

Federal Court



Cour fédérale

Date: 20111117

Docket: IMM-4493-10

Citation: 2011 FC 1321

Ottawa, Ontario, November 17, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

VERNETTE EMILE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Vernette Emile applies for judicial review of the July 19, 2010 decision of the Immigration and Refugee Board's Refugee Protection Division (RPD). The RPD refused the Applicant's claim for refugee protection made pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[2] The Applicant is from St. Lucia. At the age of 15, she entered a relationship that soon became abusive. After one incident, the Applicant reported her abuse to the police. Her boyfriend

was arrested, convicted and fined \$250.00. Shortly thereafter, her boyfriend kidnapped her and threatened her until the Applicant escaped. Her boyfriend continued to stalk and threaten her until the Applicant fled to Canada.

[3] The RPD found that the Applicant had failed to rebut the presumption of adequate state protection in St. Lucia. As a result, the RPD rejected her claim for protection.

[4] I find that the RPD's reasons were reasonable and dismiss the Applicant's application for judicial review.

Background

[5] The Applicant is from St. Lucia. When she was 15 years old, the Applicant met a young man by the name of Dale; she moved in with him soon after. Within a few months, he became physically abusive towards her.

[6] On one occasion, Dale stabbed the Applicant with scissors. She left the house and returned to her mother's home. The next day, Dale called her and said he was sorry for what had happened and promised he would mend his ways. The Applicant returned to live with him.

[7] Unfortunately, the abuse continued. On one occasion, the Applicant cut her foot when she stepped on some glass that Dale had intentionally placed on a mattress on the floor. Dale had removed the lights which forced the Applicant to walk in the dark. She was treated at the hospital

for her injuries. That same night, the Applicant went to the police with her mother and made a complaint against Dale. He was arrested, convicted and sentenced to pay a \$250.00 fine.

[8] Dale called the Applicant again. He apologized and asked her to return to him. When he came to pick her up in his car, he forcibly removed her to a friend's place in the woods and threatened to kill her if she tried to leave. The Applicant was able to escape by calling her mother who came with the Applicant's brother and other persons to the house and took her away.

[9] Dale began to stalk the Applicant and sent messages that she was going to pay because she made him go to jail. The Applicant was afraid that Dale would eventually hurt her. Her mother called a friend in Toronto who sent a plane ticket to the Applicant.

[10] The Applicant left St. Lucia by plane on December 18, 2002 and arrived in Toronto the same day. She lived in Toronto until she moved to Ottawa in January, 2004, to live with an aunt. The Applicant alleged she did not make a refugee claim because her aunt did not suggest that she do so.

[11] In 2007, the Applicant started a relationship with Jason Lesage who was a Canadian citizen. They began to live together in July, 2007. They wanted to marry and have Jason sponsor her. Unfortunately, Jason was murdered on March 7, 2009.

[12] After Jason's murder, the Applicant was sad and concerned about her status in Canada. She had heard from her friends and family in St. Lucia over the years that Dale continued to tell people

that he would kill her if she returned to St. Lucia. After receiving advice from Jason's sister, the Applicant made a refugee claim on May 1, 2009.

Decision Under Review

[13] The RPD found the Applicant to be a credible witness. The determinative issue for the RDP was whether adequate state protection was available in St. Lucia.

[14] The RPD found that the St. Lucia police had provided protection when she asked for it by arresting and charging Dale on November 25, 2002, for which he was fined \$250.00.

[15] The RPD found that St. Lucia is a multiparty, parliamentary democracy, with a government generally respecting the human rights of its citizens, although there were some problems in some areas including violence against women and child abuse.

[16] In its decision, the RPD noted counsel's reference to *Mauricette v Minister of Public Safety and Emergency Preparedness*, 2008 FC 420, 72 Imm LR (3d) 139, where Justice Shore remarked that St. Lucia's infrastructure does not adequately protect against stalking behaviour. However, the RPD also noted that the report on domestic violence against women published by the United Nations High Commissioner for Refugees (UNHCR) mentioned St. Lucia's amended Criminal Code contained provisions to address violence against women, including provisions against stalking.

[17] The RPD also observed that the *Domestic Violence Act* in St. Lucia allowed victims to seek protection, occupation and/or tenancy orders that would be issued at family court. The RPD went on to note that the Royal St. Lucia Police Force has launched a Vulnerable Persons' Team (VPT) which in part provides advice for domestic abuse cases, and has resulted in the increase in the number of sexual crimes reported to the police. The RPD did note that the Executive Director of the St. Lucia Crisis Centre did not think that the police were effective in combating domestic violence or that the formation of the VPT had improved the situation. However, the RPD stated this information could not be corroborated among the sources consulted by the Research Directorate. The RPD also noted the existence of support services including counselling and a shelter with space for 25 people that would be able to stay as long as they needed.

[18] The RPD noted that when the Applicant was directed to the contents of the reports and the services now available, the Applicant acknowledged she had not been aware that such services were in existence in St. Lucia.

[19] The RPD found that St. Lucia is making serious efforts to protect its citizens in domestic violence cases, and that the Applicant had failed to present clear and convincing proof of St. Lucia's inability to protect her. The RPD stated that it had taken into consideration the Guidelines on Women Refugee Claimants Facing Gender-Related Persecution. The RPD concluded that the Applicant was not a Convention refugee under section 96 of *IRPA*, nor a person in need of protection under section 97.

Relevant Legislation

[20] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

<p>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,</p> <p>(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</p> <p>(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.</p> <p>...</p> <p>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</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of</p>	<p>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 :</p> <p>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;</p> <p>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.</p> <p>...</p> <p>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 :</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au</p>
--	---

Article 1 of the Convention Against Torture; or	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.

Issues

[21] In my view, the issues arising in this application are:

1. Did the RPD properly analyze the evidence before it?

2. Was the RPD's finding of adequate state protection reasonable?

Standard of Review

[22] The Supreme Court of Canada has held that there are only two standards of review: correctness for questions of law, and reasonableness for questions involving fact or mixed fact and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 50 and 53.

[23] Determinations of state protection are matters of mixed fact and law and are therefore to be reviewed on a reasonableness standard: *Flores v Canada (Minister of Citizenship & Immigration)*, 2010 FC 503, [2010] FCJ no 607 at para 21.

Analysis

1. Did the RPD properly analyze the evidence before it?

[24] The Applicant submits the RPD failed to analyze the contradictory views contained in the Immigration and Refugee Response to Information Request (IRB document) on the adequacy of state protection, and failed to explain why it favoured one perspective over the other. The Applicant submits the RPD must analyze contradictory evidence and provide reasons why it does not consider it relevant or trustworthy or why it chose to disregard it. As an example, the Applicant argues the RPD ignored contradictory evidence in the IRB document that there are often delays in protection orders because of understaffing in the police department.

[25] The Respondent takes the position that the RPD thoroughly reviewed the documentary evidence and its conclusions were based on the entirety of the evidence presented. The Respondent notes the RPD specifically addressed the existing contradictory evidence regarding the existence of adequate state protection. The Respondent submits it was reasonably open to the RPD on the evidence before it to find that St. Lucia is making serious efforts to protect its citizens in domestic violence cases.

[26] The case law demonstrates that the RPD is presumed to have considered all of the evidence before it: see *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 (FCTD). The RPD need not summarize all of the evidence in its decision so long as it takes into account evidence which may contradict its conclusion and its decision is within the range of reasonable outcomes: *Peter v Canada (Minister of Citizenship & Immigration)*, 2011 FC 778 at para 45.

[27] In its decision, the RPD found that the documentary evidence supported a finding that adequate state protection was available to the Applicant. The RPD referred to the UNHCR report which stated the amended Criminal Code included a number of provisions that address violence against women, including the introduction of “marital rape” as an offence, as well as provisions that address stalking and workplace sexual harassment. The RPD also discussed the formation of the VPT and statements made by the Director of the Ministry of Home Affairs and Gender Relations that police response to domestic violence “improved significantly” in the last eight to nine years because of sensitization training provided by the Division of Gender relations and that the improvement has been “even more noticeable” with the establishment of the VPT.

[28] The Applicant submits the RPD failed to address evidence in the IRB document that delays in issuing orders and providing protection existed because of understaffing. The Applicant also submits that while the RPD referred to evidence that there is shelter space in St. Lucia to accommodate 25 people, the RPD did not refer to other evidence in the IRB document that there are only 5 spaces for women and children.

[29] Upon review of the decision, the RPD did not specifically address the contrary evidence mentioned in the Applicant's submissions. However, this is not a case where the RPD ignored all the contrary evidence. For example, the RPD stated that the UNHCR report indicated that domestic violence is still a serious problem in St. Lucia. The RPD also stated 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 VPT had improved the situation because several clients of the Crisis Center had reported not receiving an appropriate response from the police. However, the RPD noted that this information could not be corroborated among the sources consulted by the Research Directorate.

[30] While the RPD was not required to summarize all the evidence before it, it was required to consider and take into account evidence contrary to its ultimate conclusion. My reading of the RPD's decision confirms that it did. The RPD expressly noted examples of the contradictory evidence and ultimately determined that the documentary evidence supported a finding that adequate state protection exists in St. Lucia. This determination fell within the range of reasonable outcomes available to it and ought not to be interfered with.

2. Was the RPD's finding of adequate state protection reasonable?

[31] The Applicant takes particular issue with the RPD's finding that the St. Lucia police properly deal with perpetrators of abuse if and when a request for assistance is made. The Applicant submits that despite responding, the state authorities clearly had not adequately protected the Applicant because after being given the fine, Dale was angered and subsequently kidnapped and forcibly confined the Applicant, threatening to kill her. The Applicant argues it is not enough for the RPD to refer to some limited action by the police that spurred Dale on to even more abusive behaviour as constituting effective protection.

[32] The Applicant also disputes the RPD's finding that St. Lucia's legislature provides adequate state protection for victims of domestic abuse. The Applicant specifically refers to the RPD's finding that St. Lucia's amended Criminal Code contains provisions that address stalking. The Applicant submits that these amendments took place in 2005 and were not in existence when the Applicant was in St. Lucia. The Applicant argues that the RPD erred by relying on and placing a great deal of emphasis on this amendment. Finally, the Applicant cites this Court's decision in *Franklyn v Canada*, 2005 FC 1249 [*Franklyn*] to support her submission that the mere existence of a legislative framework is not enough to demonstrate that the state has the ability to protect women in the situation of the Applicant.

[33] In response, the Respondent submits that there is a presumption that state protection exists and that the burden is on the Applicant to adduce clear and convincing evidence to rebut this

presumption. The Respondent also submits that the standard of protection that a country needs to offer its citizens is one of adequate, though not necessarily perfect protection.

[34] The Respondent submits that the fact the abuser escalated his crimes after an initial conviction does not necessarily render a country unable to provide protection to the victim. The Respondent further submits the Applicant did not make a second complaint against Dale after the kidnapping incident, leaving no evidentiary basis upon which to allege that the Applicant would not be afforded adequate protection.

[35] I agree with the Respondent that a presumption of state protection exists and that the burden is on the Applicant to adduce clear and convincing evidence to rebut this presumption. The jurisprudence of this Court is clear that absent a situation of complete breakdown of the state apparatus, there is a presumption that a state is able to protect its citizens: *Pacasum v Canada (Minister of Citizenship and Immigration)*, 2008 FC 822 at para 19. To rebut this presumption, an applicant must adduce clear and convincing evidence that state protection is inadequate or non-existent: *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636 at para 38.

[36] It is also evident from a review of the jurisprudence on state protection that a state's ability to protect its citizens need not be perfect: *Canada (Minister of Employment and Immigration) v Villafranca* (1992), 99 DLR (4th) 334, 18 Imm LR (2d) 130 at para 7.

[37] In this case, the RPD found that St. Lucia is a multiparty, parliamentary democracy whose government generally respected the human rights of its citizens. The RPD was correct in finding that the presumption of state protection exists in this case and that the onus was on the Applicant to rebut this presumption.

[38] The RPD found that the Applicant had failed to adduce clear and convincing evidence that adequate state protection was not available. In addition to the documentary evidence discussed above, the RPD took into consideration the particular factual situation of the Applicant herself. The RPD noted that on the one occasion when the Applicant and her mother approached the police in October, 2002, Dale was arrested, charged, convicted and was assessed a fine. The RPD found that this was evidence that state protection was available to the Applicant. I agree.

[39] The Applicant submits the \$250.00 fine did not deter her abusive spouse. However, it is to be remembered that any criminal sentence must reflect the offence committed. It is unfortunate that Dale's arrest, conviction and fine did not spare the Applicant from further abuse. However, what is required is adequate protection, not perfect protection. In order to claim that state protection was inadequate or unavailable, it was incumbent on the Applicant to report the subsequent abuse to the police.

[40] In a democratic state, such as St. Lucia, an applicant is required to show that she exhausted all courses of action open to her without success before seeking protection: *Kadenko v Canada (Solicitor General)* (1996), 143 DLR (4th) 532, 68 ACWS (3d) 334 at para 5. In this case, the

Applicant received police assistance on the one occasion she sought it. There is no evidence to suggest that further assistance would not be forthcoming were she to request it.

[41] I also disagree with the Applicant's submission that the RPD erred by relying on the anti-stalking provisions found in the amended Criminal Code. The Applicant argues that the amendments were not in existence when the Applicant was in St. Lucia and therefore should not have been considered by the RPD. However, it must be remembered that refugee protection is forward-looking: *Baptiste v Canada (Minister of Citizenship & Immigration)*, 2011 FC 630 at para 29. The RPD was correct in addressing the issue of adequate state protection as it currently exists and its finding that the amended Criminal Code suggested the existence of adequate state protection is reasonable.

[42] Finally, the Applicant argues that the mere existence of a legislative framework is not enough to demonstrate adequate state protection. The Applicant relies on *Franklyn* to support her argument. However, after reviewing *Franklyn*, I conclude that this case can be distinguished based on the facts. In *Franklyn*, J. de Montigny stated:

[21] In the present case, the Board came to the conclusion that the Applicant had not met her burden of establishing that the State was not capable to protect her. Relying on *Canada (M.C.I.) v. Kadenko et al.* and on *Canada (M.E.I.) v. Villafranca*, the Board placed much emphasis on the fact that St-Vincent and the Grenadines was a democratic state with the full panoply of constitutionally guaranteed rights, and that serious efforts were being made to curb domestic violence, both legislatively and on the ground. But with all due respect, this is not enough to demonstrate that the State has the ability to protect women in the situation of the Applicant.

[Citations omitted]

The decision then went on to note that the applicant had been unsuccessful on several occasions in obtaining police assistance. On one occasion when the applicant tried to report an assault, an officer laughed at her and said that it was a lover's quarrel, and that she deserved it if she had lesbian tendencies.

[43] Unlike in *Franklyn*, the Applicant in this case was successful in obtaining police assistance when she requested it. I find the Applicant's success in obtaining police assistance aligns with the RPD's finding that St. Lucia's legislative framework evidences the existence of adequate state protection.

Conclusion

[44] I find that the RPD's decision regarding the existence of adequate state protection in St. Lucia to be reasonable based on the evidence before it. The RPD made no reviewable errors in its analysis and this Court ought not to interfere with the RPD's decision. The Application for judicial review is dismissed.

[45] No question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

"Leonard S. Mandamin"

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4493-10

STYLE OF CAUSE: VERNETTE EMILE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 28, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN J.

DATED: NOVEMBER 17, 2011

APPEARANCES:

Laura Setzer FOR THE APPLICANT

Craig Collins-William FOR THE RESPONDENT

SOLICITORS OF RECORD:

Laura Setzer FOR THE APPLICANT
Ottawa, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario