

Federal Court



Cour fédérale

Date: 20110902

Docket: IMM-6195-10

Citation: 2011 FC 1037

Ottawa, Ontario, September 2, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KENRICK KEVIN DE BIQUE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2007, Mr. Kenrick Kevin De Bique was violently attacked in his country of origin, St. Vincent. He spent nearly a year in hospital while doctors tried, unsuccessfully, to save one of his legs. His attacker, a man named Samuel, was a drug producer whose girlfriend Mr. De Bique was

having an affair with. Mr. De Bique was protected by police and hospital security while he was being treated for his injuries.

[2] Out of fear of retaliation, Mr. De Bique refused to testify against his attacker, so the charges against Samuel were dropped and he was released from custody. Soon after Mr. De Bique was released from hospital in 2008, he travelled to Canada but, because his travelling companion could not be admitted to Canada, he returned with her to St. Vincent. He kept a low profile and tried to avoid Samuel. Once, he was spotted by Samuel's brothers, but he managed to evade them. He decided to return to Canada and, in January 2010, made a refugee claim here.

[3] A panel of the Immigration and Refugee Board considered Mr. De Bique's claim but found that he was not eligible for refugee status because his claim was not based on any of the grounds recognized under the Refugee Convention. The Board went on to consider whether Mr. De Bique faced a substantial risk of death, or cruel and unusual treatment or punishment, if he returned to St. Vincent.

[4] The Board concluded that state protection was available to Mr. De Bique in St Vincent and, primarily on that basis, dismissed his claim. Mr. De Bique argues that the Board's conclusion was unreasonable and asks me to order a rehearing by another panel.

[5] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review. In my view, the Board's conclusion that St. Vincent was able and willing to protect Mr. De Bique was defensible in light of the law and the facts before it.

[6] While the Board discussed issues of credibility and subjective fear, the determinative part of its decision was its conclusion on state protection. As such, the issue to be decided is whether its conclusion that state protection was available to Mr. De Bique in St Vincent was unreasonable.

II. The Board's Decision

[7] The Board noted that Mr. De Bique shouldered the burden of presenting clear and convincing evidence that state protection was inadequate. In concluding that Mr. De Bique had not met that burden, the Board relied on the following evidence:

- Even though Mr. De Bique was under police protection in hospital, he refused to testify and, in so doing, stood in the way of convicting his assailant. In effect, Mr. De Bique declined to accept the protection offered to him.
- Mr. De Bique agreed there was nothing special about his circumstances that would make it unreasonable for him to seek state protection; still, he was afraid.
- Mr. De Bique testified that a police officer suggested that he drop the charges against Samuel, but he was unable to identify the officer or his rank, or explain why the officer would make such a suggestion.
- While Mr. De Bique continued to receive threatening telephone calls, he failed to report them to the police, so no action could be taken to investigate them.

[8] Based on this evidence, the Board concluded that state protection was reasonably available and that Mr. De Bique had an obligation to avail himself of it. It appeared that he simply declined to accept the protection that was available to him.

[9] The Board further observed that St. Vincent is a democracy with a functioning court system, is in effective control of its territory and has in place a functioning security force to uphold the laws of the country. In those circumstances, the presumption of state protection applied and the burden fell on Mr. De Bique to present clear and convincing evidence to the contrary.

[10] The Board acknowledged that Mr. De Bique's fear of continued attacks or revenge was understandable. However, it was satisfied on the evidence that the authorities in St. Vincent would help him if he asked. Accordingly, Mr. De Bique had failed to show that adequate state protection was unavailable to him.

III. Was the Board's Conclusion on State Protection Unreasonable?

[11] Mr. De Bique submits that the Board erred in concluding that he had received, and would continue to receive, state protection in St. Vincent.

[12] Mr. De Bique had testified that when threatened with anonymous telephone calls, the police were unable to help him, and an officer in fact advised him to not testify against Samuel, a known drug producer. Mr. De Bique contends that the Board ignored these facts.

[13] Further, Mr. De Bique maintains that the Board ignored documentary evidence that contradicted its conclusion that state protection was available. For example, there was evidence showing that St. Vincent is a major producer of marijuana, that police have difficulty combating drug violence and criminal organizations in St. Vincent, and that there is corruption within government and the police force. Further, there have been complaints that the government has failed to investigate allegations of police abuse or punish police officers responsible for abuses, and that the government has not implemented the law which penalizes corruption. In fact, the Board's own research indicated that "police are not very effective in investigating crime and many crimes remain unsolved," that "witnesses in Saint Vincent and the Grenadines are reluctant to come forward and get involved with police, that murder suspects have avoided convictions because of deficiencies in police investigations, and that the perception of police sympathy with drug growers has "hindered law enforcement.""

[14] While I agree with Mr. De Bique that the Board did not make explicit reference to the fact that Samuel was alleged to be a drug producer, the Board clearly recognized that Samuel was associated with a large criminal gang. The Board was aware of the magnitude of the risk Mr. De Bique described.

[15] Mr. De Bique has pointed to portions of the documentary evidence setting out the difficulties St. Vincent is having controlling drug trafficking and related crimes. However, in my view, the Board correctly focused primarily on the facts surrounding Mr. De Bique's particular circumstances. Mr. De Bique testified that, after his attack, he went to police and was provided protection. His attacker was arrested, charged and detained while Mr. De Bique recuperated under

police protection. This was clear evidence that state protection was available to protect him from Samuel. The fact that Mr. De Bique did not seek further protection after he left the hospital is not evidence that state protection was unavailable.

[16] As for the evidence that an officer counselled Mr. De Bique not to testify, the Board discounted that testimony on the basis that Mr. De Bique could not provide details of the conversation. This was purely a question of the weight to be given to that testimony, which is solely for the Board to decide.

[17] Based on the evidence before it, I cannot conclude that the Board's conclusion that St. Vincent had both the means and the will to provide Mr. De Bique protection was unreasonable.

IV. Conclusion and Disposition

[18] The Board's conclusion was a defensible outcome based on the facts and the law before it. Therefore, I cannot conclude that it was unreasonable and must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6195-10

STYLE OF CAUSE: KENDRICK KEVIN DE BIQUE
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 3, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 2, 2011

APPEARANCES:

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