

**Date: 20071003**

**Docket: IMM-2913-06**

**Citation: 2007 FC 1009**

**Ottawa, Ontario, October 3, 2007**

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

**BETWEEN:**

**JADINE VALDANA RICHARDSON  
VALDINE RICHARDSON  
(A.K.A. VALDINE SHADONN RICHARDSON)  
JAELDINE ELSA RICHARDSON**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 3, 2006, finding that the principal applicant (the applicant) was not credible, and therefore was neither a Convention refugee nor a person in need of protection. The applicant's two minor children base their claims on that of their mother.

## **ISSUES**

[2] Two issues are raised by the present application:

- a) Did the Board err by ignoring evidence or failing to give reasons for rejecting the applicant's explanation for the delay in making a refugee claim?
- b) Did the Board err with respect to its findings on state protection?

[3] For the reasons that follow, the answer to the two questions is negative. Therefore the application for judicial review shall be dismissed.

## **FACTUAL BACKGROUND**

[4] The applicant, Jadine Valdana Richardson, was born on May 28, 1977 and is a citizen of Saint Vincent and the Grenadines.

[5] From a very young age, the applicant was raised by her mother and stepfather. When she was approximately ten years of age, the applicant began to suffer verbal, and eventually, physical and sexual abuse at the hands of her stepfather. The abuse and the threats to her life eventually precipitated her escape in October 2003.

[6] The applicant recounts several incidents of abuse. The first instance of sexual abuse occurred when she was approximately 12 or 13 years old; her stepfather tried to make her watch an X-rated movie while he rubbed his legs against her breast. She reported this incident to her mother who confronted the stepfather but she became afraid and turned to social services instead. A social

services representative turned them away, saying the applicant's unruly behaviour was the cause of the incident.

[7] The applicant reports many incidents of rape, beginning at the age of 15 and carrying on into adulthood. Her stepfather would rape her when her mother was not around.

[8] On one particular occasion, the applicant's mother spoke of the ongoing abuse to the pastor, who then came to speak with the stepfather. The stepfather was angered by the pastor's interference and threatened the applicant with a cutlass, saying that he would kill her if she spoke of the abuse to anyone in the future. The applicant ran to the police station to make a complaint. The police said they would come to the house speak to her stepfather, but they never did.

[9] At the hearing, the applicant alleged several other visits to the police to report abuse, each time with the same result; the police would inform her that someone would come to speak with her stepfather, and never came.

[10] On October 24, 2003, the applicant fled to Canada where she stayed with her stepmother. She stayed as a visitor for the first six months, and then illegally. She made no claim for refugee protection until she spoke with a counsellor at Robertson House Shelter in Toronto, some 15 months after she had lost her status as a visitor, at which time she was informed for the first time of the possibility of making a claim for asylum.

[11] The two minor children joined their mother in Canada in February 2006.

### **DECISION UNDER REVIEW**

[12] The Board determined that the claimants were not Convention refugees or persons in need of protection. The Board further concluded that there were no subjective or objective bases to the claims. The Board based its decision on the following reasons:

- a) The applicant's failure to remove herself from her stepfather's home, even when she was an adult with an income and two minor children reflected negatively on her credibility.
- b) The applicant lived in Canada for over 15 months illegally without making a claim for refugee status, thereby risking deportation to the very country where she claimed to have a well-founded fear of persecution or need for protection. The Board determined that the delay in making the claim was indicative of an absence of subjective fear, which detracted from the applicant's credibility.
- c) The Board drew an adverse credibility inference based on the applicant's inconsistent evidence regarding the number of times she approached the authorities for protection. Only one occasion is alleged in her PIF, and at the hearing she claimed to have sought assistance on as many as five other occasions.
- d) The Board found that the response received by the applicant from social services (referred to as Marion House by the Board, and referred to as the Child Welfare Department by the applicant), that her unruly behaviour was the cause of the abuse, was inconsistent with the documentary evidence about the support available to

victims of violence in Saint Vincent currently. The Board concluded that the applicant had not availed herself of the protection of the state, and that the presumption of state protection was not rebutted.

## **ANALYSIS**

### ***Issue 1: Did the Board err by ignoring evidence or failing to give reasons for rejecting the applicant's explanation for the delay in making a refugee claim?***

[13] The applicant submits that the Board erred by failing to give reasons for rejecting her explanation regarding her delay in making a refugee claim. The Federal Court of Appeal decided in *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 at paragraph 4, that issues of the applicant's credibility are reviewable on a standard of patent unreasonableness. The applicant argues that the Board commits a reviewable error when it makes no comment on the explanations provided by the applicant and why they should be rejected. The respondent argues that any explanation provided would not take away from the Board's finding that, in 15 months, she did not take any steps to regularize her status in Canada. The Board's conclusion regarding the lack of subjective fear is not contradicted by the applicant's explanations, and cannot be said to be unsupported by the evidence. It is my opinion that the Board did not commit a reviewable error by failing to explicitly refer to the applicant's explanations.

### ***Issue 2: Did the Board err with respect to its findings on state protection?***

[14] In relation to state protection, the Board rejected the claim on two grounds: the first being that the applicant's credibility was undermined by the inconsistent evidence offered regarding the number of times she approached the authorities for help, the second being whether Saint Vincent

can offer protection to the applicant. As mentioned above, the Board's findings of credibility are reviewed on the standard of patent unreasonableness. The availability of state protection, however, is reviewable on the standard of reasonableness *simpliciter* (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2006] F.C.J. No. 232 (QL) at paragraphs 9-11; *Turna v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 202, [2006] F.C.J. No. 265 (QL) at paragraph 7; *C.P.H. v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 367, [2006] F.C.J. No. 462 (QL), at paragraph 26 (*Hutchins*)).

[15] The applicant failed to challenge the Board's finding regarding the availability of state protection. She limited her argument to the negative credibility findings and the Board's erroneous reference to her visit to Marion House. The applicant says that this negatively tainted the whole of the decision. A review of the transcripts of the hearings suggests that the Board did wrongly refer to the services sought by the applicant and her mother at Marion House. This error has no bearing on the outcome of the decision.

[16] I also accept the respondent's argument that the applicant has failed to discharge her onus of establishing that she cannot benefit from state protection in the future. No argument was presented to challenge the Board's determination that:

[...] while the system provided of protection for abused women is still flawed, the documents are clear that the situation continues to improve due to serious and concerted effort being made by the government to address the issue of gender violence, a premise which has been endorsed by the Court in *Hutchins*. The protection available does not have to be perfect but adequate, as enunciated in *Zalzali*.

Given the documentary evidence above, the panel finds the claimant must first avail herself of the protection of her country, before seeking Canada's protection. As stated in *Ward*, the claimant is required to adduce clear and convincing evidence to rebut the presumption that the state had the ability to protect her. The panel finds the presumption of state protection in this case has not been rebutted. The mere fact that the system has some insufficiencies is not enough to exempt the claimant from the requirement of seeking protection. [...]

[17] The fact that Saint Vincent can offer her state protection is determinative.

[18] No questions for certification were proposed and none arise.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

---

Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-2913-06

**STYLE OF CAUSE:** **JADINE VALDANA RICHARDSON  
VALDINE RICHARDSON (A.K.A. VALDINE  
SHADONN RICHARDSON)  
JAELDINE ELSA RICHARDSON and  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 25, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATED:** October 3, 2007

**APPEARANCES:**

Alesha Green FOR APPLICANTS

Amina Riaz FOR RESPONDENT

**SOLICITORS OF RECORD:**

Green Willard FOR APPLICANTS  
Toronto, Ontario

John Sims, Q.C. FOR RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario