

Federal Court



Cour fédérale

**Date: 20110224**

**Docket: IMM-3328-10**

**Citation: 2011 FC 214**

**Montréal, Quebec, February 24, 2011**

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

**BETWEEN:**

**GAVRIL MARICIA PETERS  
SHEM JAPETH PETERS  
YASMINE DANEKA PETERS**

**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 dated May 13, 2010 by the Refugee Protection Division of the Immigration and Refugee Board (the Board) determining that the applicants are not Convention refugees or persons in need of protection pursuant to sections 96 or 97 of the Act.

## I. Factual Background

[2] The applicants are three siblings from Saint Vincent and the Grenadines (hereinafter Saint Vincent). The principal applicant, Gavril Maricia Peters, is 19 years old, and the minor applicants are her 15-year-old sister Yasmine Daneka Peters and 12-year-old brother Shem Japheth Peters. The applicants' refugee claim is based on a fear of persecution at the hands of their cousin, Caldwell James.

[3] The applicants' mother came to Canada in June 2006 and was accepted as a refugee on September 29, 2009. The mother's refugee claim was based on physical abuse at the hands of her husband, the applicants' father.

[4] When the applicants' mother left Saint Vincent for Canada, she left the applicants in the care of her sister Christeen who with her own four children, three girls and one son named Caldwell, moved into the applicants' family home at that time. Six months later, Christeen moved out and left the claimants in Caldwell's care.

[5] At the hearing, Miss Peters testified that Caldwell became abusive shortly after Christeen moved out. She testified that he regularly used drugs, and that he would frequently abuse the applicants physically. Miss Peters also alleges that Caldwell raped her in August 2007.

[6] When Miss Peters told her aunt Iris about the rape several days later, Iris took her and her sister Yasmine to the police. She then testified that the police took down a statement and said that

they would come to the house, but that they did not consider the situation to be an emergency. The applicants stayed at Iris's house that night.

[7] The following day, when they returned home, Caldwell confronted Miss Peters. After she argued with him, Caldwell physically assaulted her. Miss Peters and Iris returned to the police station, where the police immediately accompanied them back to the family home to force Caldwell to leave. The police stayed until Caldwell left the house.

[8] In September 2007, the applicants moved in with Iris who acted as their guardian. Miss Peters testified that Caldwell continued to harass her and her siblings whenever they encountered him, but no further physical abuse seems to have occurred.

[9] The applicants stayed with Iris until March 2008, at which time Christeen returned to the family home and the applicants moved back in. Miss Peters alleged that Caldwell returned to the house periodically and that Christeen wanted him to move back.

[10] When she learned that Caldwell would be returning to the home, Miss Peters obtained a passport and waited for her mother to arrange her travel to Canada. She left Saint Vincent on July 22, 2008 and made her refugee claim one week later, on July 29, 2008. The minor applicants arrived in Canada on April 11, 2009 and made their refugee claims the same day.

## II. The Impugned Decision

[11] The Board determined that the applicants were not Convention refugees or persons in need of protection because they had failed to rebut the presumption of state protection and because they had an internal flight alternative (IFA). The Board determined that the issue of state protection was determinative in this case.

[12] The Board stated that it had considered and carefully reviewed the IRB Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution as well as the Guidelines on Child Refugee Claimants.

[13] The Board also noted that the police assisted the applicants following the incidents that took place in August 2007. The Board considered the fact that Miss Peters had been seen by a female police officer who took notes and did not intimidate her in any way. However, based on the lack of any medical examination and the lack of urgency in dealing with the allegation of the incident, the Board found that the police did not take immediate action when Miss Peters reported being raped because the incident was probably not reported to the police as a case of rape. There was no formal complaint made and after having requested a copy of the report, the police said that the report could not be found.

[14] The Board continued its analysis by determining that the intervention by the police the following day was effective in getting Caldwell to leave the house. Miss Peters testified that he never returned. The Board therefore concluded that the police intervention was successful. The

Board also pointed out that Miss Peters stayed another year in Saint Vincent following these events and did not complain to the police during that period.

[15] The Board further noted that Saint Vincent is a democratic country, and that there is a presumption of state protection, particularly towards children's rights and welfare. The Board referred to documentary evidence and outlined the many examples available to the applicants in order to seek state protection.

[16] The Board then considered whether the applicants had an IFA. The Board noted that the applicants have a relationship with their father, who lives in Baira. The Board considered the location of Baira. The Board was of the view that the applicants would not encounter Caldwell in Baira. The Board further noted that Miss Peters agreed. The Board considered the reasons given by Miss Peters for the applicants' failure to seek refuge with their father which was based on financial reasons. Miss Peters testifies that it would be too difficult to find a job in Saint Vincent if she were to return.

[17] The Board concluded that the applicants were not Convention Refugees under sections 96 and 97 of the Act.

### III. Statutory Provisions

[18] The following provision of the Act is relevant to these proceedings:

Convention refugee

**96.** A Convention refugee is a person who, by reason of a

Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention — le réfugié

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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.

#### Person in need of protection

**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

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(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

— 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) 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) 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.

#### Personne à protéger

**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) 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) 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

to avail themselves of the protection of that country,	protection de ce pays,
(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,	(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

#### IV. Issues

[19] In this application for judicial review, two issues have to be addressed:

- a) *Did the Board err in concluding the applicants failed to refute the presumption that Saint Vincent was able to grant them adequate protection?*
- b) *Did the Board err in concluding that the applicants could have availed themselves of an internal flight alternative?*

#### V. Standard of Review

[20] The Board's determination that the applicants had not rebutted the presumption of state protection requires deference. Questions regarding the availability of state protection are ones of mixed fact and law that attract a reasonableness standard (see *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171, 282 DLR (4th) 413, at para 38).

[21] Similarly, the Board's determination that there was an IFA requires deference and so attracts a reasonableness standard (see *Navarro v Canada (Citizenship and Immigration)*, 2008 FC 358, [2008] F.C.J. No. 463, at paras 12-14).

[22] In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para 47, the Supreme Court of Canada held that a Court employing the reasonableness standard is not concerned with whether the officer's decision was correct, but rather "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[23] Thus, in the case at bar, the standard of review to be applied to the two issues is reasonableness.

## VI. Analysis

[24] The applicants challenge the Board's determinations regarding state protection and the IFA. The applicants further argue that the Board ignored evidence regarding state protection and reached an unreasonable conclusion.

[25] The onus is on the applicant to rebut the presumption of state protection (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, 165 A.C.W.S. (3d) 336) and in order to rebut this presumption, the applicant must adduce reliable, relevant and convincing evidence which demonstrates, on a balance of probabilities, that state protection is inadequate (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636).



[26] There is a presumption that every state is able to protect its citizens unless the state is unable to do so due to a complete breakdown of the state apparatus. However, an applicant may rebut that presumption by bringing clear and convincing evidence that protection would not be forthcoming. In this case, the Board found the applicant did not provide persuasive evidence that the police in Saint Vincent were unwilling or unable to protect them.

[27] The applicants rely on *Bacchus v Canada (Minister Citizenship and Immigration)*, 2010 FC 616, [2010] F.C.J. No. 751, in which it was held that the Board's failure to explain why it rejected evidence which it was contradicted its conclusion rendered the decision unreasonable. However, the facts of this case are distinguishable from the facts in *Bacchus*.

[28] The *Bacchus* case dealt with a decision in which the Board ignored evidence given at the hearing as well as significant documentary evidence regarding state protection. In *Bacchus*, the Board failed to consider and address the testimony of the applicant and the totality of the evidence in respect of the lack of protection from the authorities. In *Alexander v Canada (Citizenship and Immigration)*, 2009 FC 1305, another case relied upon by the applicants, the Board had also failed to mention crucial evidence on file – i.e. that the state cannot guarantee the effectiveness of a restraining order.

[29] However, in the case at bar and following a review of the evidence, the Court is of the view that the Board made no such error. Indeed, the Board summarized the documentary evidence regarding state protection, including evidence related to difficulties encountered by those seeking state protection in Saint Vincent - e.g. domestic violence and child abuse.

[30] More importantly - and contrary to *Bacchus* where the police did not intervene and left the applicant in the hands of her abuser - the evidence in this case provides sufficient indications that the police was sensitive and helpful to Miss Peters:

- The applicant testified that a female police officer took her initial complaint and was sensitive towards her (Applicant Record at p. 30);
- The applicant testified that the female officer took notes and told her that the police would intervene (Certified Tribunal Record at p. 165);
- Caldwell was eventually evicted by the police the very next day and for the following year until the applicant's departure for Canada, Caldwell never physically assaulted the applicant (Certified Tribunal Record at p. 181).

[31] Miss Peters alleges that the rape incident was reported to the police but the Board noted that no copy of the complaint filed by the police was submitted as evidence. The applicant argues that her aunt Iris went twice to the police to request a copy of the police report. She was told that the report could not be found. It was reasonable for the Board to assume that a police report should have been available. Also, and as correctly argued by counsel for the respondent, the evidence demonstrates that an official procedure is in place in Saint Vincent in order to obtain copies of police reports (A victim can obtain a copy of the complaint by applying to the Commissioner of Police in writing in care of Central Police Station, Box 835, Kingstown, St. Vincent West Indies – Applicant Record at p. 23). Finally, there is no affidavit from her aunt Iris stating that she requested the police report but was unsuccessful in obtaining it. Absent such crucial evidence in support of the

applicant's story, the Court agrees with the respondent that the Board could logically infer that the alleged rape had not been reported to the police as rape.

[32] In the decision under review, the Board did not fail to address evidence that could rebut the presumption of state effectiveness. Rather, the Board considered the totality of the evidence and found, based on Miss Peters' testimony that the police had effectively intervened in the past. Based on this finding, the Board concluded that the applicants had failed to establish that the police could not intervene again if necessary. The Board's inference is thus based on the evidence on file and is reasonable.

[33] With respect to the determination that there was an IFA, the applicants argue that the Board ignored evidence that the applicants' father's girlfriend did not want the applicants to live with their father. The applicants further argue that their mother's decision to leave them in the care of her sister rather than their father demonstrates the unreasonableness of the IFA, and they also argue that Caldwell would likely be able to find them in Baira because Saint Vincent is a small island.

[34] The Board's finding that the applicants would not encounter Caldwell in Baira was based on Miss Peters' testimony at the hearing and was therefore reasonable. She admitted that Baira was far enough that Caldwell could not find her and her siblings there (Certified Tribunal Record at p. 178). Further the applicant's argument to the effect that she cannot live in Baira because (i) during Christmas 2006 her father and her girlfriend argued a lot in account of the applicant's presence that of her and siblings and (ii) the fact that she would face financial problems, remain unconvincing.

[35] It is well established that the Court is not to read a decision microscopically and that the Board is not required to mention every piece of evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] F.C.J. No. 1425, at para 16). The Board is presumed to have considered all of the evidence before it, and the applicants have failed to demonstrate that it ignored evidence or that the determination of an IFA is not supported by the evidence in the record.

[36] In conclusion, the Court finds that the Board's decision is reasonable. Based on the facts of this case, the Court is of the opinion that the applicants received effective state protection and they failed to rebut the presumption that such protection would be forthcoming if it was needed in the future. On balance, the applicants also failed to demonstrate that they did not have an IFA in Baira with their father, at least on a temporary basis. The application for judicial review is therefore dismissed.

[37] No question was proposed for certification and none arises in this case.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Richard Boivin”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3328-10

**STYLE OF CAUSE:** GAVRIL MARICIA PETERS et al. v M.C.I.

**PLACE OF HEARING:** Montréal (Quebec)

**DATE OF HEARING:** February 21, 2011

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** February 24, 2011

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