Date: 20070726

Docket: IMM-408-07

Citation: 2007 FC 778

OTTAWA, Ontario, July 26, 2007

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

VENEISHA YOLANDA LEWIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Pre-Removal Risk Assessment Officer (the Officer) concluding that the Applicant did not face any risk should she be returned to either of her two countries of citizenship, that is Jamaica and Grenada.

FACTS

[2] The Applicant is 25-years-old and is a Jamaican citizen by birth and a citizen of Grenada though marriage. She is married to a permanent resident of Canada and together they have a Canadian citizen daughter who was born August 8, 2002. She arrived in Canada on June 25, 2001 as a visitor and remained after her status expired.

[3] The Applicant states that she experienced marital difficulties and that her husband became abusive. On April 2, 2006, the Applicant called the police complaining of assault by her husband. She told the police that she had hit him back and a police investigation commenced. As a result of the investigation, she came to the attention of Canada Border Services Agency on April 4, 2006 when they were investigating her for abuse of her husband, after she admitted striking him. She and her daughter are currently living separate and apart from her husband.

[4] The present PRRA is the first consideration of the applicant's risk, as she never had a refugee hearing never having filed a claim for refugee status.

[5] The Applicant claims that she met a boy in Jamaica when she was around 12-years-old and was friends with him. Six years later she states that she saw him again and they decided to keep in touch. She claims he tried to commence a relationship, but she told him she was seeing someone else. He became possessive and she claims he stalked her. She found out he was the leader of a gang and that he sold crack/cocaine. She states that on one occasion he pulled a knife and put it on her side and that on another occasion he punched her in the face for talking to her school friends. She did not provide the Officer with the alleged persecutor's name or the location of the persecution, nor did she report the incidents to the police.

Decision of the PRRA Officer

[6] The Officer first noted that the Applicant did not identify the country she fears to return to. However, since the persecutory events identified by the Applicant seem to have taken place during her school days, the Officer expressed her assumption that the Applicant claimed a fear of persecution in Jamaica. This assumption was not countered by the Applicant. The Officer then noted that the Applicant's story was not provided in the form of affidavit, sworn statement, or a signed letter or note.

[7] The Officer concluded that the Applicant's actions do not demonstrate a subjective fear for two reasons. First, the Applicant visited Grenada and then reavailed herself in Jamaica. Second, she did not identify any risk to Canadian authorities for five years.

[8] The Officer than noted that, regardless of any risk that might exist in Jamaica, the Applicant did not identify an agent of harm in Grenada, a country in which she also has citizenship. Nor did she mention how the Jamaican agent of persecution would be able to continue stalking her in Grenada. Thus, the Officer concluded she would be protected in Grenada. The Officer went so far as to state that even if the Jamaican stalker posed a risk in Grenada, the state would be able to protect the Applicant because women's access to state protection is not impeded and the willingness of police to investigate and prosecute cases of domestic violence demonstrates that the applicant would be protected.

[9] The Officer also held that the Courts do not consider the best interests of Canadian citizen children in making their decisions in the PRRA process. The Applicant has not disputed this finding.

[10] A negative decision was received on November 27, 2006 with reasons following on January 16, 2007.

ISSUES

[11] There are two issues raised by this judicial review:

a. Was the Applicant entitled to an oral hearing?

b. Did the Respondent err in finding that state protection was available in Grenada?

ANALYSIS

Standard of Review

[12] The Applicant is correct that the appropriate standard of review governing the review of whether an oral hearing should have been held is correctness. See, for instance, the decision of Justice Russell in *Latifi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388, where he held that the requirement to hold an oral hearing is an issue of procedural fairness and attracts a standard of correctness. However, the issue of whether the Respondent correctly reviewed the evidence on state protection is reviewable on a standard of patent unreasonableness. The Federal Court has consistently held that the applicable standard of review for decisions of PRRA Officers is

patent unreasonable where the issue involves a question of fact, reasonableness where it is mixed fact and law and correctness for errors of law. See *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437.

Oral Hearing

[13] The Applicant notes that there is no requirement to provide her story in the form of affidavit, sworn statement, or signed letter, and that the Officer's statement in this regard results in a negative credibility finding. The Applicant also equates the Officer's subjective fear findings with a lack of credible fear. Following from this, the Applicant cites subsection 113(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA) and section 167 of the *Immigration and Protection Regulations*, SOR/2002-227 (Regulations), which govern when an oral hearing is held in a PRRA process, and argues that in this case all requirements are met.

[14] Section 113(b) of IRPA provides that

113. Consideration of an application for protection shall be as follows: […] (b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required […]	**113.** Il est disposé de la demande comme il suit : […] *b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires; […]

[15] While the Applicant emphasizes the word “shall” in the introductory portion of the provision, it is clear that there is a discretion implicit in subsection 113(b) for the Officer to decide whether or not to grant a hearing. The operative phrase is actually “a hearing may be held”.

[16] The prescribed factors that are set out in section 167 of the Regulations:

167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	167. Pour l’application de l’alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d’une audience est requise :
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a*) l’existence d’éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(*b*) whether the evidence is central to the decision with respect to the application for protection; and	*b*) l’importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify	*c*) la question de savoir si ces éléments de preuve, à supposer qu’ils soient admis, justifieraient que soit accordée

allowing the application for protection.	la protection.

[17] As the Respondent noted, these factors are cumulative. See for instance *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, aff'd (2005), 339 N.R. 233, 2005 FCA 160. Contrary to the Applicant's submissions, these factors are not met in this case. According to Justice Phelan in *Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27 at paragraph 16, section 167 of the Regulations becomes operative where credibility is an issue which could result in a negative PRRA decision. Similarly, in *Bhallu v. Canada (Solicitor General)*, 2004 FC 1324 at paragraph 6, Justice Pinard held that where an Applicant's credibility is not central to an Officer's decision, no hearing need be held. The credibility finding must be material to the outcome. Finally, in *Kim v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 321, Justice O'Reilly held at paragraph 6 that an Officer is obliged to hold an oral hearing when there is a serious issue of credibility at stake, involving evidence central to the decision that would justify allowing the application. Where there is no central issue of credibility, and where the decision on implausibility of risk is based on objective evidence rather than a finding that the Applicant is being untruthful, no hearing is necessary. See also *Yousef v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 864.

[18] With respect to the Applicant's first argument, that the Officer's statement that the Applicant provided no sworn or signed evidence of her story constituted a credibility finding, this

does not appear to be the case. First of all, it appears to be just a passing comment with no impact on the Officer's decision. It is evident that the Officer made her decision operating on the assumption that the story was true. Second, even if it was a credibility finding, it most definitely was not material to the outcome of the decision, since the Officer based her decision on the issues of subjective fear and state protection.

[19] Interestingly, the Applicant cites the decision of Justice Phelan in *Shafi v. Canada (Minister of Citizenship and Immigration),* [2006] 1 F.C.R. 128, 2005 FC 714 for the proposition that there is a presumption in favour of an oral hearing where the enumerated factors arise. The strength of the presumption depends on the nature of the credibility finding. However, the Applicant also excerpts in her reply memorandum the statement by Justice Phelan where he noted explicitly at paragraph 20 that:

> Section 113(b) of IRPA and 167 of the Regulations do not create a statutory obligation to conduct an oral hearing even where credibility is in issue.

In this case, it does not appear that any credibility was in issue, but even if it was, it was of such limited consideration and certainly not central to the case.

[20] Second, it is also clear that the Officer's subjective fear finding was not credibility based. While in some instances, there might be an overlap between subjective fear and credibility, the subjective fear finding of the Officer in this case was clearly objectively based. She held that the Applicant's reavailment to Jamaica, combined with her failure to make a claim for protection within

five years of being in Canada, led her to the conclusion the Applicant lacked subjective fear. Neither of these statements relate to the credibility of the Applicant's story.

[21] The Applicant also notes that the Officer did not consult country documentation on Jamaica in making its finding that the Applicant did not have a well-founded fear of persecution. However, that was entirely unnecessary because the Officer decided on the basis of subjective fear, one of the two components of a well-founded fear, and the component that does not require objective substantiation.

[22] Finally, the Applicant lists in support of her argument that a hearing should have been held, the fact that she was not given an opportunity to explain why she did not mention the name of the perpetrator and why she did not go to the police. However, these are not issues relating to her credibility. The Applicant was under an obligation to provide these necessary details to the Officer and the Officer was under no obligation to hold a hearing to remedy the failure of the Applicant to properly support her application. As mentioned, on all occasions the Officer operated on the assumption that the Applicant's story was true. As a result, this ground of review cannot succeed.

State Protection in Grenada

[23] The Officer's state protection determination is also well-founded. First, although the Applicant argues that the officer did not consult any documentation regarding general country conditions in Jamaica, there was no need to do so, because the Officer's finding on state protection

in Grenada (as well as its determination on the subjective fear issue) is determinative. Thus, the Applicant's evidence concerning violence against women in Jamaica is a problem is irrelevant to state protection in Grenada.

[24] With respect to the state protection finding in Grenada, there is no controversy that if an Applicant has more than one nationality, he or she must seek protection from all countries of nationality. See for instance *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraphs 88-90 and *Tit v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 556 (T.D.)(QL). Here, the Applicant has not claimed persecution from anyone in Grenada, nor did she state that she feared that her persecutor would follow her to Grenada. The Applicant provided no evidence that the authorities in Grenada would not protect her against a non-native persecutor. The Applicant appears to have absolutely no risk of return to Grenada.

[25] The Officer did, however, assess objectively whether the authorities in Grenada would be able to protect the Applicant from her Jamaican stalker. The Officer cites the US Department of State Report for 2005 (DOS Report), published in 2006, in support of this statement. The Officer concluded that women's access to state protection is not impeded, although she also cited the statement from the DOS Report that societal problems existed, including violence against women.

[26] As the Respondent noted, an Officer is entitled to weigh the evidence with little intervention from the Court. The Applicant cites the case of *Cepeda-Gutierrez v. Canada (Minister of*

Citizenship and Immigration) (1998), 157 F.T.R. 35 at paragraphs 16-17, which stands for the proposition that if there is contrary evidence directly relevant to the matter at issue, the decision-maker must address the evidence in his or her reasons. The Applicant states that both Jamaica and Grenada have been found by the Refugee Protection Division of the Immigration and Refugee Protection Board to lack state protection for victims of stalking and domestic abuse, based on evidence of country conditions. That said, the Respondent suggests correctly that there is no obligation to list each and every piece of evidence the Officer considered in her considerations.

[27] The Applicant argues that several pieces of evidence put before the Officer directly contradict the findings she drew from the DOS Report. However, upon reading the documents provided by the Applicant in her Applicant's Record, it is evident that the Officer's decision was not patently unreasonable. The documents cited by the Applicant do not, as the Applicant suggests, substantiate that:

> […] a lack of state protection exists in Grenada for women suffering from incidents of violence, and relates to the specific situation that would be faced by the Applicant if forced to return to Grenada as a vulnerable single mother alone in a country where she has no family to rely on for support.

[28] First, much of the documentary evidence offered in support of the Applicant's assertion relates to the problem of domestic violence in Grenada. Notably, this is not your standard domestic violence situation. Furthermore, the article by the Canadian International Development Agency at page 60 of the Applicant's Record notes the existence of programs and remarks on the efforts being made by the police and the courts to improve the situation of domestic violence. It also highlights that the problem stems not just from the state but the victims as well. The publication by the

Refugee Protection Division of the Immigration and Refugee Board located at page 139 of the Applicant's Record identifies difficulties in domestic abuse cases, and highlights the poor response times from police. However, it notes explicitly that once a complaint is made and charges are filed, police response is good. The DOS Report states in the section on women "police and judicial authorities usually acted promptly in cases of domestic violence".

[29] Furthermore, although the Applicant argues that the Officer noted that the DOS report that "certain societal problems were identified including violence against women," the Officer was entitled to weigh the evidence and its decision was not patently unreasonable. Thus, based on a full review of the evidence, it was clearly open to the Officer to find that, even if the Jamaican stalker was able to persecute the Applicant in Grenada, the authorities in Grenada would be able to offer protection.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question was submitted for certification.

"Max M. Teitelbaum"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	VENEISHA YOLANDA LEWIS v. MCI
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