Federal Court  Cour fédérale

Date: 20110309

Docket: IMM-3169-10

Citation: 2011 FC 277

Ottawa, Ontario, March 9, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

TOMEIKA ASHBY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 9, 2010, wherein the Applicant was determined to be neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA].

[2] The Board reasonably concluded that the Applicant was a citizen of Guyana or could obtain remigrant status in that country. Furthermore, the Board did not err when it concluded that the Applicant was required to seek protection in Guyana and that she did not face a risk of persecution in that country. For the reasons that follow, this application is dismissed.

I. Background

A. *Factual Background*

[3] The Applicant is a citizen of St. Vincent and the Grenadines. In her Personal Information Form (PIF), she also states that she is a citizen of Guyana.

[4] The Applicant is a 21 year-old woman from Diamond Village in St. Vincent and the Grenadines. She was born in Guyana to a Guyanese father and a Vincentian mother. She moved to St. Vincent and the Grenadines as a small child, after the separation of her parents, where she stayed until moving to Canada in December 2007.

[5] The Applicant alleges that she suffered physical, verbal and sexual assault at the hands of her step-father, since the time he became involved with her mother in the 1990's. She states that when she turned 16 her step-father tried to make passes at her and sexually touched her. She also alleges that he insulted her at school and in the village.

[6] She relates an incident where her foot was cut after her step-father hit her with a cutlass. She received 12 stitches. She reported the incident to the authorities, who told her to come back with an adult. However, she did not relate the incident to her mother because she did not know how she would react. During the hearing, she said that she had mentioned certain incidents to her mother, but that her mother did not believe her.

[7] After an argument between her mother and step-father, the police were called. The stepfather had left a cutlass with a message on the wall saying that he would kill the Applicant and her mother. The police gave the step-father a warning. During the hearing, the Applicant mentioned that her step-father beat her in June 2007. After the incident, she went to live with her aunt before coming to Canada. She arrived in Canada on December 19, 2007 and made a claim for refugee protection in Canada on January 8, 2008.

B. *Impugned Decision (Daniel G. McSweeney)*

[8] The Board answered the following question: Can the claimant return to Guyana, the other country of citizenship, and not face a serious possibility of persecution, or be subject to a risk to her life or risk of cruel or unusual treatment or punishment?

[9] The Board concluded that the Applicant was not a Convention refugee as she did not have a well-founded fear of persecution in her second country of citizenship, Guyana.

[10] The Board stated that Guyana does not recognize dual citizenship. However, the Applicant did not provide sufficient credible and trustworthy evidence to show that the Guyanese government had been made aware by the claimant or her mother that she had obtained Vincentian citizenship.

[11] The Board also mentioned that it was possible for a Guyanese citizen who is out of the country for four years to obtain “remigrant” status. Hence, the Board concluded that if the Applicant was no longer a citizen of Guyana, she would be eligible for remigrant status.

[12] The Board pointed out that according to IRPA, a claimant must face a risk of persecution in all countries of citizenship, regardless of the ties to those countries. In the instant case, the Applicant stated that she could not go to Guyana because she did not have a place to live, no relatives and could not get a job. The Board did not attribute any weight to these factors because they related to an internal flight alternative analysis and not to citizenship. The Applicant also claimed that there was a risk of rape and torture in Guyana, but the Board concluded that she did not face a personalized risk in this regard under section 97 of IRPA.

[13] The Board concluded based on the evidence that Guyana could protect the Applicant and that she was not a Convention refugee, nor a person in need of protection.

II. Issues

[14] There are two issues to address in this application:

(a) Did the Board err in concluding that the Applicant had retained her Guyanese citizenship or could obtain remigrant status?

(b) Did the Board err in denying the Applicant's refugee claim on the basis that she could seek protection in Guyana?

III. Standard of Review

[15] The standard of review to be applied to the determination of citizenship by the Board was established in *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126, 253 DLR (4th) 449 where Justice Robert Décary stated at paras 17 and 18:

> [17] The finding by the Board that the respondent could obtain Ugandan citizenship as a matter of course upon renouncing his Rwandan citizenship is a finding of fact which cannot be interfered with by the applications judge unless it amounts to a palpable and overriding error. The finding is not challenged by the respondent and, in any event, Pinard J. did not disturb it.
>
> [18] Whether the existence of an option to seek protection in Uganda is a valid cause for the denial of the refugee status is a question which requires the interpretation of section 96 of the IRPA. This is a question of law. It is well settled that on questions of law of such nature, the standard of review is correctness. The Board could not afford to be wrong. Nor could the applications Judge.

[16] Consequently, the question as to whether the Applicant retains her Guyanese citizenship or could obtain remigrant status is a question of fact and should be reviewed on the standard of reasonableness. The denial of the refugee application on the basis of the existence of a possibility to

seek protection in Guyana is a question of law and should be reviewed on the standard of correctness.

IV. Argument and Analysis

A. *The Board Did Not Err in Concluding that the Applicant Retained her Guyanese Citizenship or Could Obtain Remigrant Status*

(1) The Applicant's Guyanese Citizenship

[17] The Applicant argues that the fact that she had not formally renounced her Guyanese citizenship is irrelevant. In order to maintain this citizenship, she would have to "deceive" the Guyanese government by withholding the fact that she had obtained citizenship in St. Vincent. The Applicant cites the case *Donboli v Canada (Minister of Citizenship and Immigration)*, 2003 FC 883, 30 Imm LR (3d) 49, in which the Court found it to be a reviewable error of the Board to encourage applicants to misrepresent their current citizenship to authorities.

[18] The Respondent submits that the Applicant did not submit enough evidence to demonstrate that her Guyanese citizenship had been lost and that she would not be able to reacquire it or that she or her mother had renounced the Guyanese citizenship. As such, the Respondent argues that the Board correctly found that the Applicant had never lost her Guyanese citizenship or that her citizenship would be revoked should the Guyanese authorities find out that she had Vincentian citizenship.

[19] The Guyanese Constitution states that:

> 46. (1) If the President is satisfied that any citizen of Guyana has at any time after 25th May, 1966 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other that Guyana, the President may by order deprive that person of his citizenship.
>
> (2) If the President is satisfied that any citizen of Guyana has at any time after the 25th May, 1966, voluntarily claimed and exercised in a country other that Guyana any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the President may by order deprive that person of his citizenship.
>
> [Emphasis added]

[20] Furthermore, section 10 of the *Guyanese Citizenship Act* states that:

> 10. (1) Subject to subsection (2) if any citizen of Guyana of full age and capacity who is or is about to become –
>
> (a) a citizen of any country to which article 47 of the Constitution applies, or of the Republic of Ireland; or
>
> (b) a national of a foreign country,
> makes in the prescribed manner a declaration of renunciation of citizenship of Guyana, the Minister shall cause the declaration to be registered, upon the registration, that person shall cease to be a citizen of Guyana.
>
> […]

[21] A document from the Board's Research Directorate, entitled "Grenada: The possibility of dual citizenship in Grenada and Guyana; particular case with Guyana", dated November 9, 2001, indicates that "according to an official at the Guyana Consulate General, Guyanese nationals who obtain citizenship from another country do not lose their Guyanese citizenship, unless the other

country requires this. Guyana recognizes dual citizenship with all other countries without exception." If that is the case, the Applicant never lost her Guyanese citizenship.

[22] In this case, since neither the Applicant nor her mother contacted the Guyanese authorities to renounce the Applicant's citizenship, it was reasonable for the Board to find that there was insufficient evidence showing that the Applicant was no longer a citizen of Guyana.

(2) The Applicant's "Remigrant" Status

[23] The Applicant states that the "remigrant" status is obtained on the understanding that the remigrant will remain in Guyana for at least three years. As such, the Applicant cites *Katkova v Canada (Minister of Citizenship and Immigration)*, 68 ACWS (3d) 715, [1997] FCJ No 29 (QL), and argues that the Board cannot oblige a claimant to undertake a significant period of residence in another country to qualify for citizenship.

[24] The Respondent replies that there is no reason why the Applicant would not want to stay in Guyana for three years, if such period is mandatory. *Katkova*, above, is distinguishable because the evidence in that case showed that Israel had a wide discretion to refuse citizenship. In the case at bar, the Applicant has the power to regain citizenship, if she has even lost it.

[25] The "Remigrant's Information Manual", published by the Guyanese Ministry of Foreign Affairs in March of 1999, describes the remigrant process in Guyana. The Ministry defines a remigrant as "a Guyanese citizen born at home or abroad, or a Guyanese citizen by naturalization,

who is in possession of a valid Guyana passport and who has been granted remigrant's status by the Ministry of Foreign Affairs on the understanding that the remigrant will remain in Guyana for not less than three years."

[26] The publication also mentions that "in cases where the prospective remigrant has renounced his/her Guyanese nationality in order to obtain citizenship in the country where he/she currently resides, he/she should not despair since he/she remains eligible for remigrant status."

[27] According to the Guyanese statutes and practices, a former citizen of Guyana can obtain remigrant status. Consequently, it was reasonable for the Board to conclude that if the Applicant had lost her Guyanese citizenship, she could obtain remigrant status.

B. *The Board Did Not Err In Denying the Applicant's Refugee Claim on the Basis That She Could Seek Protection in Guyana*

[28] The Board states that there is an obligation for the claimant to prove a claim against a second country of citizenship. However, the Applicant cites the decision *Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 583, 167 ACWS (3d) 970 in which the claimant was not obligated to seek protection from his other country of citizenship before seeking protection in Canada. Since it is a discretionary power of the Minister in Guyana to award citizenship, the Applicant argues that the Board committed an error of law in not following the decision in *Khan*. The Applicant submits that as in *Khan*, in the present matter the Board was not in a position to establish whether the Applicant could obtain Guyanese citizenship and therefore the Board could not oblige the Applicant to seek protection there.

[29] The Respondent submits that *Williams*, above, is instructive in the present matter. In *Williams* the Court held that a person seeking refugee status is expected to make attempts to acquire citizenship in his other country of citizenship and that the applicant will be denied refugee status if it is shown that it is within his or her power to acquire that other citizenship.

[30] In *Williams*, above, the Federal Court of Appeal discussed the issue of a claimant with multiple citizenships seeking refugee status. At para. 22, Justice Décary cited with approval the reasons of Justice Marshall Rothstein in *Bouianova v Canada (Minister of Employment and Immigration)*, 67 FTR 74, 41 ACWS (3d) 392:

> [22] […]
>
> The true test, in my view, is the following: <u>if it is within the control of the applicant to acquire the</u>

> citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. While words such as "acquisition of citizenship in a non-discretionary manner" or "by mere formalities" have been used, the test is better phrased in terms of "power within the control of the applicant" for it encompasses all sorts of situations, it prevents the introduction of a practice of "country shopping" which is incompatible with the "surrogate" dimension of international refugee protection recognized in *Ward* and it is not restricted, contrary to what counsel for the respondent has suggested, to mere technicalities such as filing appropriate documents. This "control" test also reflects the notion which is transparent in the definition of a refugee that the "unwillingness" of an applicant to take steps required from him to gain state protection is fatal to his refugee claim unless that unwillingness results from the very fear of persecution itself. Paragraph 106 of the *Handbook on Procedures and Criteria for Determining Refugee Status* under the 1951 Convention an the 1967 Protocol relating to the Status of Refugees [Geneva, 1992] emphasizes the point that whenever "available, national protection takes precedence over international protection," and the Supreme Court of Canada, in *Ward*, observed, at page 752, that "[w]hen available, home state protection is a claimant's sole option."
>
> [Emphasis added]

[31] Regarding the fact that the claimant in *Williams*, above, had to renounce his actual citizenship in order to get another citizenship, Justice Décary stated at para 27:

> [27] This argument has no merit. What the case law has established is that, where citizenship in another country is available, an applicant is expected to make attempts to acquire it and will be denied refugee status if it is shown that it is within his power to acquire that other citizenship. It is, here, within the respondent's power to renounce his Rwandan citizenship and to obtain a Ugandan citizenship. That other citizenship is there for him to acquire if he has the will to acquire it. In *Chavarria v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 17 (T.D.) (QL), the

> only case relied upon by the parties that touches the issue of renunciation of citizenship without, however, expanding on it, Teitelbaum J. denied refugee status even though the reacquisition of another citizenship "would probably mean that Eduardo would have to renounce his Salvadoran citizenship…" (at paragraph 60).
>
> [Emphasis added]

[32] In *Kim v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 720

Justice Roger Hughes referred to *Williams*, above, at paras 8-9:

> [8] Thus, the extent to which a refugee claimant can "control" the award of citizenship in another country becomes a critical issue. Such an issue eventually requires an examination of the laws, jurisprudence, practice and politics of that country. In a perfect world such an examination would be conducted on the basis of one or more opinions of legal professionals entitled to practice in the relevant country and skilled in that area. These opinions are received as factual matters but involve questions of law.
>
> [9] In a less than perfect world, where a refugee claimant usually has limited funds and resources and limited time to prepare a case, reference is made to other sources in deciding what may be the situation in the other country. In the present case, the Applicants were only advised a few days before the hearing that an issue would be made as to whether they could acquire South Korean citizenship.

[33] For her part, the Applicant relies on the decision *Khan*, above, in which the Board concluded that a citizen of Tibet had a right to status in Guyana and should seek protection there.

Justice François Lemieux quashed the Board's decision reasoning at para 21 that:

> [21] The determining error the tribunal made was to trespass upon forbidden territory when, after recognizing the authorities in Guyana were not compelled on her application to grant Mrs. Khan citizenship, it (the tribunal) could opine how the Minister in Guyana might exercise the discretion conferred upon him. Such circumstances are not within her control. Mrs. Khan is not obligated to seek Guyana's protection before she seeks Canada's.

[34] In my opinion, this case is distinguishable on the facts. In *Khan*, above, the Board discussed whether the Applicant could obtain Guyanese citizenship after marrying a Guyanese citizen. She had never independently obtained Guyanese citizenship in the past. In the present case, the Applicant is a Guyanese citizen by birth and has never officially renounced her citizenship. Even if she is not a Guyanese citizen anymore because of her dual citizenship, she could obtain remigrant status. As such, unlike in *Khan*, above, the Board did not provide its opinion on whether the Guyanese authorities would exercise their discretion to refuse citizenship to the Applicant.

[35] The decision in *Williams*, above, should be followed. Since it is "within the control of the [A]pplicant to acquire the citizenship of a country with respect to which [she] has no well-founded fear of persecution," the Applicant should seek protection in her other country of nationality, Guyana, before seeking protection in Canada. Consequently, the Board did not err in its conclusion.

V. Conclusion

[36] There was a reasonable basis for the Board to conclude that the Applicant was a citizen of Guyana or could obtain remigrant status in the country. The Board correctly concluded that the Applicant was required to seek protection in Guyana.

[37] Accordingly this application is dismissed.

[38] Submissions were made with respect to the following possible certified question:

> In applying the control test, is it within the control of an applicant to acquire citizenship of a state when the granting of citizenship is

> conditional on a significant period of mandatory residence in the state granting citizenship.

Given my conclusion that the Applicant never lost Guyanese citizenship and that such a finding is dispositive of the appeal, there is no need to certify any question in this matter.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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