

Federal Court



Cour fédérale

**Date: 20160927**

**Docket: IMM-332-16**

**Citation: 2016 FC 1087**

**Ottawa, Ontario, September 27, 2016**

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

**BETWEEN:**

**KAREN ANN MARIE GUTHRIE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Karen Ann Marie Guthrie, seeks judicial review of a pre-removal risk assessment [PRRA] by a senior immigration officer in which the officer determined that Ms. Guthrie would not be subject to risk of torture, be at risk of persecution, or face a risk to life or risk of cruel and unusual punishment or treatment if removed to Jamaica, her country of nationality.

[2] As explained in greater detail below, this application is allowed, as I find that the officer erred in the articulation and application of the test for considering the availability of state protection in Jamaica.

## II. Background

[3] Ms. Guthrie is a citizen of Jamaica and alleges a fear of persecution in Jamaica at the hands of her former husband. She made a refugee claim in Canada which was refused by the Refugee Protection Division [RPD] on January 26, 2011. She submitted an application for a PRRA in 2015 and on December 2, 2015 received the decision that is the subject of this judicial review. This decision turned on the officer's finding that Ms. Guthrie had not provided sufficient evidence to persuade the officer that state protection would not be forthcoming in Jamaica.

[4] The Canada Border Services Agency issued Ms. Guthrie an order requiring her to leave Canada on February 15, 2016. By an order of the Federal Court issued on February 3, 2016, her removal was stayed until the within application for leave and judicial review has been determined.

## III. Issues

[5] Based on the arguments advanced by Ms. Guthrie, I would articulate the issues for the Court's consideration as follows:

A. Did the officer fail to apply the correct test for state protection?

- B. Did the officer reach unreasonable conclusions as to the availability of state protection in Jamaica?

IV. Analysis

[6] Ms. Guthrie submits that, in considering whether the officer identified the appropriate test for state protection, the correctness standard is to be applied by the Court (*see Gonzalez Camargo v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1044 [*Gonzalez Camargo*]), although the standard of reasonableness applies to the Court's review of how the officer applied the test to the facts of the case. The Respondent, the Minister of Citizenship and Immigration, agrees with this position on standard of review, and I concur.

[7] Ms. Guthrie argues that the officer erred by reaching a conclusion on the adequacy of state protection based on an assessment of serious efforts being made by the government of Jamaica to deal with domestic violence, rather than by assessing the operational adequacy of the protection available. The Minister does not dispute that the officer was required to conduct the assessment from the perspective of operational adequacy but argues that the officer did so.

[8] I agree with Ms. Guthrie both that the officer applied the wrong test for state protection and that the resulting state protection analysis was unreasonable. As Ms. Guthrie submits, these two findings are related, as the officer's identification and application of the wrong test are evident both from the articulation of the test in the decision and the manner in which the test was applied.

[9] As recently stated by Justice Gleeson in *Gonzalez Camargo*, at paragraph 26, the fact that a state has undertaken serious efforts at state protection is not determinative of the availability of state protection. Rather, the appropriate test involves an assessment of the adequacy of that protection at the operational level. Ms. Guthrie submits that there are several places, in the course of the officer's state protection analysis, where the officer refers to "serious efforts" and "attempts" by the government of Jamaica to protect its citizens against domestic and sexual violence:

- A. The officer refers to the documentary evidence on domestic violence and finds that the government of Jamaica is making serious efforts to deal with the issue of domestic violence within its territory;
- B. Following the recitation of that documentary evidence, the officer states that it is very clear from the documentation reviewed that the Jamaican authorities are making efforts to address the violence and in particular violence against women within its territory;
- C. While acknowledging that violence against women remains a problem in Jamaica, as it does throughout the world, the officer concludes that, according to the documentary evidence, this is a problem that the government of Jamaica is attempting to remedy.

[10] Of course, efforts made by a government to achieve state protection may be relevant to the question whether operational adequacy has been achieved. Therefore, the fact alone that a PRRA officer refers to government efforts does not necessarily mean the officer has applied the

wrong test. However, in the case at hand, a review of other elements of the officer's decision supports the conclusion that the officer did not identify or apply the correct test.

[11] The Minister refers to particular documentary evidence, from the United States Department of State 2014 Country Reports on Human Rights Practices and a 2015 publication from the United Kingdom Home Office, relied on by the officer in the decision. The Minister notes that these documents indicated:

- A. The law criminalizes spousal rape when the parties have separated;
- B. Laws prohibit domestic violence and provide remedies for victims including restraining orders and other non-custodial sentencing;
- C. Breaching a restraining order is punishable by a fine of up to \$10,000 JMD and six month's imprisonment;
- D. The authorities in Jamaica have conducted domestic abuse sensitivity training for police officers in downtown Kingston;
- E. A victim support unit operates in 14 parishes in Jamaica. It provides counselling, emotional support, and other services to victims of gender-based violence. The support unit is located within the Ministry of National Security;
- F. Several laws are currently being reviewed by the government as a part of its efforts to intensify "its drive to protect the nation's women and girls and eliminate violence against them";

- G. A Joint Select Committee of Parliament is reviewing the Sexual Offenses Act, the Offenses Against the Persons Act, the Domestic Violence Act, and the Child Care Protection Act;
- H. The Prime Minister has made public statements that the government will continue to put measures in place to provide greater security and protection for women in the fight to eliminate violence against them;
- I. Education campaigns are in place to educate citizens and build public awareness of gender-based violence and violence against women.

[12] While this information amply supports the officer's conclusion that Jamaican authorities are making serious efforts to address domestic and sexual violence, it is notable that none of this information speaks to the effectiveness of these efforts and whether these efforts are sufficiently effective to constitute adequate protection. In my view, the nature of the information cited by the officer in the course of the state protection analysis supports the conclusion that the officer was applying a test that focused upon the state's efforts at protection rather than the operational adequacy of that protection.

[13] The Minister relies on the Court's decision in *Mudrak v Canada (Minister of Citizenship and Immigration)*, 2015 FC 188 [*Mudrak*], at paragraph 56-57, to the effect that legislative and other measures should be treated as evidence enhancing the presumption of adequate state protection, and that it would be incorrect to impose on a government an obligation to demonstrate the operational adequacy of its recently instituted protection measures. Ms. Guthrie questions the authority of this decision. She notes that *Mudrak* certified for appeal the question

whether the RPD commits a reviewable error if it fails to determine whether protection measures have been demonstrated to provide operational adequacy. While the resulting appeal was dismissed by the Federal Court of Appeal in *Mudrak v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 178, Ms. Guthrie points out that the dismissal was on the basis that the question should not have been certified. The Federal Court of Appeal held at paragraph 31 that the certification of the first question in *Mudrak* resulted from an incorrect inference that a line of Federal Court jurisprudence supported a conclusion that an onus shifted to the RPD to demonstrate operational adequacy of protection measures.

[14] As I read the decision of the Federal Court of Appeal, it does not alter the law on this issue which, in the context of efforts to achieve state protection, requires consideration of whether those efforts have translated into adequate state protection at the operational level. I recognize the Minister's argument, based on the reasoning in *Mudrak*, that legislative changes reinforce the presumption of adequate state protection and that evidence of the effects of newly instituted initiatives may not be immediately available. However, in my view, this does not detract from the requirement to analyse the country condition evidence, including evidence on new initiatives and whatever effects they may have had, to assess whether adequate state protection at an operational level has been achieved.

[15] Ms. Guthrie cites information from the documentary evidence to support her position that Jamaica has not achieved adequate state protection at an operational level against domestic and sexual violence. Analysis of this information is not evident from the officer's decision, other than perhaps through the reference to violence against women remaining a problem in Jamaica. While

the officer is entitled to deference in analysing country condition documentation in support of the state protection analysis, that analysis must apply the correct test. The focus upon the government's efforts, rather than operational adequacy through the success of those efforts or otherwise, represents an error both in the selection of the wrong test and a resulting analysis which is unreasonable because of the misplaced focus.

[16] I therefore find that the PRRA officer erred in the state protection analysis, which requires that this application for judicial review be allowed and the matter referred to another officer for redetermination. Neither party proposed any question of general importance for certification for appeal, and none is stated.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed and the matter is referred to another officer for redetermination. No question is certified for appeal.

“Richard F. Southcott”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-332-16

**STYLE OF CAUSE:** KAREN ANN MARIE GUTHRIE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 8, 2016

**JUDGMENT AND REASONS:** SOUTHCOTT, J.

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**APPEARANCES:**

D. Clifford Luyt FOR THE APPLICANT

Leanne Briscoe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

D. Clifford Luyt FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario