

Federal Court



Cour fédérale

Date: 20130822

Docket: IMM-10390-12

Citation: 2013 FC 893

Ottawa, Ontario, August 22, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

VERNLLA JEROME

Applicant

and

**THE MINISTER OF CITZIENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that she was not a convention refugee or a person in need of protection under sections 96 and 97 of the Act.

I. Background

[2] The Applicant is a 22-year-old citizen of St. Lucia. Her personal narrative, dated May 31, 2011, alleges that in 2008, while living in St. Lucia, she met a man named David Scott. She entered into a relationship with Mr. Scott.

[3] In early 2010, she was diagnosed with Lupus disease. Shortly thereafter, she started noticing symptoms, such as facial sores and swelling. The Applicant states that the onset of the Lupus symptoms brought about a sudden change in Mr. Scott's behaviour towards her. He started verbally abusing her because of her appearance.

[4] According to the Applicant, Mr. Scott's abuse escalated to physical abuse, forced sexual intercourse, and serious threats to her safety. She tried to end their relationship two more times, but he beat her each time. In her narrative, she describes going to the police station to seek protection after the first beating, but the police officer she spoke to said that she was wasting her time. She also describes, after another beating, her mother helping her to find another police station to report her abuse, but they too did nothing to assist her.

[5] The Applicant alleges that to avoid Mr. Scott, she started spending time with her neighbour, Kate Paul, with whom she had known since she was a child, and they became involved romantically. Their sexual relationship continued until April 18, 2011, when Mr. Scott inadvertently discovered it. Mr. Scott confronted the Applicant and then raped her. The Applicant ended her relationship with Mr. Scott at that time.

[6] The Applicant again attempted to go to the police to make a report about the sexual assault. The police said that since Mr. Scott was the Applicant's partner, they did not consider it assault.

[7] The Applicant alleges in the days following the discovery of her affair with Ms. Paul, people in her neighbourhood found out and directed homophobic slurs towards her and threw things at her house. Mr. Scott also showed up at her house with a group of male friends and threatened the Applicant with death unless she agreed to resume her relationship with him.

[8] The Applicant then fled for Canada, arriving on May 8, 2011. She applied for refugee protection on December 2, 2011.

[9] Upon questioning from the Board, the Applicant stated in her testimony that she had been beaten by Mr. Scott multiple times, from three or four times to perhaps ten times, and had requested assistance from the police after each beating. She also requested to speak to a higher-ranking police officer, but was never given an opportunity. She never sought assistance from any other social services organization in St. Lucia, because she believes that they did not have any such services. Further, she never sought assistance from a lawyer in seeking a restraining order, because she could not afford one.

[10] The Applicant testified that her injuries resulting from the physical abuse included bruising and blackened eyes. The Applicant further stated that after leaving St. Lucia, she had not communicated with Ms. Paul in any way. Ms. Jerome has not had same-sex encounters since her relationship with Ms. Paul.

[11] The Board rejected the Applicant's claim for protection from domestic abuse, and from being a bisexual woman, on the basis that she was not credible, and also found that she failed to rebut the presumption of adequate state protection.

II. Issues

[12] The issues raised in the present application are as follows:

- A. Was the Board's credibility finding reasonable?
- B. Was the Board's state protection finding reasonable?

III. Standard of review

[13] The standard of review for credibility issues and for state protection is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

A. *Was the Board's Credibility Finding Reasonable?*

[14] The Applicant submits that the Board failed to make credibility findings in a clear and unmistakable manner. It is argued that the Board asked confusing questions concerning her abuses and rape by Mr. Scott, leading to unwarranted credibility concerns, and improperly required specific types of documentary corroboration in support of the Applicant's testimony concerning reports to the police, and with respect to her bisexual relationship with Ms. Paul.

[15] The Respondent argues that the Board's credibility findings were reasonable, in that Ms. Jerome's evidence contained a number of inconsistencies and omissions:

- A. Omission of being raped while at the hearing, which was a material allegation in the Applicant's PIF narrative;
- B. Inadequate and inconsistent evidence of the same sex relationship with Ms. Paul. No corroborative letter was obtained from Ms. Paul about the relationship, and Ms. Jerome had no knowledge of Ms. Paul's whereabouts after allegedly fleeing St. Lucia due to threats from Mr. Scott. No such threat was mentioned in the Applicant's PIF narrative. Having known Ms. Paul her whole life, the Board found her testimony questionable concerning her lack of any knowledge of Ms. Paul being a lesbian prior to their relationship;
- C. Inconsistent police reporting concerning the number of times the Applicant allegedly sought police protection, from "multiple" times to agreeing to "2, 3, 4, or up to 10 times", or "only a few limited occasions". Also, no police reports were produced, even though the RPD screening form specifically requested the Applicant to submit police and medical reports.

[16] While any one of these factors relied upon by the Board would be insufficient to make a reasonable finding of lack of credibility, when taken together, I find that it was reasonable for the Board not only to seek corroborative evidence but as well to find an overall lack of credibility by the Applicant in giving her testimony. While the questioning by the Board concerning physical abuse was perhaps ambiguous, in not eliciting facts specific to the rape of the Applicant by Mr. Scott, the

argument that the line of questioning by the Board led to all the inconsistencies and omissions by the Applicant is not reasonable or supported in the evidence.

[17] With respect to the allegation by the Applicant that the Board erred by impugning the Applicant's credibility based on contradictions and/or inconsistencies that were not put to her, this is not a fair characterization. The Board did put questions concerning the lack of police reports, the lack of seeking help or protection from any agencies other than the one police station referred to by the Applicant, and the lack of any corroboration from Ms. Paul concerning her bisexual relationship.

[18] The law surrounding the duty of a tribunal to provide an applicant with notice of its concerns and an opportunity to explain must be looked at contextually on a case-by-case basis, as per *Dehghani-Ashkezari v Canada (Minister of Citizenship and Immigration)*, 2011 FC 809 at paras 14-15.

[19] The Applicant was represented by counsel, and no concerns were raised at the hearing on this front. I do not find that the Board erred on how it conducted itself such that the decision on credibility was unreasonable.

B. Was the Board's State Protection Finding Reasonable?

[20] The Board's finding with respect to state protection is an alternative argument to the credibility decision (Board's decision, paragraph 11), and should be considered independently of the credibility analysis.

[21] The Board decided that given St. Lucia is a functioning democracy it is presumed to be capable of protecting its citizens. The Board refused to accept the Applicant's reason that she did not seek assistance or could not find help from a women's shelter, crisis centre or women's group, because none of these services are available to women in abusive relationships. The Board also found her position of not seeking legal advice from a lawyer or legal clinic due to her inability to afford such advice unreasonable.

[22] The Respondent relies on the cases of *Fuentes v Canada (Minister of Citizenship and Immigration)*, 2010 FC 457 at para 14 and *Lezama v Canada (Minister of Citizenship and Immigration)*, 2011 FC 986 at para 92, to support the view that the Applicant is required to seek protection from protective agencies other than police, because those agencies are set up to protect women in the position of the Applicant. Moreover, in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 49, Justice LaForest states that an applicant's claim will be defeated where state protection might reasonably have been forthcoming, but the Applicant failed to seek it.

[23] Those cases deal with the state infrastructure in Mexico, and qualify their findings that each case must be decided on a case-by-case basis. St. Lucia is not Mexico.

[24] As stated by Justice Simon Noël in *Horvath v Canada (Minister of Citizenship and Immigration)*, 2013 FC 788 at para 36:

It has been recognized that when undertaking a contextual approach to determine whether a refugee claimant has rebutted the presumption of state protection, a number of factors need to be taken into consideration including the following ones (see *Gonzalez Torres v Canada (Minister of Citizenship and Immigration)*, 2010 FC 234 at para 37):

1. The nature of the human rights violation.
2. The profile of the alleged human right abuser.
3. The efforts that the victim took to seek protection from authorities.
4. The response of the authorities to requests for their assistance.
5. The available documentary evidence.

[25] In my opinion, the Board failed to consider relevant evidence and documentation before it that contradicts its assertion of adequate or effective protection for abused women or that state protection might reasonably have been forthcoming:

In contrast, the Executive Director of the Saint Lucia Crisis Centre (SLCC), which offers counselling, referrals and outreach services to victims of domestic violence, did not think that the police were effective in combating domestic violence or that the formation of the VPT had improved the situation (SLCC 29 June 2009). In a 29 June 2009 telephone interview with the Research Directorate, the Executive Director stated that several clients of the Crisis Centre report not receiving an “appropriate response” from police (*idid.*). This information could not be corroborated among the sources consulted by the Research Directorate. However, the *St. Lucia Star* reports that prior to her death, one victim of domestic violence had filed several reports against her alleged abuser which “were never pursued”; details of why they were not pursued were not provided in the article (*St. Lucia Star* 16 June 2009). According to the Attorney, the police do not always take domestic cases seriously because many victims withdraw their cases (Attorney 9 July 2009).

According to the Director of the Ministry of Home Affairs and Gender Relations, the shelter has space to accommodate a total of 25 people, including both women and children (Saint Lucia 2 July 2009). IWRAW and SLCC similarly report that the shelter has space for up to five women and their children (IWRAW Mar. 2006, 4; SLCC 29 June 2009). According to the Executive Direction of SLCC, the number of spaces at the shelter is insufficient (*ibid.*). Sources indicate that it is the only women’s shelter in Saint Lucia (SLCC 29 June 2009; Saint Lucia 2 July 2009; IWRAW Mar. 2006, 4). IWRAW reports that the shelter is available for a limited period (Mar.2006, 4). The Director of the Ministry of Home Affairs and Gender Relations indicates that no clients are forced to leave the shelter if they do not have safe alternative housing (Saint Lucia 2 July 2009).

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[26] As stated by Justice Richard Mosley in *EYMC v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at para 16:

The Board did not provide any analysis of the operational adequacy of the efforts undertaken by the government of Honduras and international actors to improve state protection in Honduras. While the state's efforts are indeed relevant to an assessment of state protection, they are neither determinative nor sufficient (*Jaroslav v Canada (Minister of Citizenship and Immigration)*, 2011 FC 634, [2011] FCJ No 816 at para 75). Any efforts must have "actually translated into adequate state protection" at the operational level (*Beharry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 111 at para 9.

[27] Failure by the Board to do any contextual analysis of the effective protection of abused women in St. Lucia, and to omit any reference to available protection for bisexual women as part of its analysis, or any reference to clearly contradictory evidence on the record concerning the adequacy of such protection, and particularly with respect to the Applicant, is unreasonable.

[28] In this case, the Board briefly reviews the availability of social support services for victims of domestic abuse as well as changes to the law around domestic abuse itself. There is no analysis of how this translates into adequate protection for the Applicant at an operational level.

[29] In conclusion, notwithstanding my decision concerning the inadequacy of the Board's analysis of state protection, the Board's decision concerning lack of credibility of the Applicant is reasonable.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The Applicant’s application for judicial review is dismissed;
2. No question is to be certified.

“Michael D. Manson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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

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