Federal Court Cour fédérale

**Date: 20131025**

**Docket: IMM-11221-12**

**Citation: 2013 FC 1084**

**Ottawa, Ontario, October 25, 2013**

**PRESENT: The Honourable Mr. Justice S. Noël**

**BETWEEN:**

**DONDRE CALBERT HENRY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division [RPD] finding that Dondre Calbert Henry is neither a "refugee" within the meaning of section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA.

## I. Facts

[2] Dondre Calbert Henry [the Applicant] is a citizen of Saint Vincent and the Grenadines [Saint Vincent], where he was born on October 23, 2000.

[3] The Applicant's mother, Michelle Hooper, was appointed designated representative of her minor son.

[4] The Applicant's mother left Saint Vincent in December 2007 to flee her abusive father. She was unable to bring the Applicant with her for financial reasons. While his mother was in Canada, the Applicant remained with his mother's friend, where he was mistreated to the extent that a hospital wanted to put him under the care of Child Welfare Services. At the request of his mother, the Applicant later moved in with his mother's parents, where he was also abused. He was put under the care of his mother's sister, who took care of him for several months until his arrival in Canada.

[5] In May 2009, two years after arriving in Canada, the Applicant's mother sought asylum claiming that she was abused by her father, who did not want to support her financially. Her claim was denied in February 2011 for lack of fear of persecution. She filed an application for the judicial review of this decision, but the application was rejected.

[6] The Applicant's mother claims that she cannot seek permanent residency on the basis of humanitarian and compassionate grounds [H&C application] as the costs involved in such an application exceed her financial capabilities. However, during the judicial review hearing, counsel for the Applicant informed that the mother and her son had filed an H&C Application.

[7] The Applicant visited his mother in Canada for two months in July 2010 but returned to his grand-parents' house. The Applicant returned to Canada in July 2011 and claimed asylum.

[8] The Applicant's mother was advised that her removal from Canada would take place no later than on July 12, 2012. However, she requested the deferral of her removal, which was granted after arguing that her son, the Applicant, was suffering from severe separation anxiety, that he should not be separated from his mother and that, as a result, her removal should be postponed pending the outcome of the Applicant's claim for refugee protection.

## II. Decision under review

[9] The RPD was satisfied with the evidence submitted as to the Applicant's identity.

[10] It ultimately found that the Applicant does not have a well-founded fear of persecution should he return to Saint Vincent accompanied by his mother, nor would he be subjected, on a balance of probabilities, to a risk to his life or a risk of cruel and unusual treatment or punishment.

[11] After laying out the facts on which it relied its decision, the RPD explained that it was considering the Applicant's claim in the context of the fact that his mother's claim for refugee protection had been rejected, that she had decided not to file an H&C application and that her deportation was imminent.

[12] The RPD explained that it would first examine the veracity of the allegations made with regard to the Applicant and, if these were found to be truthful, it would examine the consequences of his return to his home country.

[13] On one hand, the RPD was satisfied, based on the evidence submitted, that the Applicant was indeed a victim of abuse and mistreatment tantamount to persecution in Saint Vincent, but on the other hand it concluded that there was not a serious possibility that he would be persecuted or that he would be subjected, in all probability, to a risk to his life or a risk of cruel and unusual treatment or punishment should he return to his home country.

[14] The RPD based this finding on a doctor's report according to which the Applicant greatly fears being separated from his mother again and has some friends in Saint Vincent whom he misses. The RPD insisted on the importance for the Applicant not to be separated from his mother and determined that, from a prospective point of view, the Applicant's mother will have to leave Canada. It therefore concluded to a significant change in circumstances with respect to what will happen to the Applicant should he return to Saint Vincent. He would no longer be placed in the care of his grandparents, but he would be with his mother. In consequence, the RPD found the Applicant did not have a fear of persecution.

[15] The RPD then discussed the decision previously rendered with respect to the Applicant's mother's refugee protection claim and more specifically to the difficulties she experienced with her father. According to this decision, while the Applicant's grandfather is an abusive man and made the Applicant's mother's life unbearable, the threats were made by the man because he did not want

to assume economic responsibility for his grown daughter. It seemed that he had not harmed any of his other children in recent years. Ultimately this decision found that there is not a serious possibility that the Applicant's mother would be harmed if she returned to Saint Vincent and does not return to the family home.

[16] The RPD also considered the Applicant's mother's testimony, which states that while her son was living with her sister, several villages away from her parents' house, he still had to walk by his grandparents' house and was yelled at by his grandfather. The RPD found this part of the testimony to be not credible, as its previous decision concerning the Applicant's mother was to the effect that the Applicant's grandfather was not looking for revenge but simply did not want to support his daughter economically.

[17] The RPD concluded that, should the Applicant return to Saint Vincent with his mother, they would not have to live close to her parents. The most important element was for the Applicant not to be separated from his mother.

[18] The RPD then turned to the issue of the availability of psychiatric care in Saint Vincent, which falls under section 97 of the Act. It found that while the Applicant is receiving excellent treatment in Canada, the absence of the same quality of psychiatric care in Saint Vincent does not constitute persecutorial motives, given that this risk flows from legitimate financial priority reasons on the part of the country for denying the care and not from an illegitimate reason.

[19] The RPD also considered several pieces of evidence put forward by counsel for the Applicant (e.g. a country report on corporal punishment, a study on child vulnerability, and a document addressing the treatment and support for victims with Post Traumatic Stress Disorder and mental health issues) and concluded that these were not relevant to the case at bar or that they do not give rise to persecutorial reasons for denying care.

[20] Lastly, the RPD concludes that neither the issue of state protection nor the question of internal flight alternatives is relevant in the present matter.

## III. Applicant's submission

[21] The Applicant brings forward the following four issues which, in his opinion, render the RPD's decision unreasonable: (1) the RPD improperly applied the test for "change of circumstances" pursuant to paragraph 108(1)(*e*) of the IRPA or, alternatively, (2) it erred in determining that there was no compelling reasons to accept the Applicant's refugee claim pursuant to subsection 108(4) of the IRPA, (3) the RPD erred in finding that the Applicant would not have a fear of persecution should he return to Saint Vincent with his mother, and (4) the RPD failed to consider the Applicant's claim on its own merit.

[22] The Applicant first submits that the RPD did not properly apply the test for "change of circumstances" pursuant to paragraph 108(1)(*e*) of the IRPA. The RPD was satisfied that the Applicant had been the victim of abuse tantamount to persecution, and despite this finding concluded that he did not face a serious possibility of persecution or a risk of cruel and unusual treatment or punishment, on a balance of probabilities, should he return to Saint Vincent because of

a change of circumstances – he would be with his mother. The RPD found that the Applicant's mother was going back to Saint Vincent because her removal had only been deferred and she had not filed an H&C application. While it wanted to refrain from speculating as to what could happen in the future, the RPD did just that. The fact of the matter is, at the time the decision was rendered by the RPD, the Applicant's mother was still in Canada and there were no change of circumstances to speak of.

[23] The Applicant further argues that the test for the determination of whether there was a "change of circumstances" is set out in section 108(1)(*e*) of the IRPA. Pursuant to the wording of this provision, change needs to have already occurred.

| *Immigration and Refugee Protection Act*, SC 2001, c 27 | *Loi sur l'immigration et la protection des réfugiés* LC 2001, ch 27 |
| --- | --- |
| Rejection | Rejet |
| **108. (1)** A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances: | **108. (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants : |
| [...] | […] |
| (e) the reasons for which the person sought refugee protection have ceased to exist. | e) les raisons qui lui ont fait demander l'asile n'existent plus. |

[24] Furthermore, the case law has established that the rejection of a claim on the basis of "change of circumstances" requires a significant change in the political or social situation in the

country, which is not the case in the present matter. The Plaintiff is therefore of the opinion that the RPD improperly applied the test for "change of circumstances" and that there were no such changes in the case at bar.

[25] Second, the Applicant submits that notwithstanding the improper application of this test, the RPD also erred in determining that there were no compelling reasons to accept the Applicant's refugee claim pursuant to subsection 108(4) of the IRPA, which the RPD was obligated to consider, as it had been found that the Applicant has been a victim of abuse tantamount to persecution. The provision reads as follows:

| *Immigration and Refugee Protection Act*, SC 2001, c 27 | *Loi sur l'immigration et la protection des réfugiés* LC 2001, ch 27 |
| --- | --- |
| <u>Exception</u> | <u>Exception</u> |
| **108. (4)** Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment. | **108. (4)** L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré. |

[26] The Applicant submits that he still suffers from the abuse despite now living with his mother and that returning to his country of origin would be detrimental to his psychological health given his age, the trauma suffered, his continued mental and emotional anguish, etc. In concluding otherwise,

the RPD either ignored the documentary evidence submitted or disingenuously dismissed the suffering endured by the Applicant. This error renders the RPD's decision unreasonable.

[27] As a third argument, the Applicant submits that it was unreasonable for the RPD to find that the Applicant will not have a subjective fear of persecution, should he return to Saint Vincent with his mother, while having found that he was the victim of abuse tantamount to persecution. The RPD insisted on the importance for the Applicant to remain with his mother. The Applicant argues that the abuse suffered by the Applicant is being minimized by the fact that he misses his friends and does not want to be separated from his mother, both of which are reasonable expressions coming from a child in these circumstances. The Applicant adds that the decision fails to consider the special vulnerabilities of children and the *Chairperson Guideline 3: Child Refugee Claimants* [*Guideline 3*] for the determination of the subjective fear of a child.

[28] Lastly, the Applicant submits that the RPD failed to consider the application on its own merit and undertake an analysis of state protection. He submits that the RPD engaged in an analysis of the risks associated with the return of the mother to Saint Vincent and not of the Applicant himself, and that it concluded that mother and son will be unharmed in the future because they will be reunited in Saint Vincent. The Applicant has trouble understanding why the RPD could, on one hand, state that the Applicant suffered abuse tantamount to persecution and, on the other hand, that state protection is not relevant in the present matter. Documentation submitted clearly shows that child abuse remains a prevalent problem in Saint Vincent because of "woefully outdated" legislation and a lack of shelter for such children. The RPD focused on the Applicant's mother's

claim and did not consider the application on its own merits. Given the fact that the RPD accepted the Applicant's allegation, a proper analysis of his claim was warranted.

## IV. Respondent's submission

[29] The Respondent argues that it was reasonable for the RPD to conclude that the Applicant would not be persecuted or abused should he return to Saint Vincent with his mother because he would be with his mother and no longer with his grandfather, i.e. a lack of prospective fear. The Respondent also adds that the RPD did not err by concluding that the Applicant had not established the existence of compelling reasons under subsection 108(4) of the IRPA.

[30] With regard to the lack of prospective fear, the Respondent claims that the Applicant was only abused because he temporarily had to live with his grandparents. He and his mother were in the same situation – the abuse would stop if they left the grandfather's house. Also, all the evidence submitted was to the effect that the Applicant's mother's removal was only delayed pending the outcome of the Applicant's refugee protection claim. Her removal was imminent, and considering how vital this fact is to the Applicant's claim, the RPD had no other choice but to acknowledge the fact that the mother was leaving the country, as this meant that mother and child would be reunited.

[31] The Applicant failed to establish the existence of an actual and prospective risk of return. What is more, if he is able to make a reasonable choice in order to avoid being persecuted in his country, the Applicant must pursue this option. This is the case in the present matter because the Applicant and his mother could simply decide to reside anywhere but with their abusers.

[32] With respect to the absence of compelling reasons under section 108(4) of the IRPA, the Respondent claims that the Applicant has failed to meet the burden of establishing that he at one point satisfied the definition of refugee or person in need of protection. Indeed, the RPD found that his fear was not well founded. The Applicant had to establish a prospective risk of return, which he did not do. Furthermore, the Applicant in any event failed to demonstrate the existence of compelling reasons arising out of his persecution. Indeed, as established by his own evidence, the Applicant's psychological issues and his anxiety are all linked to the fact that is or could be separated from him mother, and not to the possibility of going back to his country.

[33] The Respondent further submits that, to the contrary of the Applicant's submission, the RPD did consider the Applicant's case on its own merits. It actually reviewed all of the evidence submitted and considered the trauma suffered by the Applicant. In fact, the RPD was satisfied that the Applicant was a victim of abuse tantamount to persecution based on medical evidence submitted by the evidences and two psychological reports related to the Applicant's health. Given the extensive evidence which lead the RPD to determine that the Applicant's first concern was to remain with his mother, the RPD's decision was reasonable The abuse suffered will not continue if the Applicant returns to Saint Vincent because he will not live with his grandparents.

[34] Also, on the subject of the *Guideline 3* mentioned by the Applicant, the Respondent claims that the *Guideline* was quite obviously taken into consideration and that the RPD had no obligation to mention it in its decision. In fact, the RPD went to great lengths to ensure due consideration of the Applicant's best interest.

[35] As for the issue of state protection, the Respondent argues that the RPD was in no way obligated to determine the existence of such protection, because it was of the view that he would not be subjected to a risk to his life or a risk of cruel and unusual treatment or punishment if returned to Saint Vincent.

## V. **Issues**

[36] Did the RPD err in rejecting the Applicant's claims under sections 96 and 97 of the IRPA?

## VI. **Standard of review**

[37] The RPD's findings with regard to the Applicant's claims under sections 96 and 97 of the IRPA shall be reviewed under the standard of reasonableness as they constitute a question of mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). This Court must afford deference to the RPD's findings and its intervention shall only be warranted if these findings fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir*, above, at para 47)

## VII. **Analysis**

[38] Prior to undertaking its analysis of the issue, this Court cares to address the Applicant's argument according to which the RPD improperly applied the test for change of circumstances pursuant to paragraph 108(1)(*e*) of the IRPA, as previously cited at paragraph 23.

[39] The Applicant's argument surely relies on paragraph 18 of the RPD's reasons which states the following:

> [18] To reiterate, the tribunal believes that there is a change of circumstances in the sense that previously, Dondre was living without his mother and, therefore, relied upon the shelter and protection of his grandparents where he was abused. […]
> [Emphasis added.]

[40] While the Applicant's understanding of the paragraph 108(1)(*e*) test is quite correct – this provision indeed requires a significant change in the political or social situation in the country – I do not believe the RPD ever intended to base its reasoning on this test. In fact, there is no mention of paragraph 108(1)(*e*) in the decision. In my view, the RPD simply refers to a new element arising out of the Applicant's mother's claim being rejected which affects, in its opinion, the outcome of the Applicant's claim. The RPD's wording may be the same as that of the test on which the Applicant's argument relies, but I find this to be purely coincidental. The Applicant fruitlessly grasped unto the RPD's choice of words in the hope of finding an irregularity in the decision. This argument is deprived of any relevance.

[41] As a consequence, while I recognize that the RPD referred to the issue of "compelling reasons" in its decision, I find there is no need to address the Applicant's question relating to the RPD's appreciation of "compelling reasons" pursuant to subsection 108(4) of the IRPA, as this obligation could only have been triggered had the RPD based its rejection on paragraph 108(1)(*e*) of the IRPA, which it did not. As this Court previously stated in *Contreras Martinez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 343 at para 21, [2006] FCJ No 421 [*Contreras Martinez*]:

> It is clear from the wording of sub. 108(4) that it is not aimed at creating a broad obligation for the RPD to assess the existence of "compelling reasons" in every refugee claim. If a refugee claimant is neither a refugee nor a person in need of protection because the conditions of the general definition of section 96 and 97 of the IRPA

> are not met, then no "compelling reasons" assessment need be performed by the RPD. It is only necessary where the rejection of the claim is based on 108(1)(*e*).

[42] Moreover, as rightly submitted by the Respondent, a 1992 Federal Court of Appeal decision, *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946, 147 NR 317 [*Hassan*], regarding subsections 2(2) and 2(3) of the former *Immigration Act*, RSC 1985, c I-2, states that in order to invoke the assessment of compelling reasons, one must at some point have been considered a refugee or a person in need of protection:

> It is clear, as the appellant suggests, that subsections 2(2) and 2(3) of the Immigration Act speak to the loss of status as a Convention refugee because of, inter alia, a change in material circumstance in a refugee's home nation. But those provisions in no way alter the test used to initially determine a claimant's status. It is trite law that to establish status as a Convention refugee within the meaning of the Immigration Act, one has to meet both a subjective and objective threshold. One must have a "well-founded fear of persecution". One cannot get to the point of possibly losing one's status as a Convention refugee, i.e. subsections 2(2) and 2(3) cannot be applicable, unless one first falls within the statutory definition contained in subsection 2(1). [Emphasis added.]

[43] Although *Hassan* relates to the former version of the IRPA, this principle was reiterated by the courts following the enactment of the new IRPA (see *Contreras Martinez*, above at para 20 and *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at para 5, [2004] FCJ No 771).

[44] In this regard, while the RPD did recognize that the Applicant has been victim of abuse tantamount to persecution, never at any point did it consider the Applicant to be a refugee or a person in need of protection. In fact, that the RPD found that the Applicant's fear was not well

founded as he failed to demonstrate the existence of a prospective risk. As a matter of fact, the RPD rejected the Applicant's claim because he did not satisfy the necessary conditions in order to be considered a refugee or a person in need of protection. As such, the exception enacted in paragraph 108(1)(*e*) was not applicable and, consequently, the RPD was in no way obligated to undertake a "compelling reasons" assessment under subsection 108(4) of the IRPA.

[45] Therefore, the only relevant issue in the present matter is whether or not it was reasonable for the RPD to reject the Applicant's claims and to find that he is neither a "refugee" within the meaning of section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA. I find that these conclusions were reasonable for the following reasons.

[46] Regarding the RPD's finding under section 96, it was reasonable for the RPD to conclude that the Applicant would not have a well-founded fear of persecution, should he return to Saint-Vincent with his mother.

[47] The Applicant's mother claims that no real change has occurred in the circumstances surrounding the Applicant and that the RPD's decision is based on speculation. However, the RPD did not speculate in rendering its decision, but rather adopted a prospective approach, which is the approach mandated by case law, as recently stated by this Court in *Sugiarto v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1326 at para 14, [2010] FCJ No 1676:

> [14] Justice Marshall Rothstein, in *Pour-Shariati v Canada (Minister of Employment and Immigration)* (1994), [1995] 1 FC 767, 52 ACWS (3d) 621 (TD) emphasized the prospective nature of the "well-founded fear of persecution" pointed to by section 96 of the *IRPA*. At paragraph 17, he indicated:

> Before turning to the cases themselves, I would observe that a Convention refugee claimant must demonstrate a well-founded fear of persecution in the future to support a Convention refugee claim. In making a claim for Convention refugee status, an individual will often advance evidence of past persecution. This evidence may demonstrate that he/she has been subjected to a pattern of persecution in his/her country of origin in the past. But this is insufficient of itself. The test for Convention refugee status is prospective, not retrospective: for example, see *Minister of Employment and Immigration v. Mark* (1993), 151 N.R. 213 (F.C.A.), at page 215. The relevance of evidence of past persecution is that it may support a well-founded fear of persecution in the future. However, <u>it is a finding that there is a well-founded fear of persecution in the future that is critical</u>. [Emphasis added.]

[48] It is a fact that at the time of the hearing all the evidence submitted was to the effect the Applicant's mother was scheduled to leave Canada in direction of Saint Vincent. Indeed, her removal has only been postponed pending the outcome of the Applicant's claim, which is imminent. The fact that the Applicant's mother is scheduled to be in Saint Vincent is crucial to the determination of this issue, as the Applicant has suffered abuse when he was separated from his mother but never while living with her. Contrary to what the Applicant suggests, this Court finds that this major paradigm shift constitutes an important change in the circumstances surrounding the Applicant's return in Saint Vincent, albeit not a change in circumstances for the purposes of paragraph 108(1)(*e*).

[49] Moreover, as we now know the H&C Application has been made and without predicting the future, the mother and her son will be together at least for the time being.

[50] Furthermore, the Applicant claims that the RPD fails to consider the *Chairperson Guideline 3: Child Refugee Claimants.* However, as stated by Justice Beaudry in *Allinagogo v Canada (Minister of Citizenship and Immigration)* 2010 FC 545 at para 14, [2010] FCJ No 649, "[t]his argument cannot succeed as there is no obligation for the Board to mention the guidelines in its decision and the reasons show that the Board properly considered the […] Applicant's claim". This decision relates to the *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, but this Court sees no difference as to the application of this principle to *Guideline 3*. What is more, the *Guideline 3* requires the decision-maker to give primary consideration to the best interest of the child and, in fact, the RPD stated on numerous occasions that the main concern in the case at bar was for the Applicant to remain with his mother and to avoid future separation. Therefore, this Court finds that the RPD did not fail to consider the *Guideline 3* as the reasons show that it did.

[51] As for the RPD's finding that the Applicant is not a "person in need of protection," thereby rejecting his claim under section 97 of the IRPA, the Applicant's mother claims that the RPD failed to conduct an analysis of the state protection issue. The RPD indeed stated in its decision that state protection was not an issue in the present matter, but it did so after considering the evidence and reasonably concluding to the absence of cogent evidence that the Applicant and his mother would be subject to aggressions by the Applicant's grandfather should they return to Saint Vincent. In any event, it was certainly open to the RPD to come to such a conclusion – state protection is not a relevant matter given that there is no risk of persecution from which the state could protect the Applicant.

[52] Moreover, about section 97, a Federal Court of Appeal decision, *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99, [2007] FCJ No 336, states at paras 15 and 16 that the Applicant had the burden of establishing the existence of a real and prospective risk resulting from the return and that if the Applicant has the possibility of making reasonable choices in order to free himself of harm he must do so:

> [15] As such, a determination of whether a claimant is in need of protection requires an objective assessment of risk, rather than a subjective evaluation of the claimant's concerns. Evidence of past persecution may be a relevant factor in assessing whether or not a claimant would be a risk of harm if returned to his or her country, but it is not determinative of the matter. Subsection 97(1) is an objective test to be administered in the context of a *present* or *prospective* risk for the claimant.
>
> [16] In assessing the existence of a prospective risk, the applications judge analogized the appellants' situation to one where there is an internal flight alternative (IFA) and held that "Canada cannot and should not be a substitute refuge for those who have the option of choosing a safe haven in their home countries" (paragraph 18). Without importing the IFA test into subsection 97(1), I believe the underlying purpose of the IFA test is helpful in assessing a risk of harm. As noted by this Court in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.), at paragraph 12, "if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so." Similarly, claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options. [Emphasis added.]

In the present matter, such a reasonable choice was available to the Applicant and his mother; they could avoid all persecutions by opting to reside away from the Applicant's grandfather's house. They do have a "safe haven" to "free themselves of a risk of harm." Thus it was reasonable for the

RPD to conclude that the Applicant does not have a well-founded fear of persecution should he return to Saint Vincent.

[53] The Applicant's mother also argues that the RPD's decision generally failed to consider the Applicant's claim on its own merits and focused its analysis on her case and history. Quite to the contrary, this Court finds that the RPD did consider the case on its merits. In fact, the RPD reviewed and referred to evidence submitted, including medical reports, and examined the trauma suffered by the Applicant. While it is true that the RPD gives some importance to the Applicant's mother in its decision, it was nonetheless reasonable to do so considering that, as it had reasonably been found that mother and child should not be separated, she is the reason why the Applicant would no longer be subject to persecution in Saint Vincent. This however does not amount to the RPD failing to consider the Applicant's claim on its own merits.

[54] The Applicant's mother also puts forward the argument that the abuse suffered by her son is being minimized by the fact that he misses his friends and that he does not want to be separated from his mother. This Court finds it difficult to reconcile this affirmation with the fact that the RPD ultimately came to the conclusion, upon consideration of the evidence submitted, that the Applicant was a victim of abuse tantamount to persecution. Stating that a person is in reality a victim of abuse which amounts to persecution is quite the opposite of minimizing the problems suffered by said person.

[55] For the aforementioned reasons, I find that the RPD's decision, as it concerns section 96 as well as section 97, was reasonable and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, and that this Court's intervention is not warranted.

[56] The parties were invited to submit a question for certification but none were proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed. No question is certified.

"Simon Noël"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-11221-12 |
| **STYLE OF CAUSE:** | DONDRE CALBERT HENRY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTREAL, QUEBEC |
| **DATE OF HEARING:** | OCTOBER 23, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | NOËL S. J. |
| **DATED:** | OCTOBER 25, 2013 |

**APPEARANCES:**

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| Émilie Tremblay | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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