Date: 20071116

Docket: IMM-5310-06

Citation: 2007 FC 1201

Toronto, Ontario, November 16, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LEILA BREHELIA TRIMMINGHAM BROWN
OMAR TRIMMINGHAM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Leila Brehelia Trimmingham Brown (the "Principal Applicant") and her son Omer Trimmingham (collectively the "Applicants") seek judicial review of the decision of A. Curtis, a Pre-Removal Risk Assessment Officer (the "PRRA Officer"), dated August 22, 2006. In that decision, the PRRA Officer determined that the Applicants were not persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "IRPA" or the "Act").

[2] The Applicants are citizens of St. Vincent and the Grenadines ("St. Vincent"). The Principal Applicant first came to Canada in 1987. She applied for Convention refugee status pursuant to the former *Immigration* Act, R.S.C. 1985, c. I-2 and her claim was denied. Following her removal to St. Vincent in 1996, she entered into an intimate relationship with one Oriel Yearwood and in 1998, gave birth to their son.

[3] Oriel Yearwood began to abuse the Principal Applicant; this abuse was physical, sexual and emotional. In 2001, the Principal Applicant left St. Vincent with her son and re-entered Canada. On May 8, 2002, the Applicants filed an application for permanent residence in Canada on humanitarian and compassionate grounds pursuant to sub-section 25(1) of IRPA. The application was refused on July 6, 2004 and an application for leave and judicial review was dismissed by the Court on January 4, 2005.

[4] On January 28, 2006, the Applicants submitted their PRRA application. They alleged that they would be at risk from Oriel Yearwood if returned to St. Vincent. The Applicants' application in this regard referred to the abuse suffered by them at the hands of Mr. Yearwood, even in Canada, in 2003 and 2004.

[5] The PRRA Officer dismissed their application on the basis that state protection was available in St. Vincent, having regard to the availability of a police force, functional courts and domestic legislation regarding domestic abuse. The PRRA Officer was not satisfied that the Applicants would face more than a mere possibility of persecution or a risk of cruel and unusual

treatment or punishment in St. Vincent.

[6] The first matter to be addressed is the applicable standard of review based upon a pragmatic and functional analysis. That analysis requires consideration of four factors: the presence or absence of a privative clause, the expertise of the tribunal, the purpose of the legislation, and the nature of the question.

[7] The Act contains no privative clause; this factor invites deference. The PRRA Officer is experienced in dealing with pre-removal risk assessments and that experience deserves deference. The broad purpose of the Act is to regulate the admission of immigrants and persons at risk into Canada. The purpose of sub-section 97(1) is to provide an avenue for persons at risk, who do not qualify as refugees, into Canada. This factor also attracts a high degree of deference. Finally, there is the nature of the question.

[8] In this case, the nature of the question involves both law and fact. The PRRA Officer is to assess the evidence of risk against the criteria described in sections 96 and 97. On balance, I conclude that the appropriate standard of review in this case is reasonableness *simpliciter*.

[9] The content of that standard is addressed in the decision in *Ryan v. Law Society of New Brunswick*, [2003] 1 S.C.R. 247 at paragraph 49 as follows:

> 49. This signals that the reasonableness standard requires a reviewing court to stay close to the reasons given by the tribunal and "look to

> see" whether any of those reasons adequately support the decision.
> …

[10] The PRRA Officer determined that state protection was available to them in St. Vincent. Upon the basis of the material before the PRRA Officer, I am satisfied that this conclusion is supported by the evidence. The PRRA Officer provided a coherent analysis of the evidence. There is no basis for judicial intervention and the application for judicial review will be dismissed.

[11] Nonetheless, I note that this may be a case where the Applicants may consider a further application for the exercise of discretion by the Respondent on humanitarian and compassionate grounds, pursuant to sub-section 25(1) of the Act.

ORDER

The application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	LEILA BREHELIA TRIMMINGHAM BROWN ET AL and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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DATED:	November 16, 2007

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