Federal Court Cour fédérale

Date: 20141027

Docket: IMM-7791-13

Citation: 2014 FC 1017

Ottawa, Ontario, October 27, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JOSETHA PETULA HENRY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision, dated November 12, 2013, in which the Refugee Protection Division of the Immigration and Refugee Board [Board] found that the applicant was neither a "Convention refugee" nor a "person in need of protection" pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The applicant is a citizen of Saint Vincent and the Grenadines who arrived in Canada on October 24, 2011. The applicant claimed refugee protection on the basis of the domestic violence, trafficking and threats she suffered at the hands of her former common-law partner, Mr. Alston Lorraine [Lorraine]. The Board found the applicant to be credible and accepted that she was mistreated in her relationship with Lorraine when they were living in the same house. In July 2009, the applicant went to live with her sister in the same small village and stayed there safely for more than two years until her departure to Canada. Lorraine's calls promptly stopped once the applicant changed her phone number. Indeed, he never came to threaten the applicant at her place of living, even if he knew where she was and he lived just minutes away. However, on October 6, 2011, she saw him on the street and he began to run after her, but she managed to run away by hiding in a shop; the shopkeeper did not call the police. Be that as it may, the Board found that the applicant did not have a well-founded fear of persecution. The Board went on to examine the issue of state protection. In its analysis, the Board focused on the State's efforts to protect its citizens, including the fact that some police officers are specially trained to handle sexual crimes, that police officers follow a training program on domestic violence and that an increasing number of women are coming forward to the police. Indeed, the Board found that these efforts were producing results in the case of victims of domestic abuse. The Board also mentioned that the applicant could apply to the courts for a protection order. Based on the documentary evidence and on the lack of efforts by the applicant to obtain police protection, the Board concluded that the applicant had not rebutted the presumption of state protection.

[3] The applicant submits three grounds of review:

1. The Board erred in failing to determine whether the applicant had compelling reasons arising out of previous persecution for refusing to avail herself of the protection of her country under subsection 108(4) of the Act;

2. The Board erred in determining that the applicant did not have a well-founded fear of persecution; and

3. The Board erred in determining the presence of state protection.

[4] First, the applicant argues that the Board found the applicant credible, and thus, implicitly accepted that she had been "persecuted" by Lorraine. Therefore, it had to make an analysis of the compelling reasons exception, whether the applicant had raised the argument or not (*Yamba v Canada (Citizenship and Immigration)*, 2000 CanLII 15191, [2000] FCJ No 457 at para 6 (FCA)). The respondent replies that a plain reading of subsection 108(4) of the Act shows that this is not a case where the exception applies.

[5] Second, the applicant argues that the Board's finding of an absence of objective fear is unreasonable because it does not take into account the full testimony of the applicant. The Board also erred in noting that Lorraine did not issue any threats during the October 6, 2011 incident. The respondent replies that the applicant was not physically harmed for more than two years after leaving Lorraine, and that even when she did run into him, she was not harmed. In addition, if Lorraine had wanted to harm her, he knew where she lived, but the evidence shows he never looked for her. The respondent argues that the applicant did not show a prospective fear and it was reasonable for the Board to conclude that the applicant had not established a well-founded fear of persecution.

[6] Thirdly, the applicant argues that the Board's conclusion that there is adequate state protection is unreasonable. The applicant points out that the Board concluded that the applicant only attempted to obtain state protection on one occasion, but that the Board should also have considered the incident when the applicant's daughter called the police, and when Lorraine was threatening to burn her brother's house if she did not come home with him. The applicant also questions the effectiveness of applying to the courts of her country for a protection order since the police may not respond if called for help (see *Alexander v Canada (Citizenship and Immigration)*, 2009 FC 1305 at paras 12-13; *Trimmingham v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1059). The respondent argues that the applicant never gave the police a real chance to protect her, referring to the fact that she never reported the incident of rape and that when she called police because Lorraine showed up at her brother's house, they couldn't come because they didn't have transport, not because they did not want to get involved, and the applicant did not go to the police the next day to report the threats. Moreover, the respondent submits that, on the contrary, the documentary evidence shows that there has been a substantial improvement in the training of police who are better prepared to intervene in cases of domestic violence. The respondent also argues that when her daughter called the police, they came and no other action was taken because the applicant took no other action.

[7] The second and third grounds of attack raise questions of fact, and mixed of fact and law, and the reasonableness standard applies (*Dunsmuir v New Brunswick*, 2008 SCC 9). While it is debatable whether the first ground should be assessed on the correctness standard (*Kumarasamy v Canada (Citizenship and Immigration)*, 2012 FC 290 at paras 6 and 11) or on the reasonableness standard (*Jairo v Canada (Citizenship and Immigration)*, 2014 FC 622 at para 18

[*Jairo*]), the choice of the standard of review is not determinative, as I find no reviewable error was made by the Board, whichever standard applies to the issue of compelling reasons which was never raised to the Board.

[8] This application must be dismissed.

[9] There was no need for the Board to conduct to a compelling reasons analysis. Paragraph 108(1)(e) and subsection 108(4) of the Act read as follows:

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.
[…]	[…]
(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.	(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.

[10] Firstly, two conditions had to be met: 1) the applicant had to establish that at some point, she met the definition for Convention refugee or person in need of protection, and 2) that the reasons for the claim have ceased due to changed country conditions (*Jairo*, above at para 26). The applicant may have had been persecuted prior to leaving Lorraine's house in 2009, but to be a "Convention refugee" or a "person in need of protection", the applicant had to leave her country and seek the international surrogate protection. She could only cease to be a "Convention refugee" or a "person in need of protection" after she had left Saint Vincent, that is after October 2011 (*Musialek v Canada (Citizenship and Immigration)*, 2008 FC 403 at paras 24-27; *John v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1088 at para 41). As indicated by Justice de Montigny in *Jairo*, above at para 30: "[subsection 108(4) of the Act] is meant to apply in situations where the applicant has fled at a time where the agent of persecution was in power and, at the time of the refugee application, this agent is no longer in power." In this case, there had been no change in conditions between the time where the applicant fled and the time of the refugee application. Therefore, the Board did not err in not considering the application of subsection 108(4) of the Act.

[11] Secondly, while it is well established that physical harassment or harm is not necessary for the applicant to have a well-founded fear of persecution, especially in the presence of threats to one's life (*Amayo v Canada (Minister of Employment and Immigration)*, [1981] FCJ No 136, [1982] 1 FC 520 (FCA); *Ngwenya v Canada (Minister of Citizenship and Immigration)*, 2008 FC 156 at para 25), it was not unreasonable for the Board to conclude in this case that the applicant did not have an objective fear of persecution for the various reasons provided in the impugned decision. These reasons are transparent and intelligible. The reasoning of the Board is rational

and supported by law, which provides that the fear must be evaluated on a forward basis. In the case at bar, the finding of an absence of objective fear of domestic abuse or violence in the future, is not speculative and is based on the evidence on record. After all, there were no threats and no incident of persecution occurred during a period of more than two years after the applicant left the house of her violent and abusive partner. As far as the incident of October 2011 goes, the applicant could not confirm whether or not threats were actually made by Lorraine, and in any case, it was not unreasonable for the Board to consider that there were not sufficient efforts by the applicant to seek the protection of the police. In view of this conclusion, it is not necessary to address the other arguments made by the parties.

[12] Counsel agree that this case does not raise a question of law of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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