

Federal Court



Cour fédérale

Date: 20110728

Docket: IMM-6965-10

Citation: 2011 FC 948

Ottawa, Ontario, July 28, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BRIAN AGUSTINE JOSEPH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Joseph was an adult when he left St. Vincent and the Grenadines for Canada in March 2005. He said he had been the victim of his father's verbal and physical abuse since childhood. A defining incident was in December 2004 when he intervened in an argument between his parents and barely escaped serious injury. He complained to the police, who gave his father a warning and told Brian to move out of the house. He went to live with his grandmother, but his father would follow him in order to provoke a confrontation.

[2] However, upon his arrival in Canada he did not claim for refugee protection. He says he was afraid of being refused. In June 2007, he returned to St. Vincent as his mother was sick and wanted to transfer the deed of her land to him. He had no problem with his father until January 2008 when his father learned of this proposed transfer and said he would either kill Mr. Joseph or hire someone to kill him. Mr. Joseph came to Canada 13 months later, in April 2009, and claimed refugee protection a month after that.

[3] The panel of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) found that he was neither a Convention refugee nor a person in need of international protection. This is the judicial review of that decision.

[4] The second defining incident, the one which brought Mr. Joseph back to Canada, was his mother's intention to transfer property to him. The panel noted that he did not attach any documents to support his claim. His explanation was that his mother had been told she was not allowed to make a photocopy. Indeed, at the time of the RPD hearing in October last year, the property had still not been transferred.

[5] The panel also noted that Mr. Joseph's other brothers remain in St. Vincent and do not live in fear of their father. Indeed, the father has been living and working on the Grenadine island of Bekuia for many years and only returns occasionally to the homestead. More recently the father instituted divorce proceedings.

[6] According to Mr. Joseph, when his father learned of the intended property transfer he tried to stab Mr. Joseph with a garden fork. This was six months after his return to St. Vincent. Until that time he had no problem. Furthermore, he remained in St. Vincent for more than a year after that incident. He says he did not leave earlier because he lacked the funds with which to buy an airline ticket.

[7] The key parts of the panel's decision are found at paragraphs 13 and 20 which read:

[13] Given the fact that the claimant did not fear returning to Saint Vincent in June 2007 and had not claimed refugee status on his first trip to Canada, along with the fact that the claimant remained in Saint-Vincent and did not suffer any physical harm from his father after the January 2008 incident and given the fact that the father has initiated divorce proceedings which will quite likely settle the property dispute, the panel finds, on a balance of probabilities, that the claimant is not at a serious risk of harm.

[20] Because of the possibility of state protection and the lack of an objective basis to the claimant's fear, the panel finds the claimant is not a "Convention refugee" and that, on a balance of probabilities, the claimant would not be subjected to a risk to life or to a risk of cruel and unusual treatment or punishment or to a danger of being tortured should he return to Saint Vincent.

[8] The panel recited some facts which could have put Mr. Joseph's credibility in doubt, such as his excuse for not providing any particulars with respect to the property subject to transfer, and his excuse for waiting more than a year before leaving St. Vincent as he had to save money for his plane ticket to Canada when there were many other safe havens much closer which could have been reached at far less cost. This is unfortunate because there is a presumption that a claimant is speaking the truth (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA)).

[9] The panel had the great advantage of seeing the witness, and it would have been helpful to this Court if a finding as to credibility had been made. Certainly, his story raises suspicions.

As Mr. Justice O'Halloran of the British Columbia Court of Appeal said in *Faryna v Chorny*, [1952] 2 DLR 354, [1951] BCJ No 152 (QL) at paragraph 11:

The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[10] Mr. Joseph's counsel is quite right that the panel's opinion that the upcoming divorce between his parents will settle the land dispute is outright speculation, and not an inference reasonably drawn from established facts. However, that opinion is easily segregated from the finding that there was no objective basis for Mr. Joseph's fear both because he had not suffered any physical harm from his father after the January 2008 incident and because of state protection.

[11] Mr. Joseph's counsel mounted a strong attack on the presumption of state protection in St. Vincent. She referred to country conditions relating to domestic violence and to a great

deal of jurisprudence emanating from this Court such as *King v Canada (Minister of Citizenship and Immigration)*, 2005 FC 774, 139 ACWS (3d) 1061; *Myle v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1073, 66 Imm LR (3d) 214; and *Alexander v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1305, 88 Imm LR (3d) 75.

[12] While it is quite true that domestic violence is not limited to violence against women, that is mainly what the decisions from this Court have dealt with. It does appear that police officers only take action in domestic violence cases when the situation seems out of control, as indeed happened in this case in the 2004 incident.

[13] Based on the facts of this case, the analysis of state protection has to be coupled with Mr. Joseph's own demeanour, which displays a lack of subjective fear. The application for judicial review shall be dismissed.

[14] The hearing before this Court took place in the French language at the convenience of counsel. However, since Mr. Joseph's mother tongue is English, his affidavit is in English and his hearing before the RPD was in English, the original version of these reasons is being issued in that language.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that the application for judicial review is dismissed. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6965-10

STYLE OF CAUSE: BRIAN AGUSTINE JOSEPH v MCI

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: July 20, 2011

REASONS FOR ORDER: HARRINGTON J.

DATED: July 28, 2011

APPEARANCES:

Annie Bélanger FOR THE APPLICANT

Thi My Dung Tran FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bélanger, Fiore FOR THE APPLICANT
Barristers and Solicitors
St-Laurent (Quebec)

Myles J. Kirvan, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montreal, Quebec