Federal Court  Cour fédérale

Date: 20100610

Docket: IMM-5559-09

Citation: 2010 FC 616

Ottawa, Ontario, June 10, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

CELESTINA MARIL BACCHUS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision dated September 30, 2009, by the Refugee Protection Division of the Immigration and Refugee Board (the Board), wherein the Board found the applicant was not a Convention refugee or a person in need of protection pursuant to subsections 96 and 97(1) of the Act.

Factual Background

[2] The applicant is a 49 year-old citizen of both Saint Vincent and the Grenadines (Saint Vincent) and Trinidad and Tobago (Trinidad), who claims refugee protection status as a Convention refugee. She has seven children, all of whom reside in Trinidad.

[3] In 2004, the applicant entered into a common-law relationship with Mr. Desmond Peters, a former police officer in Trinidad. Mr. Peters, like the applicant, is also a citizen of Saint Vincent. Over time the relationship is said to have become very violent as Mr. Peters apparently abused and threatened the applicant. In 2005, the applicant ended the relationship but Mr. Peters remained in the home in which they lived in and the applicant did not retrieve her possessions.

[4] Despite the beatings, the applicant never made a report to the authorities because Mr. Peters himself was a former police officer.

[5] In 2006, the applicant traveled to Saint Vincent, where she was apparently followed by Mr. Peters and harassed by him. Thereafter, the applicant returned to Trinidad to take care of her mother until her passing. Throughout this time, Mr. Peters apparently continued to threaten the applicant.

[6] In May 2008, the applicant ultimately quit her job due to Mr. Peters' continued harassment. On June 1, 2008, the applicant arrived in Canada, where she has relatives. On June 30, 2010 the applicant filed her refugee application.

[7] In addition, the applicant also claimed to fear for her safety at the hands of her stepbrother, Noel Sylvester, with whom she has been engaged in a dispute over her mother's estate.

The impugned decision

[8] The Board found that the applicant had not discharged her burden regarding all the components of the definition of a "Convention refugee" or a "person in need of protection".

[9] With respect to her ex-boyfriend, Mr. Peters, the Board concluded that the applicant had not established an absence of state protection. The Board noted that the applicant had not made a single police report during the four years of the violent relationship nor at anytime thereafter.

[10] With respect to the applicant's stepbrother, the Board held that because he is a citizen of Trinidad and not a citizen of Saint Vincent, there was no well-founded fear of persecution or a risk of serious harm to the applicant in the event she returned to Saint Vincent.

Issue

[11] At the outcome of the hearing, it emerged that the central issue in this matter is whether the decision of the Board, rejecting the applicant's claim on the basis of the applicant's failure to rebut the presumption of state protection with clear and convincing evidence in regards to her ex-boyfriend, is reasonable.

Standard of Review

[12] In connection with the applicable standard of review, the Court recalls that in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 53, it was held that "[W]here the question is one of fact, discretion or policy, deference will usually apply automatically (*Mossop*, at pp. 599-600; *Dr. Q*, at para. 29; *Suresh*, at paras. 29-30). We believe that the same standard must apply to the review of questions where the legal and factual issues are intertwined with and cannot be readily separated". In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 59, the Supreme Court of Canada added that "[W]here the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47)".

[13] In addition, in the recent decision *Paguada v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 351**,** [2009] F.C.J. No. 401, at para. 19, this Court established that:

> The question of state protection is therefore precisely what remains. It is clearly a question of mixed fact and law and, as such, must be considered by this Court on a standard of reasonableness: see, *inter alia*, *Mendez* v. *M.C.I.*, 2008 FC 584; *Da Mota* v. *M.C.I.*, 2008 FC 386; *Obeid* v. *M.C.I.*, 2009 FC 503; *Naumets* v. *M.C.I.*, 2008 FC 522; *Woods* v. *M.C.I.*, 2008 FC 446.

[14] Thus, the standard of review applicable to the decision of the Board at issue concerning the availability of state protection is reasonableness.

Analysis

[15] The Board found that the applicant did not provide clear and convincing evidence of an absence of state protection in both Trinidad and Saint Vincent and relied heavily on the fact that the applicant did not seek state protection in the circumstances:

> […] The claimant, despite being a victim of abuse and threats at the hands of Mr. Peters over four years, would have never made a single police report. When questioned by the panel, the claimant stated that, being a former police officer in Trinidad and Tobago, the claimant did not believe that she would be able to get protection and she was fearful of him. The panel notes that Trinidad and Tobago is a parliamentary democracy with a judiciary and police forces. The fact that the claimant never even attempted to ask for state protection here weighs against her credibility. However, more so is the case of Saint Vincent. Even if the panel were to accept the claimant's assertions of an inability to get the authorities to protect her in her own country of residence, Trinidad and Tobago, as a result of her persecutor being a former police officer, the same cannot be said with respect to Saint Vincent and the Grenadines. Saint Vincent and the Grenadines is also an independent country with a parliamentary democracy and again an independent judiciary. There are laws on the books of Saint Vincent in order to protect individuals such as the claimant. Even if the panel were to accept the claimant's assertion of an inability to the state protection in Trinidad, Mr. Peters was not a police officer and not even a resident of Saint Vincent. […] The documentary evidence does speak of difficulties that women have in domestic abuse cases to get the authorities to take their cases seriously. Yet, there are still laws on the books and mechanisms that the claimant could have attempted. In the current context, the claimant was not even in a domestic relationship with Mr. Peters at the time of her stay in Saint Vincent. Taken all together, the panel does not believe that this claimant has established with clear and convincing evidence an absence of state protection in her claim.
>
> (Tribunal's Record, pp. 5-6)

[16] Based on its review of the evidence, the Court considers that the Board's conclusion with respect to the availability of state protection was selective, inadequate and, as a result,

unreasonable. In particular, the Board failed to consider and address the testimony of the applicant and the totality of the evidence in respect of the lack of protection from the authorities.

[17] Indeed, the applicant testified that her ex-boyfriend, a former member of the police force is also a citizen of both Trinidad and Saint-Vincent. In October 2005, in Trinidad, her ex-boyfriend allegedly was beating the applicant when the police officers appeared at the scene. Upon realizing who her ex-boyfriend was i.e. a former police officer – the police did not intervene and allegedly left the applicant in the hands of her abuser: “Mr. Peters, only because it’s you we will let this go, but please take madam and try and make up this.” (Tribunal’s Record at pp. 244-247).

[18] With respect to the availability of state protection in Saint Vincent, while the evidence demonstrates that the applicant did not seek such protection, she nonetheless testified that there is a lack of protection. She also testified that her cousin, who was also involved in a violent relationship, was unable to obtain any protection from the Saint Vincent police despite the fact that she had requested such assistance (Tribunal’s Record at p. 252).

[19] In terms of the most recent documentary evidence regarding both St-Vincent and Trinidad - dated 2008 - it demonstrates that the situation towards women is still an issue in both countries. The Board had an obligation to address this important contradictory evidence. In the words of Justice Evans in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration*), 157 F.T.R. 35, [1998] F.C.J. No. 1425 at paragraph 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 and Immigration*) (1993), 63 F.T.R. 312 (F.C.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 form 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.
>
> [Emphasis added.]

[20] More particularly, in the case at bar, document no. VCT102962.E, dated 18 November 2008, states the following with regard to the effectiveness of police protection in Saint Vincent (Application's Record at pp. 38-40):

> With respect to the effectiveness of the police in handling of cases of domestic violence in Saint-Vincent and the Grenadines, a representative of the Saint Vincent and the Grenadines Human Rights Association (SVGHRA) provided the following information in 7 November 2008 correspondence to the Research Directorate:
>
> Most police officers have limited knowledge and skills on domestic and family violence, inclusive of procedures, but a selective few treat the issue with seriousness. Trained officers receive general training in policing which they apply in domestic and family violence incidences and which lead to complications for the victim, who feels further victimized.
>
> In addition, when female victims go to make reports, they are served by gross, disrespectful, chauvinistic, young male officers who feel that the victim asked for what she received. There are no specialized kits either. In most cases, the male police officers become impatient if the victim is hesitant in responding to questions.

> Generally, the attitude of police officers, the open area for questioning and the overall ineffectiveness of the police and court, make the victim reluctant to testify.
>
> Although a limited number of sensitive police officers try their utmost to facilitate and make the victim comfortable, when the matter gets to the court, the victim often withdraws as she is in most cases dependent on the perpetrator. The lengthy court process too also frustrates the victim.
>
> If there is a protection order, the victim often feels unprotected as the absence of shelters makes the document merely an empty academic order. There are instances where the police is the perpetrator, therefore there is need to ensure that these officers or their friends do not deal with such cases as they tend to trivialize them. […]

[21] Further, the evidence submitted with respect to Trinidad (Application's Record at pp. 41-46) and more particularly the IRB Information No. TTO102810.E, dated 20 May 2008, is to the same effect regarding the situation of women and the protection offered to them:

> A United Kingdom (UK) Foreign and Commonwealth Office document released on 29 January 2008 states that Trinidad and Tobago has a "high level of domestic violence," while human rights reports covering 2007 describe the problem of domestic violence in Trinidad and Tobago as "significant" (Freedom House 2007; US 11 Mar. 2008, Sec. 5). Women's groups estimate that twenty to twenty-five percent of all women in the country have suffered abuse (ibid.; *Nation News* 16 Mar. 2008) although the United States (US) Department of State's *Country Reports on Human Rights Practices for 2007* indicates that reliable national statistics are unavailable (US 11 Mar. 2008, Sec. 5). Nevertheless, a Court of Appeal judge is quoted in *Trinidad and Tobago's Newsday*, as saying that domestic violence in the country has reached "epidemic proportions" (5 Mar. 2008).
>
> An article in the *Trinidad Guardian* notes that although a protection order is intended to act as a safety barrier for victims of domestic abuse, it is not a "fence made of steel" (26 Nov. 2006). Cases involving women who were killed by former partners after seeking a protection order have been reported in the Trinidadian media (*Trinidad and Tobago's Newsday* 27 Nov. 2005; ibid. 4

> Nov. 2006). In November 2006, a woman was stabbed to death after fleeing an abusive relationship and filing a protection order against her former partner (ibid.).
>
> In another case in 2005, a woman was murdered outside her new place of residence even though she had reported several previous attacks by her estranged husband and had tried to obtain a protection order (*Trinidad and Tobago's Newsday* 27 Nov. 2005). Furthermore, a report compiled by local non-governmental organizations (NGOs) indicated that enforcement of protection orders may be difficult due to unwillingness on the part of police to intervene in domestic matters (*Trinidad and Tobago's Newsday* 27 Nov. 2005).
>
> Police Response
>
> Despite the powers granted to law enforcement officials by the Act, sources report that police enforcement is "lax" (*Nation News* 16 Mar. 2008; US 11 Mar. 2008, Sec. 5). An article that appeared in the *Trinidad and Tobago Express* on 4 December 2005 refers to reports of insensitivity and inadequacy on the part of police, and gives details of one victim's experience of police inaction despite several complaints, including an incident in which she was jailed for half a day following a confrontation with her husband.

[22] In the present circumstances, the Board had an obligation to refer to pertinent and contradictory evidence such as the above but failed to do so (*Cepeda-Gutierrez*). While it might have been an option for the Board not to give much weight to these reports in light of the overall evidence, the fact of the matter remains that given the situation in Saint Vincent and Trinidad with respect to protecting women from domestic violence, the Court considers that it was not open to the Board, in these circumstances, to ignore the most current reports. The Court is therefore of the view that the Board conducted its analysis in a vacuum without addressing the relevant documentary evidence in connection with the applicant's testimony. It is simply not enough for the Board to merely state that Trinidad and Saint Vincent are independent countries

and parliamentary democracies with an independent judiciary. Rather, the Board had a duty to explain why the quoted evidence was not taken into consideration. At the very least, the Board was required to provide reasons for discarding such evidence. In failing to do so, the Board expressed a preference, used specific portion of evidence in isolation, conducted an incomplete and fragmentary assessment of the evidence and, in so doing, committed a serious error. (*King v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 774, [2005] F.C.J. No. 979 (QL).

[23] The Court finds that, due to lack of discussion with respect to the documentary evidence, the Board is not in a position to reach the conclusion it did without further substantiation (see *Myle v. Canada (Minister of Citizenship and Immigration*), 2006 FC 871, 2006 F.C.J. No. 1127 (QL) (Justice Shore). See also *Rosita Vascilca Myle v. Canada* (*Minister of Citizenship and Immigration)* 2007 FC 1073, [2007] F.C.J. No. 1389 (Justice Harrington) and *Sherica Sherilon James v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 546 (Justice Mainville).

[24] In conclusion, the Board did not conduct a full assessment of the evidence, including the applicant's testimony and the totality of the documentary evidence on file. The Board's decision was not reasonable in the circumstances and the Court's intervention is justified. The application for judicial review is therefore allowed.

[25] No question was proposed for certification and there is none in this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The Board's decision is set aside;
2. The matter is referred back to the Immigration and Refugee Board to be determined by a new and different constituted Board;
3. No question of general importance is certified.

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5559-09
STYLE OF CAUSE:	Celestina Maril Bacchus v. The Minister of Citizenship and Immigration
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 27, 2010
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	June 10, 2010

APPEARANCES:

Viken G. Artinian	FOR THE APPLICANT
Christine Bernard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT