

Federal Court



Cour fédérale

Date: 20120730

Docket: IMM-8599-11

Citation: 2012 FC 938

Ottawa, Ontario, July 30, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

SUSAN MERLENE COUDOUGAN

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Susan Merlene Coudougan, seeks judicial review of a negative Pre-Removal Risk Assessment (PRRA), dated November 18, 2011. This hearing was held at the same time as that of her judicial review application related to a denial on humanitarian and compassionate (H&C) grounds (Court File # IMM-8600-11).

I. Background

[2] The Applicant is a citizen of St. Vincent and the Grenadines (St. Vincent). She initially brought a claim for refugee protection in Canada in 2006 based on violence committed by her former partner and the father of her three eldest children, Gus Robertson. Her claim was denied, as was a subsequent PRRA. She was removed to St. Vincent in December 2009.

[3] The Applicant claims that on her return she was attacked by family members of Mr. Robertson. She arrived in Canada again on October 5, 2011. She applied for a PRRA to be considered along with her pending H&C application that was initially filed prior to her removal from Canada in 2008. Both applications were denied by the same Senior Immigration Officer (the Officer). The Applicant now asks this Court to review the decision made regarding her PRRA application.

II. PRRA Determination

[4] The Officer assessed the risk posed by Mr. Robertson, noting that there was little information on which to base a finding that he poses a serious possibility of forward looking risk to the Applicant. Given her past history and country documentation on violence against women in St. Vincent, however, the Officer gave the Applicant the benefit of the doubt and acknowledged that she faced some degree of risk from Mr. Robertson. In addition, the Officer accepted evidence of Mr. Robertson's family attacking the Applicant and that they posed a degree risk, despite suggesting that these family members were not purposely searching for the Applicant to attack her.

[5] More significantly, the Officer found that state protection would be available and reasonably forthcoming to the Applicant in St. Vincent. The police and state were willing to take action in response to the incidents experienced by her. She reported the incidents to police and they speculated the family member had fled to Trinidad. The fact that police failed to secure a conviction was not evidence of their failure to investigate.

[6] Turning to relevant documentary evidence, the Officer placed greater weight on more current and independent information in a US State Department Human Rights report (or USDOS report) discussing police training to deal with domestic violence victims. While domestic violence is not a crime in St. Vincent, the law provides protection through other charges as do government and non-government services.

[7] The Officer explicitly recognized that state protection was imperfect, referring to a lack of shelters, an “imbalance of power between men and women; the prevalence and severity of domestic violence incidents; and that the small size of the country imposes a challenge.”

III. Issues

[8] The general issue before this Court is the reasonableness of the Officer’s determination.

IV. Standard of Review

[9] The standard of review applicable to the assessment of a PRRA Officer is generally reasonableness (see for example *Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18, [2010] FCJ no 21 at paras 25-26). This standard is relevant to any finding of state protection.

V. Analysis

[10] The Applicant submits the Officer erred in finding that state protection would be reasonably forthcoming to her by not focusing on whether protection existed at the practical or operational level. However, I remain unconvinced that the Officer failed to undertake the appropriate analysis and consider the adequacy of state protection in the present case. The Officer addressed the procedures in place for responding to domestic violence complaints in the country, referred to police training, legal protection and services provided by the government's Gender Affairs Division. At the same time, the Officer expressly acknowledged the imperfections. Her analysis considered some limited knowledge and skills on domestic violence as referred to in evidence, the lack of shelters as well as a power imbalance between men and women and prevalence of domestic violence in St. Vincent.

[11] I am of the view that the Officer was alive to contradictory evidence of practical challenges associated with addressing domestic violence and, given information of efforts being made to address the problem while considering all of the relevant negative evidence, was sufficiently

justified in the conclusion that state protection would be reasonably forthcoming. While the Applicant would have preferred a more favourable weighing of this evidence, it does not follow that the Officer's analysis was unreasonable in the circumstances. The Applicant is expected to provide clear and convincing evidence that state protection would be inadequate or not reasonably forthcoming (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] FCJ no 399 at para 38).

[12] Similarly, the Applicant faults the Officer for referencing particular portions of reports but not others that highlight the extent of domestic violence in the country. I emphasize that the Officer is presumed to have considered all of the evidence before him or her and is not required to refer to each and every piece of that evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598); *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (FCA)). In general, the Officer's reasons demonstrate concern for the prevalence and severity of domestic violence in St. Vincent.

[13] The Officer is also entitled to assign weight to evidence based on factors such as its currency, as done with the USDOS report in relation to other information available. Contrary to the Applicant's submissions, and as the Respondent has noted, the Officer expressly considered the legal opinion presented as to the issue of domestic violence in St. Vincent. The Officer referred to the conclusion in the opinion that adequate state protection did not exist for victims and various limitations associated with it. This contradictory information was specifically addressed by the Officer in a relatively detailed manner before reaching the conclusion that state protection would nonetheless be forthcoming for the Applicant.

[14] The Applicant further takes issue with the Officer's finding that the police and state were willing to take action in response to the incidents experienced by her. She charges that there was no adequate emergency response to her attack occurring not far from the police station where police were asleep and no efforts were made to locate the perpetrators. Despite this information, the Officer also referenced her ability to file a report and follow up with police. The Respondent points to evidence that in response to another attack police attended at the hospital to gather evidence. The Officer recognized the shortcomings the Applicant perceived in the police reaction but, in light of all of the evidence presented, found them sufficiently responsive to the Applicant's situation and noted that the lack of an arrest did not demonstrate that they were not investigating or taking action on the case. Even though the Applicant believes the Officer should have focused solely on negative information related to the police response, the analysis and conclusion are reasonable as they reflect the totality of evidence presented for the PRRA application.

VI. Conclusion

[15] Since I consider the Officer's finding on the availability of state protection reasonable in this case, the 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

DOCKET: IMM-8599-11

STYLE OF CAUSE: SUSAN MERLENE COUDOUGAN v MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: JUNE 28, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: JULY 30, 2012

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