

Federal Court



Cour fédérale

**Date: 20110308**

**Docket: IMM-4266-10**

**Citation: 2011 FC 266**

**Ottawa, Ontario, March 8, 2011**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**DESMARIE SHARIL AUDANNA NANTON  
(a.k.a. DESMARIE SHARIEL NANTON)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is a woman from the small country of St Vincent and the Grenadines. After a tumultuous and abusive relationship, she was pregnant and sought refuge from her boyfriend at the time. She came to Canada and filed a refugee claim, alleging not only abuse, but also St Vincent's incapacity to meaningfully protect her in dealing with this abuse. Her claim was denied by a written

decision of the Immigration and Refugee Board (IRB), dated June 30, 2010. She sought to have this decision judicially reviewed. Leave was granted on November 30, 2010.

[2] The impugned decision was to the effect that the Applicant was not a Convention refugee and was not a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Central to the IRB's findings were the following elements:

- a) A negative inference was made from the Applicant's "inability to accurately identify what year she began her relationship with Neil";
- b) A negative inference was made from the fact that the Applicant did not indicate in her Personal Identification Form (PIF) that she had resided for four (4) months with Neil in Sandybay;
- c) A negative inference was made from the Applicant's omission to indicate that she had approached Marion House, a non-governmental organization helping battered women;
- d) No supporting documentation, such as medical or police reports, were provided; and
- e) The fact that there is effective state protection in St Vincent.

### **Position of the Parties**

[3] The Applicant reproaches the IRB's decision on the grounds that it conducted an unreasonable assessment of her credibility and misapprehended the evidence to make its credibility findings. Furthermore, it is alleged that no supporting documentation could be provided because of important facts of the case that were ignored by the IRB. More importantly, the Applicant argues that the IRB misconstrued the evidence on state protection in St Vincent. Also, the IRB did not

properly justify why it considered the positive aspects found in the documentation to supersede the negative aspects put forward in the country documentation.

[4] The Respondent argues that the findings were reasonable and that, in light of the principles of judicial review and the applicable standards of review, this Court should not intervene. Basically, the Respondent finds that the Applicant wants the Court to re-weigh the evidence placed before the IRB.

### **Standard of Review**

[5] Two (2) questions are to be reviewed by this Court. Firstly, was the IRB's appreciation of the Applicant's credibility reasonable? Secondly, if necessary, the Court must assess if the findings in regards to state protection were reasonable.

[6] As indicated, these are questions to be reviewed on the standard of reasonableness, whereby the Court must evaluate whether the decision falls within the range of justifiable outcomes in fact and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171; *Myle v Canada (Minister of Citizenship and Immigration)*, 2006 FC 871).

### **Analysis**

#### A. *The Credibility Issue*

[7] It is certain that the evaluation of asylum-seekers' credibility must find its basis in the facts of the case. The credibility findings must be factually-founded, well-explained and reasonable. A

reviewing court must assess them in light of these factors. It must not substitute itself to the role of the trier of facts.

[8] The IRB made a negative inference from the fact that the Applicant did not recall the exact year of the start of her relationship. The transcript of the hearing definitely relates an exchange and further questions asked in this respect. However, the sum total of the evidence does reasonably lend itself to the conclusion that a negative inference was to be made from not remembering a date. As the IRB noted, there was confusion with the start of the relationship. It was reasonable for the IRB to make a negative inference on the Applicant's inability to remember this date; surely, it was an important relationship, which was central to her claim.

[9] However, the same cannot be said of the Applicant's claim of "having lived four months in Sandybay". In fact, the transcript of the hearing shows that this fact was presented differently before the IRB. Indeed, the Applicant visited her boyfriend and would spend nights in Sandybay. She specifically said she did not consider herself to be residing there and did not include it in her PIF. Taking a negative inference on this basis is unreasonable, but is not determinative.

[10] Furthermore, the Applicant's evidence in regards to approaching Marion House was mixed. She clearly stated having gone to Marion House (see page16, line 30 of the Transcript). Her affirmations were to the effect that she had only spoken with a woman working there. Counsel for the Applicant concurred with this presentation of the facts. The IRB's conclusion was that a negative inference was to be made from her not indicating in her PIF that she had been in contact with Marion House. The Applicant indicated that only counselling was offered and that she did not

consider it important to include it. It does seem that deference is to be owed to the IRB on this point, as its finding falls within the reasonable range of outcomes, especially as the evidence shows the Applicant had only been in contact with the organization days before her departure. Also, as an important element of the claim was sufficiency of state protection, it is clear that this evidence was relevant to her claim.

[11] Furthermore, it remains true that the Applicant did have responsibilities in terms of providing sufficient documentary evidence for the assessment of her claim (section 16(1) of IRPA). A letter was to be forwarded by her mother, confirming the events as they had taken place. However, no documentary evidence was provided. It was reasonable for the IRB to make a negative inference on this basis.

[12] The negative inferences made in regards to the date of the start of her relationship and her documentary evidence are reasonable. Evidently, these matters go to the heart of the Applicant's claim and affect her credibility. As noted by Mr. Justice Shore in *Kengkarasa v Canada (Citizenship and Immigration)*, 2007 FC 714, at para 1, where it is said that:

On a credibility finding, it is not for an applicant to substitute his interpretation of a credibility determination for that of a specialized tribunal, nor is it for this Court, within its jurisdiction in a judicial review application, to substitute its interpretation of a credibility determination for that of a specialized tribunal unless the determination is perverse, capricious or made without regard to the evidence.

[13] In this light, while the Court could have comments to make on the IRB's appreciation of the sufficiency of state protection in St Vincent, it is not necessary to do so as the IRB's credibility findings are reasonable. As noted by the Court, a negative credibility finding is determinative *per se*

of the application, and the failure to rebut it is determinative of the application for judicial review (*Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262, at para 25 citing *Chan v Canada (Minister of Citizenship and Immigration)*, [1995] 3 SCR 593, at para 147; *Salim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592, at para 31).

[14] Therefore, the application is denied. No question for certification arises, and none was suggested.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is denied. No question is certified.

“Simon Noël”

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Judge

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

**DOCKET:** IMM-4266-10

**STYLE OF CAUSE:** DESMARIE SHARIL AUDANNA NANTON  
(a.k.a. DESMARIE SHARIEL NANTON)  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 28, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** NOËL S. J.

**DATED:** March 8, 2011

**APPEARANCES:**

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