Federal Court  Cour fédérale

**Date: 20120608**

**Docket: IMM-7071-11**

**Citation: 2012 FC 722**

**Ottawa, Ontario, June 8, 2012**

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

**BETWEEN:**

**SANDRA MARIA ALVES DIAS**
**PEDRO NASCIMENTO DIAS**
**STEFANNY SAMARA NASCIMENTO DIAS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants (Sandra Maria Alves Dias and her children Pedro Nascimento Dias and Stefanny Samara Nascimento Dias) seek judicial review of their negative determination from the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 23, 2011. The Board found they were neither Convention refugees nor persons in

need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the following reasons, their application is dismissed.

## I. Facts

[3] The Applicants are citizens of Brazil. They fled their home country for the United States of America (US) on February 15, 2005. They remained there without status until entering Canada and making a refugee claim on January 8, 2010.

[4] Sandra (or the Principal Applicant) claimed that her husband Paulo began abusing drugs and alcohol and physically assaulted her on a regular basis. When she went to live with her mother in a gated condominium complex, she believes Paulo attempted to enter but, since she had informed security guards about him in advance, he was not permitted to do so. This prompted her to leave for the US.

## II. Decision Under Review

[5] The Board concluded that the Principal Applicant's failure to claim in the US during her five years without status indicated a lack of subjective fear. The determinative issues, however, remained that of an Internal Flight Alternative (IFA) and the availability of state protection.

[6] Despite the Principal Applicant's testimony that it would be difficult to relocate in Brazil with her children and Paulo would be motivated to find her as he is still "leading the same life" involving drugs, the Board found the Applicants had an IFA in Rio de Janeiro. It was noted:

> Considering the passage of time, the fact that Paulo did not harm the claimants after they left him, that he authorized the minor claimants to leave Brazil with Sandra, and considering his personal situation, it is unlikely that the agent of persecution would pursue the claimants if they were to return to Brazil. I find that it is even more unlikely that he would pursue them in Rio de Janeiro.

[7] The Board also found that the Applicants had not provided clear and convincing evidence that, on a balance of probabilities, there is inadequate state protection in a democratic Brazil. The Principal Applicant made no effort to seek state protection by reporting the assaults. She claimed Paulo threatened her and she thought he would take revenge if she sought a restraining order. The Board was not persuaded, however, that the police would not investigate her allegations if reported to them. It found that "Sandra's responses regarding the effectiveness of state protection were not persuasive, since they were largely unsubstantiated and not consistent with documentary evidence."

[8] It was acknowledged that Brazil has had some difficulties in the past addressing crime and corruption that exists within the security forces, but that, on the whole, these issues were being addressed by the state. The evidence showed that "Brazil has had many notable successes in its attempts to curb crime and corruption and many of their initiatives have been effective." Specific to the issue of domestic violence, the Board stated "[t]he success in the initial implementation of the new laws is evident by the number of Brazilians who are aware of the new laws and agree with their efficacy and by the increase in the number of clients served by the Center for Women's Services."

[9] Finally, the Board addressed whether it would be objectively unreasonable or unduly harsh for the Applicants to move to Rio de Janeiro. It found that this would not be the case. Since they were able to adjust to life in a new country, it would be much easier to readjust to life in a different locale in their home country. The Board acknowledged the psychological report referring to the Principal Applicant's post traumatic stress disorder and other symptoms as well as the chronic adjustment disorder with anxiety experienced by Steffany. Regardless, treatment for those conditions would be available to the Applicants should they return to Brazil.

## III. Issues

[10] This general issue before this Court is the reasonableness of the Board's decision.

## IV. Standard of Review

[11] Questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 51). More specifically, this standard applies to findings regarding state protection (*Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13) and an IFA (*Rodriguez Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243, [2008] FCJ no 1543 at para 24).

[12] This Court is concerned with whether the decision demonstrates the existence of justification, transparency and intelligibility or, to put it another way, falls within a range of

possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir*, above at para 47).

## V. Analysis

[13] The Principal Applicant takes issue with the Board's finding regarding her failure to seek protection in the US. The Board stated at paragraph 12 of its reasons:

> Sandra did not pursue any avenues of protection while in the USA for almost five years. I find her actions to be unreasonable for a person fearing persecution in her home country. Sandra did not even ask an immigration consultant or lawyer about any prospect for protection, even though it was not likely that there was any risk in asking. These are not actions consistent with a person who fears returning to her home country. From these actions I draw an adverse inference with respect to Sandra's subjective fear. I am persuaded that if Sandra was genuinely fearful of returning to Brazil, she would have made some attempt to normalize her status in the USA. I conclude that her failure to claim in the USA indicates a lack of subjective fear.

[14] The Principal Applicant contends that she testified to her understanding that only one percent of those seeking asylum in the US would be granted it and she was too fearful of being deported to Brazil. She implies that since the Board did not identify any credibility issues associated with her testimony as a victim of domestic violence, it failed to consider the totality of her evidence in not seeking protection in the US.

[15] I cannot accept the Applicants' position that the Board's reasoning was unreasonable in the circumstances. As is evident in the above passages and at other points in the decision, her stated fears of being deported to Brazil from the US were given detailed consideration by the Board. It

was nonetheless found that her actions in not asking about the possibility of seeking protection in five years without status were not consistent with someone truly fearing to return to their home country and this called into question her subjective fear. Moreover, the Board addressed the issue of subjective fear, but still considered the state protection and IFA findings determinative.

[16] The Board's reasoning is consistent with relevant jurisprudence. The Applicants were expected to make a claim at the first possible opportunity (see *Jeune v Canada (Minister of Citizenship and Immigration)*, 2009 FC 835, [2009] FCJ no 965 at para 15). More recent cases of this Court stress that absent a satisfactory explanation for the delay in seeking protection, it "can be fatal to such a claim, even where the credibility of an applicant's claims has not otherwise been challenged" (*Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923 at para 28). While the Principal Applicant explained that she was fearful, the Board did not consider this testimony sufficient to address the concerns raised regarding her subjective fear.

[17] The Applicants further contests the Board's analysis of state protection in faulting her for not going to police despite her belief that this would aggravate the situation. In support of this position, she points to concerns regarding the lack of adequate state protection for victims of domestic violence in documentary evidence.

[18] She is not, however, relieved of her obligation to attempt to seek state protection. She made no effort to do so in this instance. In *Bolanos v Canada (Minister of Citizenship and Immigration)*, 2011 FC 388, [2011] FCJ no 497 at para 60, Justice James Russell commented:

> [60] […] The Applicant cannot, in my view, argue that state protection is inadequate in Mexico because, as a vulnerable woman,

> she is reluctant to seek it. She may well have subjective fears in this regard, but if the state can, objectively speaking, provide adequate protection for women in her position then she has not rebutted the basic presumption that state protection is available to her.

[19] Such reasoning is applicable to the Applicant's case. Irrespective of the Principal Applicant's belief that an attempt to seek protection in Brazil would merely aggravate the situation, this does not address her failure to rebut the presumption of state protection. The Board's conclusions in this regard were appropriate based on the evidence. It was noted that the Applicants "did not take all the reasonable steps in the circumstances to seek protection in Brazil before seeking international protection in Canada. Sandra made no effort at all to seek state protection in Brazil. She did not report Paulo's physical assaults or threats to police at any time."

[20] The Applicants do raise some interesting arguments regarding the Board's treatment of documentary evidence specific to the issue of state protection for victims of domestic violence in Brazil. They insist that the Board ignored certain negative and contradictory information on this issue and point to particular relevant examples.

[21] Despite concerns regarding the failure to specifically mention some negative country documentation on the issue of domestic violence, the overall conclusion that Brazil is capable of providing adequate state protection to the Applicant, if she had requested it, remains reasonable in the circumstances.

[22] Similarly, I consider the Board's determination regarding an IFA an acceptable outcome in light of the facts and law. The Board specifically addressed the Applicants' psychological report

and accepted the conditions identified in it. The Board found that "should the claimants return to Brazil, treatment for their conditions would be available to them." This ensured that would not be objective unreasonable or unduly harsh to expect the Applicants to move to Rio de Janiero as an IFA. Even though the Applicants anticipated a more favourable assessment, having considered all relevant evidence, the Board's approach was reasonable.

## VI. Conclusion

[23] Accordingly, this application for judicial review is dismissed

**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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| **DOCKET:** | **IMM-7071-11** |
| **STYLE OF CAUSE:** | **SANDRA MARIA ALVES DIAS ET AL v MCI** |
| **PLACE OF HEARING:** | **TORONTO** |
| **DATE OF HEARING:** | **MAY 3, 2012** |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | **NEAR J.** |
| **DATED:** | **JUNE 8, 2012** |

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