Federal Court Cour fédérale

Date: 20110124

Docket: IMM-1768-10

Citation: 2011 FC 82

Ottawa, Ontario, January 24, 2011

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

LANA SHERRY HIPPOLYTE
KEYNON CLIFF HIPPOLYTE

Applicants

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 the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated March 3, 2010, concluding that the applicants are not Convention refugees or persons in need of protection pursuant to sections 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) because the applicants have adequate state protection in Saint Lucia.

FACTS

Background

[2] The applicants are Lana Sherry Hippolyte, the principal applicant, and her son, Keynon Cliff Hippolyte, for whom the principal applicant acted as a designated representative before the Board. The applicants are citizens of Saint Lucia. They arrived in Canada on December 19, 2006, and filed their refugee claim approximately one year later, on December 13, 2007. The applicants claim refugee protection on the grounds that Keynon's father was abusive towards the principal applicant.

[3] Although the principal applicant was vague on the precise dates, the Board accepted that she was repeatedly abused by her son's father. She sustained injuries and he threatened to kill her. She described one instance, in 2000, when her abuser hit her with a gun, leaving a gash that required her to get stitches at the hospital. She described a second instance, in 2001, during which her abuser stabbed her and she required hospital treatment.

[4] The principal applicant lived with her son's father for one month following the birth of her son, after which she went to live with her mother. Her abuser continued to threaten and abuse her while she was living with her parents.

[5] In 2002, after one abusive incident in which her abuser slapped her face, the principal applicant called the police. The police gave him a warning and forced him to leave.

[6] Also in 2002, the principal applicant testified that she began working at a restaurant, where her abuser repeatedly came and harassed her. The applicant's "boss" at the restaurant always made her abuser leave the premises.

[7] From 2002 to 2006, the principal applicant continued to be harassed by her abuser, who threatened to kill her and take her son away.

Decision under Review

[8] On March 3, 2010, the Board rejected the applicants' refugee claim. Because the Board accepted that the principal applicant had been abused during her relationship with the alleged agent of persecution, the Board stated at paragraph 7 that it had considered the guidelines, *Women Refugee Claimants Fearing Gender-Related Persecution*, issued by the Chairperson on June 28, 2002, under the authority of the Act.

[9] At paragraph 8, the Board stated that the determinative issue was state protection. The Board stated the law with regard to state protection at paragraphs 9-10 of its decision:

> ¶9. The Board, in assessing the issue of state protection, is guided by a number of cases from the Federal Court and the Supreme Court of Canada. There is a presumption, except in situations where the state is in a complete breakdown, that it is capable of protecting its citizens. A claimant can rebut this presumption by providing clear and convincing evidence of the state's inability to protect. The onus is on the claimant to approach the state for protection in situations where state protection might reasonably be forthcoming.[1]
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> ¶10. No government is expected to guarantee perfect protection to all of its citizens at all times, and the fact that a state is not always successful in protecting its citizens is not enough to justify a claim,

[1] *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

> especially where a state is in effective control of its territory, has military, police, and civil authorities in place and is making serious efforts to protect is citizens.[2] Less than perfect protection is not a basis to determine that the state is either unwilling or unable to offer reasonable protection.[3]

[10] The Board considered the steps that the principal applicant took to seek state protection. The Board noted that although the principal applicant claimed that she had twice received hospital treatment as a result of the abuse that she suffered, she had no documentary evidence to corroborate those claims. The Board further stated that on neither occasion did the principal applicant contact state authorities. The Board considered the principal applicant's explanation that she did not contact police because the perpetrator had followed her to the hospital and so she was too afraid, but the Board appeared to question this, noting that she had also not contacted the police after she left the hospital.

[11] The Board stated that the principal applicant had only once approached the police: in 2002, when she was living at her mother's house and had been slapped by the perpetrator. The principal applicant acknowledged that there had been a police report made of the incident, but was unable to obtain a copy for the Board. The Board stated that the principal claimant believed that the police reaction to her complaint was insufficient because they failed to arrest the perpetrator.

[12] The Board found that the principal applicant's evidence did not reveal details of any incidents between the 2002 abuse and the time that the applicants left Saint Lucia in 2006, although it did indicate that she was continually harassed by her abuser. The principal applicant

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[2] *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
[3] *Milev, Dane v. M.C.I.* (F.C.T.D.), no. IMM-1125-95), MacKay, June 28, 1996.

acknowledged, however, that at no time during this period did she report any ongoing harassment or threats to the police. She explained that she did not believe that the police would assist her.

[13] At paragraph 15, the Board concluded that the principal applicant was not diligent in pursuing state protection:

> ¶15. The Board concludes that the principal claimant was not diligent in pursuing state protection. The Board specifically notes the two incidents in which the principal claimant sustained injury and in which she made no reports to the police. Yet when roughed up later at her mother's house, she telephoned the police. At no time since 2002, did the claimant contact the police or any other state authority.

[14] The Board considered the documentary evidence regarding the availability of state protection in Saint Lucia. The Board found that Saint Lucia is a democracy with a functioning and independent judiciary. It found that the state police force is competent and orderly. It is hierarchical and provides members of the public with procedures for complaining to higher levels if they are dissatisfied with police services.

[15] The Board found that violence against women is a problem in Saint Lucia. It considered the applicant's evidence that state efforts to combat violence against women are not effective. In particular, it considered a report from a non-governmental organization, CAFRA, and counsel's submissions that police do not take complaints seriously.

[16] The Board concluded that there is an effective security force in place to protect women of domestic violence. At paragraphs 18 and 20, the Board recited much of the salient documentary evidence [references omitted]:

> ¶18. The Ministry of Health, Human Services and Gender Relations is responsible for addressing the problem of domestic violence. The increased recognition of gender-based violence has led to the government and advocacy groups being able to offer better protection to victims. *The Domestic Violence Act (1995)* prohibits violence against women and children and has provisions for Protection Orders and Occupation Orders, which can remove the abuser from the home. There is a special Family Court to deal with domestic violence issues and generally, the laws are enforced. The Court is described as victim friendly and an applicant does not require the services of a lawyer to proceed. Social workers at the Court assist victims in obtaining Protection Orders and conduct investigations of allegations to determine urgency of need. Police have undertaken special gender sensitivity training. Although it is acknowledged that some are still reticent to intervene, response speed is often attributed to a lack of police transportation.
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> …
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> ¶20. Documentary evidence confirms that there are investigations, prosecutions and convictions and Protection Orders issued in domestic assault situations. The statistics bear this out. Problems with reporting continue as victims are often reluctant to come forward and follow through with laying charges, or they withdraw due to financial dependency on the perpetrator.

[17] The Board also found that there are significant support services available to victims of domestic violence [references omitted]:

> ¶19. The documentary evidence also indicates that support services for physical, sexual and emotional abuse are available in the Saint Lucia Crisis Centre for Women. In addition, the Women's Support Centre, which is a government-supported shelter for women, provides residential services, crisis intervention, counselling education out-reach and assists victims with applications at court for Protection Orders. The Centre has a 24-hour hotline and can arrange to pick up victims at any time.

[18] At paragraph 21 the Board concluded that the principal applicant's lack of confidence in the availability of state protection was not supported on the evidence:

> ¶21. The claimant does not believe that she would be afforded state protection as the police in her opinion do not take the necessary action. The Board finds that this statement is vague, speculative and inconsistent with what objective agencies who observe conditions in Saint Lucia indicate. The Board finds, based on the documentary evidence before it, that there is an effective security force in place and that police reluctance, although existing, is not generalized.

LEGISLATION

[19] Section 96 of the Act, grants protection to Convention refugees:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[20] Section 97 of the Act grants protection to persons whose removal would subject them personally to a danger of torture, or to a risk to life, or to a risk of cruel and unusual treatment or punishment:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[21] The only issue in this application is whether the Board's finding that the applicants had failed to rebut the presumption of state protection was reasonable.

STANDARD OF REVIEW

[22] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, per Justice Binnie at paragraph 53.

[23] Questions of state protection concern determinations of fact and mixed fact and law. They concern the relative weight assigned to evidence, the interpretation and assessment of such evidence, and whether the Board had proper regard to all of the evidence when reaching a decision. It is clear that as a result of *Dunsmuir* and *Khosa* that such questions are to be reviewed on a standard of reasonableness: see, for example, my decisions in *Corzas Monjaras v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 771 at paragraph 15; and *Rodriguez Perez v. Canada (Minister of Citizenship and Immigration)* 2009 FC 1029 at paragraph 25.

[24] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are

defensible in respect of the facts and law": *Dunsmuir*, supra, at paragraph 47; *Khosa*, supra, at para. 59.

ANALYSIS

<u>Issue:</u> Did the Board err in finding that the applicants had failed to rebut the presumption of state protection?

[25] The applicants submit that where an applicant has sought state protection and it was not forthcoming, objective evidence is sufficient to rebut the presumption of state protection. In this case, the applicants submit that the principal applicant did approach the police on one occasion but state protection was not forthcoming. As a result, the applicant submits that the Board erred in failing to consider the objective documentary regarding the inadequacy of state protection. The applicant further submits that the Board erred by focusing upon the availability to victims of domestic violence of mechanisms or organizations for protection, rather than focusing upon the effectiveness of the protection that they offer.

[26] At paragraphs 9 and 10 of its decision, quoted above, the Board described the law with regard to state protection. As the Board recognized, the question is whether state protection is adequate – perfection is not demanded.

[27] There has been some discussion in the past regarding whether the test for state protection is adequacy or "effectiveness." In *Flores v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 723, at paragraph 8, Justice Mosley, stated that "[*Carrillo v. Canada (Minister of Citizenship & Immigration)*, 2008 FCA 94] confirmed that the test is adequacy rather than effectiveness *per se*."

This position has since been upheld in a number of decisions before this Court. In *Cosgun v. Canada (Citizenship and Immigration)*, 2010 FC 400, at paragraph 52, Justice Crampton concluded:

> ¶52. Based on the foregoing review of the cases cited by the parties, I agree with the Respondent that the law is now well-settled that the appropriate test for assessing state protection is whether a country is able and willing to provide adequate protection. In short, a claimant for protection under sections 96 or 97 of the IRPA must establish, with clear and convincing evidence, and on a balance of probabilities, the inability or unwillingness of the state to provide adequate protection. This burden of proof remains the same regardless of the country being assessed, although the evidentiary burden required to rebut the presumption of adequate state protection will increase with the level of democracy of the state in question. (*Carrillo*, above, at paras. 25 and 26.)

[28] In this case, the applicants submit that there was significant documentary evidence before the Board regarding the inadequacy of state protection for victims of domestic violence in Saint Lucia. The applicants submit that the Board failed to consider the following probative evidence:

1. a 2006 Response to Information Request stating that police response is sometimes ineffective, especially in emergency situations, because of factors such as a lack of transportation for police personnel;

2. a 2009 Response to Information Request stating that the Executive Director of the Saint Lucia Crisis Centre did not think that the police were effective in combating domestic violence or that the formation of the special police Victim Protection Unit had improved the situation; and

3. the same 2009 Response to Information Request stating that a newspaper article reported on a victim of domestic violence who had repeatedly sought and failed to receive police protection and was eventually killed by her abuser.

[29] The applicants submit that this evidence reveals that state protection is not available to victims of domestic violence, and that the mechanisms and organizations that exist to offer state protection are not effective in providing adequate protection.

[30] In this case, the Board's reasons demonstrate a careful consideration of the objective documentary evidence, including the evidence that is contrary to its ultimate conclusion. Indeed, the Board specifically quoted from the 2006 Response to Information Request cited by the applicants, and recognized the problems that some non-governmental organizations had reported regarding the effectiveness of state protection. Nevertheless, the Board concluded that the applicants had failed to provide clear and convincing evidence on a balance of probabilities that the principal applicant had sought state protection or that state protection would not be forthcoming to the applicants. Indeed, the Court notes that the one time the principal applicant called the police the police came and dealt with the alleged abuser in a reasonable manner.

[31] The Board's reasons are justified, transparent, and intelligible.

CONCLUSION

[1] It was reasonably open to the Board to find that the applicants' evidence failed to persuade it on the balance of probabilities that there is inadequate state protection available to the applicants in Saint Lucia. Accordingly, there is no basis upon which this Court can interfere with the Board's conclusion.

CERTIFIED QUESTION

[2] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT'S JUDGMENT is that:

This application for judicial review is dismissed.

"Michael A. Kelen"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1768-10
STYLE OF CAUSE:	*Lana Sherry Hippolyte et al. v. The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 11, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	KELEN J.
DATED:	January 24, 2011

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