

Federal Court



Cour fédérale

**Date: 20111212**

**Docket: IMM-3171-11**

**Citation: 2011 FC 1455**

**Ottawa, Ontario, December 12, 2011**

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

**BETWEEN:**

**ROY ALLISTER, JANET IANA ALFRED,  
ZENISHA BLADES AND ZENERTTI ALFRED**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the April 8, 2011 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD) which found that the Applicants were not Convention refugees or persons in need of protection.

[2] The Applicants are citizens of St. Lucia who made claims for protection on the basis that Mr. Allister had witnessed his brother's murder in 1994 and that he and his family had been

threatened and harmed by the alleged murderer and his associates before the alleged murderer's trial and after his release from incarceration following his conviction.

[3] The RPD considered both Mr. Allister's written narrative and his testimony at the hearing and found Mr. Allister was not a credible witness. Ms. Alfred's claim, as well as those of their children, was based on being at risk because Mr. Allister was at risk.

[4] A preliminary issue was raised by the Respondent submitting the Applicants had misled the Court by filing a false affidavit. On this point I find otherwise. However, I am dismissing the application for judicial review because my review of Mr. Allister's evidence confirms the RPD's conclusion was entirely reasonable. Mr. Allister's testimony is not believable and he has no credible documentary evidence to support his claim of being at risk because he witnessed a brother's murder. My reasons follow.

## **Background**

[5] The Applicants, Roy Allister, his wife Janet Iana Alfred and their children, Zenisha Blades and Zenertti Alfred, are all citizens of St. Lucia.

[6] Mr. Allister alleged that he witnessed his brother's murder in March of 1994. Mr. Allister claimed he was threatened by the murderer and his associates both before and after the murderer's trial. Ms. Alfred alleged that her aunt's home had been burned and that Ms. Alfred had been kidnapped and sexually assaulted by the murderer and his associates.

[7] Ms. Alfred arrived on May 24, 2004. Mr. Allister and Zenisha Blades arrived in Canada on September 25, 2004. Zenerti Alfred arrived on December 23, 2007. The Applicants made their claim for refugee protection on February 7, 2008.

### **Decision Under Review**

[8] The RPD found that the Applicants' claim did not have a credible basis.

[9] The RPD considered both Mr. Allister's written narrative and his testimony at the hearing and found Mr. Allister was not credible. For example, the RPD noted that Mr. Allister did not list the deceased as a sibling, could not give the birth year for his deceased brother, provided different dates for the death in written and oral testimony, had no documents showing the family relationship, produced a death certificate with information that conflicted with other evidence, and failed to provide a police report confirming he witnessed the murder in his evidence. Given the serious credibility concerns with Mr. Allister's evidence, the RDP found Mr. Allister failed to provide sufficient credible evidence that the deceased was his brother and that he and his family was threatened and harmed by the murderer and his associates.

### **Legislation**

[10] The *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) provides:

96. A Convention refugee is a person who, by reason of a

96. A qualité de réfugié au sens de la Convention — le réfugié

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by

— la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

the person in every part of that country and is not faced generally by other individuals in or from that country...

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

## Issues

[11] Two issues arise in this case:

- 1) *Did Ms. Alfred mislead the Court?*
- 2) *Was the RPD's decision reasonable?*

## Standard of Review

[12] The RPD's findings of fact and conclusions on questions of mixed fact and law are to be assessed on the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The credibility findings of the RPD are entitled to a high degree of deference: *Aguebor v Canada (Minister of Citizenship & Immigration)* (1993), 160 NR 315 (FCA) at paras 3-4.

## Analysis

- 1) *Did Ms. Alfred mislead the Court?*

[13] The Applicants were self-represented at the judicial review. Ms. Alfred filed an affidavit declaring she feared to return to St. Lucia because of being harmed because her husband, Mr. Allister, was a witness to the murder of his brother. Ms. Alfred attested to being kidnapped and sexually assaulted in St. Lucia by the murderer and his associates. She declared the RPD would not allow her to testify as to what happened to her or what she feared in St. Lucia. She stated: “The panel member was very rude and aggressive towards me when I asked to testify and stated that he did not need to hear from me.” In the balance of her affidavit, Ms. Alfred attempts to explain the contradictions in Mr. Allister’s evidence.

[14] As a preliminary issue, the Respondent submits the Applicants mislead the Court by claiming the RPD refused to allow Ms. Alfred to testify. The Respondent stated the transcript of the hearing reveals otherwise. The Respondent submits their application should be dismissed without hearing the merits and the Applicants be required to reimburse the Respondent with costs, albeit in a modest amount having regard to their circumstances.

[15] The transcript of the review hearing demonstrates Ms. Alfred was assisted by counsel and given full opportunity to testify at the hearing. The RPD expressly stated it did not need to hear details of the kidnapping and sexual assault. On my review of the transcript, I infer the RPD did so to spare Ms. Alfred from having to recount details of shameful and degrading treatment by the kidnappers.

[16] The Respondent submits bad faith is established because the hearing transcript contradicts Ms. Alfred's testimony. The Respondent cites *Mayorga v Canada (Minister of Citizenship & Immigration)*, 2010 FC 1180 in support of its position.

[17] I begin by observing that, while verbatim transcripts of a hearing are reliable evidence of what was said, one must exercise caution in extending the plain meaning of the words on paper to how participants perceive the meaning of what is said. Transcripts cannot convey demeanour or tone of voice. Nor do transcripts readily reveal personality or cultural traits that come into play. When people interact, they incorporate these factors into their understanding of the meaning of the words said.

[18] Ms. Alfred's strongest evidence was about her kidnapping and sexual assault. Being told she need not testify about that experience could be understood by her as denying her the opportunity to testify about her most important evidence. She may well have interpreted the RPD's words as a refusal to hear her testimony.

[19] In *Mayorga*, Justice Near found that the applicant had filed false evidence. The facts were unequivocal: the applicant declared in an affidavit she had filed an employment letter stating she worked taking care of disabled children in a school. On investigation, the school authorities advised there were no disabled students in the school and the school director had not written the letter.

[20] In the case at hand, there is room for a subjective belief by Ms. Alfred that she was not being allowed to testify. This belief is not necessarily inconsistent with the objective transcript evidence. In these circumstances, I decline to find Ms. Alfred engaged in misleading the Court.

2) *Was the RPD's decision reasonable?*

[21] I now turn to the merits of the judicial review application. In *Canada (Minister of Citizenship & Immigration) v Sellan*, 2008 FCA 381, 76 Imm LR (3d) 6, the Appeal Court stated:

[3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[Emphasis added]

[22] At the RPD hearing, the Applicants relied on Mr. Allister's written narrative and his oral testimony. Ms. Alfred's claim, as well as those of their children, was based on being at risk because Mr. Allister was at risk.

[23] My review of Mr. Allister's evidence confirms the RPD's conclusion was entirely reasonable. Mr. Allister was not believable and he has no credible documentary evidence to support his claim of being at risk because he witnessed a brother's murder. No amount of explaining by Ms.



Alfred will make Mr. Allister's testimony believable. The RPD did not make any reviewable error in coming to the conclusion it did.

## **Conclusion**

[24] This application for judicial review is dismissed.

[25] Neither party submitted a serious question of general importance for certification and I do not certify any question.

[26] Finally, counsel for the Respondent is to be commended. The Applicants appeared in court without the Respondent's memorandum and related materials notwithstanding they had been personally served. The Respondent's counsel took the time to make that material available to the Applicants and his conduct and approach to these unrepresented Applicants was exemplary.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Leonard S. Mandamin”

---

Judge

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

**DOCKET:** IMM-3171-11

**STYLE OF CAUSE:** ROY ALLISTER, JANET IANA ALFRED, ZENISHA  
BLADES AND ZENERTTI ALFRED v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 30, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MANDAMIN J.

**DATED:** DECEMBER 12, 2011

**APPEARANCES:**

Roy Allister  
Janet Alfred

FOR THE APPLICANTS  
(ON THEIR OWN BEHALF)

Brad Bechard

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Roy Allister  
Janet Alfred  
Richmond Hill, ON

FOR THE APPLICANTS  
(ON THEIR OWN BEHALF)

Myles J. Kirvan Deputy Attorney  
General of Canada  
Toronto, Ontario

FOR THE RESPONDENT