

Federal Court



Cour fédérale

**Date: 20110324**

**Docket: IMM-3087-10**

**Citation: 2011 FC 366**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Ottawa, Ontario, March 24, 2011**

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

**BETWEEN:**

**TRACEYANN ELIZABETH SAMUELS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under 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 panel) dated April 28, 2010, determining that the applicant is not a Convention refugee or a person in need of protection.

Factual background

[2] The applicant, Traceyann Elizabeth Samuels, is a citizen of Jamaica. She made a refugee claim in Canada in 2006 because she said she was persecuted for her political opinions and membership in a particular social group.

[3] Ms. Samuels was born in St-James, Jamaica. She is a chartered accountant and was apparently employed by the Jamaican tax authorities from 1994 to 1999. In 1998, she apparently discovered two cases of tax evasion in companies linked to then-Prime Minister Edward Seaga.

[4] When she informed the company's chief accountant, he allegedly asked if she was afraid for her life. Before she was able to tell her superiors about this, she was attacked by two individuals while strolling with a friend. Her mother called the police to complain. Meanwhile, the tax evasion was made public.

[5] Ms. Samuels therefore changed jobs. She moved to Montego Bay to work at the Ritz Carlton. She also apparently had a relationship with a man while she was visiting Canada and gave birth to her daughter. Ms. Samuels was apparently the victim of attacks until April 2006.

[6] According to Ms. Samuel, the agent of persecution during all those years was a former security guard of one of the companies that allegedly defrauded the tax authorities who had become a police officer.

[7] On May 23, 2006, Ms. Samuels decided to leave Jamaica. After spending almost three months in the United States—without making a claim for asylum—she arrived in Canada on August 13, 2006, and filed her refugee claim the same day.

Impugned decision

[8] The panel established that Ms. Samuels was not credible and that she had not provided tangible or reliable evidence to support her allegations. Therefore, the panel rejected her refugee claim.

[9] Ms. Samuels alleged before the panel that if she returned to Jamaica, she would be personally subjected to a risk of torture and would be persecuted because of the tax evasion she had discovered 11 years before.

[10] The panel noted that Ms. Samuels alleges that she fears an employee of one of the companies where she discovered the tax evasion. The panel also noted that she sometimes described that individual as a security guard and, at other times, as a police officer. Therefore, the panel made a negative credibility finding.

[11] Moreover, the panel pointed out that Ms. Samuels was unable to explain why this individual, whose name she does not know and whose identity she did not attempt to discover, would go out of his way to search for her after so many years and after the tax evasion had been made public. The panel decided that it was implausible that Ms. Samuels would be targeted since the tax evasion has been made public.

[12] The panel pointed out that Ms. Samuels never sought state protection in the past 11 years. Ms. Samuels alleged that her mother had called the police, but that was only on one occasion and that she herself never complained. She did not complain to her superiors either. When the panel questioned her about this, Ms. Samuels answered that she did not file a complaint because she did not know who she could trust given that there is a great deal of corruption in her country.

[13] Although the panel acknowledged the problem of corruption in Jamaica, it found that the documentary evidence shows that Jamaica is a parliamentary democracy with an independent judiciary. The panel therefore determined that she had not met her burden of proving her country was unable to protect her.

[14] As the second ground for her refugee claim, Ms. Samuels alleged that she feared the father of her daughter, born in Montreal in May 2002, because she asked for and obtained child support from him in 2003. However, the panel did not find Ms. Samuels' testimony credible since she admitted that in 2006 she approached her child's father to ask him to marry her. The panel found that Ms. Samuels' conduct did not indicate a genuine fear.

[15] Finally, relying on the documentary evidence, the panel rejected Ms. Samuels' allegation that she would be in danger because she is a woman.

[16] Accordingly, the panel rejected the applicant's refugee claim on the ground that she had not met her burden of proving a risk of persecution on one of the Convention grounds. In the panel's view, she also failed to demonstrate that, if she were to return to Jamaica, she would be personally

subject to a risk of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment.

### Relevant statutory provisions

[17] The following provisions of the *Immigration and Refugee Protection Act* are relevant in this matter.

#### Convention refugee

**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,

(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,

#### Définition de « réfugié »

**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) 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

would subject them personally	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	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la 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.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de

also a person in need of protection.

personnes auxquelles est reconnu par règlement le besoin de protection.

### Issue

[18] The issue in this judicial review application is as follows:

Did the panel err in finding that state protection was available to the applicant in Jamaica?

### Standard of review

[19] According to the Supreme Court of Canada, at paragraph 53 of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, when a tribunal is assessing legal and factual issues that cannot be readily separated, the reviewing court will show deference to the tribunal.

[20] With respect to state protection, it is well established that questions as to the adequacy of state protection are questions of mixed fact and law (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] F.C.J. No. 584). Therefore, the applicable standard of review is reasonableness.

### Analysis

[21] Ms. Samuels submits that the panel erred in finding that the protection of authorities was available in her case. She states that she fears influential people in Jamaica because of her work in the tax department and that her allegations of corruption in Jamaica are well supported by the documentary evidence.

[22] The Court notes that Ms. Samuels is not disputing the panel's findings regarding the credibility of her story. The Court's analysis will therefore deal with the panel's findings as to the availability of state protection in Jamaica.

[23] The Minister submits that the burden rests on the applicant to demonstrate, by clear and convincing evidence, that her country is unable to protect her (see *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636).

[24] The Minister alleges that Ms. Samuels did not meet her burden of proof, since she did not attempt to obtain her country's protection. In support of his claims, the Minister relied on *Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376, 206 NR 272, at para. 5:

[5] When the state in question is a democratic state, as in the case at bar, 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 unsuccessful. 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.

[25] Ms. Samuels never complained to police nor reported anything to her superiors for a period of 11 years during which she alleges that there were attempts to attack her several times for having discovered the tax evasion. Furthermore, she stayed in a number of other countries during this period—Spain in 2000, the United States until 2002 and Canada in 1997, 2001 and 2002—and never filed a refugee claim.



[26] In fact, she said that she feared an unidentified individual. The Court is of the view that the panel rightly found that Ms. Samuels' failure to avail herself of her country's protection shows that she did not reverse the burden of proving that there was a lack of state protection in Jamaica (*Martinez v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1050, [2005] F.C.J. No. 1297). In this case, that aspect is decisive.

[27] Ms. Samuels argued that if she were to return to Jamaica, she would be persecuted and her life would be at risk because she is a woman. In support of her claims, Ms. Samuels submits documentary evidence. The Court understands that the situation for women in Jamaica is not perfect. The panel also admitted that fact (Certified Tribunal Record, panel's decision, at para. 8). The Court notes, however, that the panel referred to the documentary evidence and made particular note that Jamaica has an independent judiciary. Investigations on corruption have been conducted and charges were laid (Certified Tribunal Record, panel's decision, at para. 7). It is also relevant to add that general documentary evidence is not sufficient evidence in itself to substantiate a refugee claim (*Alexibich v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 53, [2002] F.C.J. No. 57) particularly in this case, since the panel questioned the credibility of the applicant's story because of her conduct.

[28] Therefore, the applicant's argument of generalized violence against women in Jamaica must be rejected because the evidence on file does not establish a connection between the general documentary evidence and the applicant's particular situation (*Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, [2008] F.C.J. No. 415).

[29] All things considered, the panel's decision is reasonable and the intervention of the Court is not warranted. The application for judicial review is therefore dismissed.

[30] This matter does not raise a question of general importance.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** this application for judicial review be dismissed. No question is certified.

“Richard Boivin”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-3087-10

**STYLE OF CAUSE:** Traceyann Elizabeth Samuels v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 24, 2011

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** March 24, 2011

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