person with a subjective fear of persecution.

(Decision, p.3)

In my opinion, this finding is erroneous. The Applicant's un-refuted evidence is that she did not claim refugee protection until 2006 when she realized the prospect that she might be deported to St. Lucia, and, therefore, would face the risk of violence from the ex-partner who was already there and blaming her for his deportation. It is obvious that, until that time, there was no reason for her to claim refugee protection. It is also obvious that the RPD missed this essential element of the Applicant's claim for protection in drawing a fundamentally important adverse inference. In my opinion, this finding constitutes a reviewable error.

[5] The finding that the Applicant has supplied insufficient evidence to substantiate her subjective and objective fear of persecution should she be required to return to St. Lucia is as follows:

The panel acknowledges that the test is forward-looking. When analyzing the claimant's situation in the context of her past problems, the panel finds, on a balance of probabilities, that her ex-common law spouse did abuse her physically in St. Lucia before they came to Canada and accepts that he abused her in Canada, where she was able to get a protection order against him. The panel finds that the claimant has not provided persuasive evidence that there is a serious possibility or a reasonable change that he would continue to abuse her if she were to return to St. Lucia just because he was deported when he was not determined to be a refugee. The principal claimant in this claim was not part of his claim; she has not seen him or spoken to him since 2003, and has had no knowledge of his life in over three years. The panel is cognizant of the fact that the principal claimant's mother alleged that she has seen the principal claimant's ex-common law spouse in St. Lucia, that he is occasionally seen drinking and that she alleged that if the principal claimant were to

return to St. Lucia, he would get her because he blames her for their break-up, and the fact that he was deported to St. Lucia. The panel notes that the claimant has no intention of resuming their relationship and that her ex-common law spouse abided by the terms of the protection order in Canada. The panel finds that, if the panel were incorrect and the claimant were to encounter any problems from her ex-common law spouse, there is adequate state protection available to the principal claimant and her daughter in St. Lucia, including the option of obtaining a protection order against her ex-common law spouse in St. Lucia. [Emphasis added]

(Decision, p. 5)

[6] In my opinion this statement is internally inconsistent to the point of exposing a fundamental misapprehension of the evidence which constitutes a reviewable error.

[7] In the statement the RPD accepts that: the ex-partner is an abuser; he is in St. Lucia; the Applicant faces return to St. Lucia, and the abuser is threatening to “get her” if she returns to St. Lucia. In the face of this evidence there is no substantiation for the RPD’s finding that “the claimant has not provided persuasive evidence that there is serious possibility or a reasonable chance that he would continue to abuse her if she were to return to St. Lucia just because he was deported when he was not determined to be a refugee”.

**ORDER**

Accordingly, I set aside the decision under review and refer the matter back for redetermination before a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-525-07

**STYLE OF CAUSE:** DECA IGNATHA LESMOND (a.k.a. Lesmond, Ignatha Deca) KERDEJHA MARISSA EDOLE (a.k.a. Edole, Kerdejha Mariss) (by her litigation guardian Deca Ignatha Lesmond) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 9, 2008

**REASONS FOR ORDER AND ORDER:** CAMPBELL J.

**DATED:** September 11, 2008

**APPEARANCES:**

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Mr. David Joseph FOR THE RESPONDENT

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