

Date: 20080207

Docket: IMM-1885-07

Citation: 2008 FC 160

Toronto, Ontario, February 7, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

SHANE SHAD LEON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a claim for protection by a young man who fears a threat to his life if he returns to St. Lucia. The threat he fears is from his step-father who is a violent pedophile who, when the Applicant was a child, sexually assaulted him, assaulted his mother, and threatened to kill him. As a result of this violence, the Applicant fled to Canada.

[2] The Applicant argues that the conduct of his case before the Refugee Protection Division (RPD) was in breach of due process. The Applicant's claim was initially scheduled for a hearing in November 2006 but because his counsel was ill, and because the Applicant was unprepared to

proceed without his counsel, the hearing was adjourned to December 2007. The hearing was further adjourned to March 9, 2007 because for a legitimate reason the Applicant was unable to appear. The adjournments were granted on a peremptory basis.

[3] At his hearing on March 9th, the Applicant appeared but his counsel did not. The circumstances are recounted in the Applicant's Affidavit as follows:

At the hearing, my counsel was not present. I indicated to the panel that I would not be able to proceed with the hearing without my counsel as counsel had the entire disclosure package and other documents I needed to refer to during hearing. I tried to reach my counsel by telephone from the IRB, but his phone went into a voicemail and I left a message.

The panel, however, insisted on proceeding with the hearing with or without my counsel and was not prepared to adjourn the matter to a later date.

At the hearing, the panel member raised issues about state protection and other issues, but for most part of it, I had no clue what he were talking about as I had not had an opportunity to review the materials he was referring to or a counsel present to assist me with all technical issues I was faced with which I did not understand.

(Applicant's Affidavit, Applicant's Application Record, p.15, paras. 9-11)

Nevertheless, the hearing commenced and, on the formal record, the Applicant agreed to proceed.

[4] A critical issue in the hearing was whether the Applicant sought state protection while in St. Lucia and whether there would be state protection available upon his return. In the decision

rendered the RPD accepted the Applicant's evidence that he was afraid to tell his mother about the abuse he had suffered because of the threats he received from his step-father, and that he did not report the violence to the police because he did not think that the police would protect him from his step-father.

[5] The hearing before the RPD concluded without any argument being presented.

[6] The RPD's decision on state protection reads as follows:

When a state in question is a democratic state, the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were not successful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question, the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.

There is no evidence that the claimant sought help from anyone, other than his father's friend. He assumed that police would not protect him and he never went to a higher placed authority in the police force.

(RPD's Decision, p. 4)

[7] It is obvious that the RPD's decision fails to apply the Applicant's evidence in making the state protection determination. The findings in the decision imply that the Applicant was required to exhaust all state protection avenues opened to him and to even seek higher authority of the police force to do so. In my opinion, since the Applicant's evidence is certainly capable of rebutting this expectation, and must be taken into consideration on a critical analysis before being rejected. In addition, in the finding that there is state protection in St. Lucia should the Applicant return, there is

no acknowledgement of the reality of the predation meted upon him by his step-father in the past and, given the fact that the Applicant's step-father is a police officer, whether there would be state protection from this direct threat should he return. I find that these failures in decision-making are reviewable errors (see: *Garcia v. Canada (Citizenship and Immigration)* 2007 FC 79).

[8] In addition to the argument that the hearing before the RPD was in breach in due process, counsel for the Applicant argues that, given the conduct of the hearing and the decision as described above, the decision itself is patently unreasonable.

[9] I find that there is a direct connection between the inadequacy of the decision rendered and the failure of the RPD to grant the Applicant's reasonable request for an adjournment of the March hearing to ensure that he be provided with a fair hearing of highly complex issues. Without the representation of counsel, and without the presentation of legal argument, it appears that the RPD's mind was not directed to the legal requirements for a finding on state protection to the prejudice of the Applicant. As a result, I find that the decision was not only patently unreasonable for error of law, but was rendered in breach of due process.

ORDER

As a result, I set aside the RPD's decision and refer the matter back for re-determination before a differently constituted panel.

"Douglas R. Campbell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1885-07

STYLE OF CAUSE: SHANE SHAD LEON v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 5, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL, J.

DATED: FEBRUARY 7, 2008

APPEARANCES:

RICHARD ODELEYE FOR THE APPLICANT

MARTINA KARVELLAS FOR THE RESPONDENT

SOLICITORS OF RECORD:

BABALOLA, ODELEYE
Barristers and Solicitors
Toronto, Ontario FOR THE APPLICANT

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