

Federal Court



Cour fédérale

Date: 20131205

Docket: IMM-2411-13

Citation: 2013 FC 1216

Montréal, Quebec, December 5, 2013

PRESENT: The Honourable Mr. Justice S. Noël

BETWEEN:

**FRANCOIS, ZETA LOUVINA
FRANCOIS, SHONDA STACY
FRANCOIS, SHANIA DELISHA
FRANCOIS, DELICIA SHANIQUE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division [RPD] rendered by Ms. Anna Brychcy finding that Zeta Louvina Francois [the Principal Applicant],

her daughter, Shonda Stacy Francois, and her daughter's children, Shania Delisha Francois and Delicia Shanique Francois, citizens of Saint Vincent and the Grenadines [Saint Vincent] [together, the Applicants], were neither refugees within the meaning of section 96 of the IRPA nor persons in need of protection under subsection 97(1) of the IRPA.

II. Facts

[2] The Principal Applicant is 62 years of age, while her daughter, Shonda Stacy, is 23 years old and her daughter's children, Shania Delisha and Delicia Shanique, are respectively 4 and 2 years old.

[3] Shonda Stacy Francois has some intellectual impairment and so, for the purpose of the hearing, the *Programme régional d'accueil et d'intégration des demandeurs d'asile* [PRAIDA] was confirmed as the designated representative for her as well as for her two minor children.

[4] The Principal Applicant has suffered abuse at the hands of her former common-law partner, Brian Robinson, until the man's sudden death in 1997. She claims to have often complained to the police throughout this abusive relationship.

[5] Starting in 2004, she was abused by her subsequent partner, Eddy Charles, whom she met in 1999. The abuse even caused her to lose sight in one eye. The Principal Applicant never reported the incidents of conjugal violence regarding Eddy Charles to the authorities in her country.

[6] The Principal Applicant came to Canada in 1981 and remained here for three years.

[7] She came back to Canada a second time on April 24, 2010 but was denied entry because she did not inform the immigration officer of her trip in 1981. She was returned to Saint Vincent on April 26, 2010 but traveled to New York for a few months prior to returning to Saint Vincent in July 2010 after learning that Eddy Charles had moved because of his work.

[8] After the Principal Applicant had returned to Saint Vincent, Eddy Charles returned to her house, and both resumed the relationship. No serious incidents of violence occurred except for the fact that he gave her a sexually transmitted disease on two occasions.

[9] The Principal Applicant came to Canada for a third time on June 9, 2011 and asked for refugee status in October 2011 claiming that she was a victim of conjugal violence by Eddy Charles.

[10] Upon learning that the Principal Applicant had left the country for Canada, Eddy Charles returned to her home in Saint Vincent, where the Principal Applicant's daughter and her two grandchildren were living, and he threatened to kill her should she ever return.

[11] After this event, Shonda Stacy and her two children moved in with the Principal Applicant's sister in a nearby town.

[12] Shonda Stacy and her two children arrived in Canada on December 18, 2011 and asked for refugee protection on January 5, 2012 claiming, on one hand, that she feared she would be harmed

by Eddy Charles, and on the other hand, that Elroy Diamond, her children's grandfather and her ex-partner's father, had sexually abused Shania in the past.

III. Decision under review

[13] The RPD was satisfied as to the identity of the four Applicants.

[14] Prior to rendering its decision, the RPD specified having reviewed the Immigration and Refugee Board of Canada's *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* as well as the *Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues*.

[15] The RPD ultimately found that Shonda Stacy does not have a well-founded fear of persecution at the hands of Eddy Charles, as she was never physically harmed by him and he only tried once to get into her house, neither does she have a well-founded fear of persecution of Elroy Diamond, the children's paternal grandfather, as he never made any threats to her. As for the Principal Applicant and her two minor grandchildren, the RPD found that state protection would be available to them in Saint Vincent and that they are therefore not "Convention refugees" under section 96 of the IRPA. It also concluded that they are not "persons in need of protection" under subsection 97(1) of the IRPA because of their return to Saint Vincent, considering the availability of state protection, would not place them in a situation where, on a balance of probabilities, there would be at a risk to their lives or a risk of cruel and unusual treatment or punishment or that they would face danger or torture.

[16] At the beginning of its decision, the RPD acknowledged that Shonda Stacy has some level of intellectual impairment and specified having taken into consideration two psychological reports prepared regarding the Principal Applicant and her daughter, which speak of the vulnerability of the two women.

[17] The RPD examined the claims of the Principal Applicant and her daughter and grandchildren separately.

[18] Firstly, regarding the Principal Applicant's fear of Eddy Charles, the RPD reviewed the required assessment of state protection and considered the steps taken by the Principal Applicant in order to seek state protection before concluding that state protection was available to her. Upon analyzing the documentary evidence, the RPD found that although the issue of violence against women is a serious problem in Saint Vincent, the government is making serious and concerted efforts to tackle the issue of gender violence and the situation is improving. However, it concluded that the Principal Applicant had never approached the police when she had been abused by Eddy Charles, despite having suffered important eye damage. Consequently, if no protection is sought, the state cannot be considered to have failed in providing protection. The RPD also noted that the Principal Applicant has a sister who could have helped her to deal with the police but did not.

[19] Following this analysis, the RPD found that the country's efforts in protecting victims of domestic violence are producing results and that such protection would still be available to her, should she return to her country of origin. The RPD even noted specific resources of which she

could avail herself and finally concluded that, all in all, the Principal Applicant simply failed to provide the clear and convincing evidence necessary to rebut the presumption of state protection.

[20] Secondly, the RPD examined the case of Shonda Stacy, the Principal Applicant's daughter and the mother of the two minor Applicants. Shonda Stacy testified that after her mother had left for Canada, she was at some point alone in the family home with her two children. According to Shonda Stacy's testimony, Eddy Charles only came once to the house during that time, but she managed to lock the door in time. He did not come back. She later left the house to stay with her mother's sister in a nearby village, but regularly returned to the family home prior to her coming to Canada with her children. While the RPD accepted that she did not feel comfortable living alone, it concluded that had Shonda Stacy felt in any real danger, she would not have returned so frequently to the family home. Therefore, the RPD found that Eddy Charles does not pose a real threat to Shonda Stacy and her children, as they were never harmed by him.

[21] Thirdly, the RPD turned to Shonda Stacy's submission that she fears for her two children because her oldest daughter, Shania, was abused by her former boyfriend's father – the child's grandfather – Elroy Diamond. The RPD accepted that the abuse in question may have happened but found that it occurred only while the girl was staying at her grandfather's house during pre-school. It added that she was no longer of pre-school age, that she could attend another school and that she and her mother could live away from her grandfather's house.

[22] The RPD understood that due to her limited intellectual capacity Shonda Stacy may have been unable to report this abuse to the police, but it did consider a letter written by the Principal Applicant's sister in which she claims to have confronted Elroy Diamond's wife. Despite this

confrontation, the abuse was never reported to the authorities. The RPD then examined the documentary evidence submitted on child abuse and found that the system “generally works” and that measures put in place and efforts made by the government are efficient for children who are victims of sexual abuse. The Applicants stated that Shonda Stacy’s oldest daughter was sent to a physician who diagnosed a yeast infection on the minor Applicant (a diagnosis which the RPD recognizes as a possible indicator of sexual abuse), that the Principal Applicant tried to obtain a copy of the report and that she was denied such access. In its decision, the RPD examined the documentary evidence on the procedure to obtain medical reports in Saint Vincent and concluded that the citizens of this country have a legislated right to grant access to their medical records to another person. Had the Applicants followed this procedure, they would have been able to obtain the record.

[23] On the issue of the danger Elroy Diamond poses for Shonda Stacy’s child, the RPD noted as a final point that psychological evaluation and medical reports documenting the abuse suffered by the child still exist and that all this information could be provided to the appropriate authorities. The Applicants have a large family network, including the Principal Applicant’s sister, who could offer them assistance.

IV. Applicants’ submissions

[24] The Applicants argue that the RPD’s decision is unreasonable and should be set aside for two reasons: 1) the RPD failed to consider the particular circumstances of the Applicants, and 2) the RPD failed to acknowledge evidence that goes contrary to its findings.

[25] The Applicants first submit that the RPD made a reviewable error because it failed to take into consideration the particular circumstances surrounding their applications. The Principal Applicant's granddaughter who was sexually abused, Shania, is only four years old and is surrounded by family members who are unable to protect her because of their own limitations and vulnerabilities. Her mother has limited intellectual capacity and did not even understand what was wrong when her daughter was diagnosed with a yeast infection. According to a letter submitted by PRAIDA, Shonda is vulnerable, only has a few years of education and, as a result of the difficulties she has encountered, has a limited ability to function, all of which render her unable to assist the child in the procedures. Furthermore, the child's father also has limited intellectual capacity and has not done anything after learning of the abuse suffered by his daughter. The Principal Applicant adds that she will have to continue dealing with her former spouse at the hands of whom she suffered violence to the extent of losing sight.

[26] Second, the Applicants argue that the RPD has failed to refer to evidence that goes to the contrary of its conclusions and, as such, has committed a reviewable error when it acknowledged the fact that the system providing protection to abused women is still flawed but, at the same time, still found that it is improving. The Applicants also submit that the RPD made a reviewable error by assessing the improvements on the basis of the measures taken by the government rather than the actual results.

V. Respondent's submissions

[27] The Respondent argues that the RPD's decision was reasonable because state protection was available to the Principal Applicant and the minor Applicants and because there is no risk of persecution for the Applicant, Shonda Stacy, in her home country.

[28] First, with regard to the Principal Applicant, the Respondent claims that as stated by the RPD she could have availed herself of state protection in Saint Vincent and that refugee protection should not be granted when such protection exists. The Principal Applicant had the burden of rebutting the presumption that Saint Vincent is capable of affording her protection, and she failed to rebut this presumption. Also, she failed to prove that she had made all reasonable efforts to exhaust all the protection avenues available to her in Saint Vincent, given that she only sought police protection once during the time of her former relationship and that she never went to the police during her abusive relationship with Eddy Charles. What is more, when she returned to Saint Vincent from Canada before leaving for Canada again, she even rekindled a relationship with this man in 2010 without ever going to the police. In this regard, it was most certainly open to the RPD to find that she did not make all reasonable efforts to obtain state protection.

[29] The Respondent further adds that the RPD indeed took into account the Principal Applicant's personal condition, having referred to her limited education and to her negative past experience with the police, but found that the Principal Applicant's sister could have helped her in times of need. The Principal Applicant's subjective reluctance is not enough to rebut the presumption of state protection. The Respondent adds that the RPD carefully weighed the positive and the negative information available on the issue of state protection before rendering its decision,

and noted that the situation is continuing to improve and that the efforts are producing actual results. Protection needs only to be adequate and not effective. The Respondent concludes by stating that this Court has confirmed several decisions in which it was found that Saint Vincent is a democratic country that offers adequate state protection to victims of domestic violence.

[30] As for the minor Applicants, the Respondent claims that the RPD accepted the fact that the youngest one had been sexually abused but also found that she could have benefited from state protection via the Principal Applicant's sister, who never denounced the abuse suffered by the children upon learning about it. The RPD also reviewed documentary evidence submitted regarding child abuse in Saint Vincent and concluded that a system was in place which has protected her and which could protect her in the future. In this regard, measures could be taken to keep the abused child away from her grandfather. The minor Applicants also failed to rebut the presumption of state protection.

[31] Lastly, with respect to Shonda Stacy, given the facts of the case, it was not unreasonable for the RPD to conclude that had Shonda Stacy been truly afraid of Eddy Charles, she would not have returned regularly to her family home. No evidence was submitted to the effect that Eddy Charles has been looking for Shonda Stacy since her arrival in Canada. She failed to prove that she is exposed to a risk at the hands of Eddy Charles in Saint Vincent, and it was reasonable for the RPD to conclude as such.

VI. Issue

[32] The case at bar raises the following issues:

1. Did the RPD err when it concluded that state protection was available to the Principal Applicant and the two minor Applicants in Saint Vincent?

2. Did the RPD err when it concluded that Shonda Stacy does not have a well-founded fear of persecution at the hands of Eddy Charles in Saint Vincent?

VII. Standard of review

[33] The RPD's state protection findings are a question of fact and are therefore reviewable under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]).

[34] As for the RPD's determination that Shonda Stacy does not have a well-founded fear of persecution in Saint Vincent, it, too, is to be examined under the standard of reasonableness (see *Moreno v Canada (Minister of Citizenship and Immigration)*, 2011 FC 841 at para 7, [2011] FCJ No 1042, see also *Jean v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1014, at para 9, [2010] FCJ No 1254).

[35] Given that both issues are subject to the standard of reasonableness, this Court shall only intervene if it concludes that the RPD's findings are unreasonable to the point that they fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." [*Dunsmuir*, above, at para 47]

VIII. Analysis

A. *Did the RPD err when it concluded that state protection was available to the Principal Applicant and the two minor Applicants in Saint Vincent?*

[36] The RPD's findings in this regard do not warrant the intervention of this Court, as it was reasonable to find that the Principal Applicant and the two minor Applicants could have benefited from state protection.

[37] As correctly stated by the RPD in its decision, a State is presumed to be able to afford protection to its citizens unless it is in complete breakdown (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p. 709, 20 Imm LR (2d) 85 [*Ward*]). This Court has often reiterated that refugee protection should only be granted as a form of surrogate protection in cases where the protection of the home country is not forthcoming (*Ward*, above, see also *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para. 41, [2007] FCJ No 584 [*Hinzman*], and see for example *Starcevic v Canada (Minister of Citizenship and Immigration)* 2008 FC 1370 at para 19, [2008] FCJ No 1748 and *Campos v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1244 at para 14, [2008] FCJ No 1566).

[38] The RPD also noted that in order to rebut this presumption claimants must “adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate” (*Carrillo v Canada (Minister of Citizenship and Immigration)* 2008 FCA 94 at para 30, [2008] FCJ No 399). The onus on claimants is heavier in cases where they come from a democratic country (*Hinzman*, above, at para 57), such as it is the case in the present

matter (see for example, *S.H.R. v Canada (Minister of Citizenship and Immigration)*, 2010 FC 802 at para 19, [2010] FCJ No 983 and *Matthews v Canada (Minister of Citizenship and Immigration)*, 2012 FC 535 at para 32, [2012] FCJ No 563).

[39] The Federal Court of Appeal further stated that the more democratic a country is, the more the claimant must have done to seek out the protection of his or her home state (*Hinzman*, above, at para 45, and *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376 at para 5, 143 DLR (4th) 532). In such cases, the claimants are “required to prove that they exhausted all domestic avenues available to them without success before claiming refugee status in Canada” (*Hinzman*, above, at para 46). Also, the protection offered by a state needs not to be perfect but adequate (*Canada (Minister of Employment and Immigration) v Villafranca* (1992), 18 Imm LR (2d) 130, 99 DLR (4th) 334 (FCA)).

1. State protection for the Principal Applicant

[40] Before concluding that state protection measures in Saint Vincent could indeed protect the Principal Applicant from Eddy Charles, the RPD rightly provided a detailed overview of the analysis required in assessing state protection (the presumption of state protection, the requirements for the rebuttal of said presumption, etc.) and considered documentary evidence related to state protection and violence against women in the country. The RPD recognized that although the issue of violence against women is a serious problem in Saint Vincent, the local government is making serious and concerted efforts to tackle the issue of gender violence. In further examining the documentary evidence, the RPD noted that adequate laws, initiatives, policies and mechanisms are in place in the country to provide for the protection of Saint Vincent citizens and that, contrary to the Applicant’s submissions, these measures are indeed producing results: police are better prepared

to intervene, more women are coming forward and perpetrators are punished. The RPD found that while the situation is not perfect, evidence clearly establishes that it is continually improving.

[41] In this regard, the Applicants submit in their Memorandum of Argument that the RPD failed to refer to evidence contrary to its findings. However, this Court finds that in its extensive consideration of the evidence the RPD relied on evidence it found to be mixed and referred to evidence which went to the contrary of its determination, for example it referred to cases where the police did not act quickly enough (see also paras 24, 29 and 30 of the decision under review). Counsel for the Applicants would have liked to see more in-depth analysis. I find that my reading of the decision in its totality shows not only a balancing of the different point of views but also a good factual evaluation directly related to the Principal Applicant. The same can be said for the daughter and her children, as we will see later on.

[42] In the present matter, the Principal Applicant failed to prove that she exhausted all domestic avenues available to her before seeking refugee status in Canada. She went to the police once during a previous relationship but never sought protection from the authorities throughout her relationship with Eddy Charles, even though it resulted in her losing eyesight. Particularly noteworthy, after having left Saint Vincent and being denied entry into Canada, she returned to her home country where she resumed a relationship with her abusive partner.

[43] Also, contrary to what is being suggested by the Applicants, the RPD did take into consideration the Principal Applicant's particular circumstances, explicitly doing so at the outset of the decision, stating that she is vulnerable, has limited education and has been abused in her

lifetime. However, it ultimately found that these factors could be counterbalanced by the Principal Applicant's sister who could have helped her during her difficult times but did not.

[44] Finally, the RPD indicated that this protection would still be offered to the Principal Applicant should she return to Saint Vincent and noted specific resources that would be available to her, e.g. the Family Court of Saint Vincent and the Grenadines which provides information on the procedure for applying for protection orders. On the whole, this Court finds that the RPD reasonably concluded that the Principal Applicant failed to provide clear and convincing evidence necessary to rebut the presumption of state protection.

2. State protection for the two minor Applicants

[45] In coming to the conclusion that state protection was available to the two minor Applicants, the RPD undertook a review of the mixed documentary evidence related to child abuse, and it concluded that although people are usually reluctant to report child abuse, sexual abuse or incest for various reasons and although this issue remains a hidden problem in the country, the law enforcement and judicial process in Saint Vincent actually take abuse seriously: police are involved and investigate, perpetrators are prosecuted, and Family Services provide assistance to the children in cases where protection orders are requested from the Family Court. The RPD also noted that Saint Vincent set up a foster care system for children that mainly helps children who are victims of abuse, including sexual abuse, and that through this system many of the expenses for the child are taken care of – clothing, medical expenses, schooling, etc. – and social workers offer counselling to the children and the family.

[46] Once again, to the contrary of the Applicants' claims, the RPD did take into consideration the two minor Applicants' particular circumstances before finding that the state could also have afforded them protection, in their case from Elroy Diamond. In fact, it took into account the fact that their mother has limited intellectual capacities and that one of the girls had been sexually abused. It also acknowledged that they are young but stated in the decision that the Applicants have an important network of family members in Saint Vincent who could help them.

[47] That being said, however, as rightly put by the RPD, no one tried to obtain state protection in their name - not their mother, not the Principal Applicant (their grandmother) and not the Principal Applicant's sister, even though she knew of the abuse suffered by one of the minor Applicants. In the case at bar, the major Applicants failed to seek state protection and, as duly expressed by the RPD, such protection would still be available to them should they return to Saint Vincent. Moreover, the RPD noted that other precautions could be taken (i.e. relocation) in order to protect the minor Applicant from her abusive grandfather, Elroy Diamond.

[48] Finally, the RPD rightly indicated that all the medical and psychological reports related to the abuse suffered by the minor Applicant are still available in Saint Vincent and could be used to prosecute the grandfather. Therefore, this Court finds that the RPD reasonably concluded that the Applicants failed to rebut the presumption of state protection as far as the minor Applicants are concerned.

[49] Consequently, I find that the RPD properly stated and applied the test for state protection as it regards the Principal Applicant and the two minor Applicants, thereby reasonably concluding that

these Applicants failed to meet their evidentiary burden to rebut the presumption of state protection and that they could still avail themselves of such protection should they return to Saint Vincent.

B. Did the RPD err when it concluded that Shonda Stacy does not have a well-founded fear of persecution of Eddy Charles in Saint Vincent?

[50] Considering the evidence before the RPD, this finding, too, is reasonable and does not warrant the intervention of this Court.

[51] The Applicant Shonda Stacy had the burden of establishing that she faced a reasonable risk of persecution in Saint Vincent should she return to her home country (*Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 at para 5, 57 DLR (4th) 153). However, Shonda Stacy testified that there has only been one incident involving Eddy Charles, namely the one when he had come to the family house to threaten her but she had managed to lock the door in time and stave him off. This was the only incident and she was never contacted by Eddy Charles again. She also testified that she left the house after the events but regularly returned to the house in the months before her coming to Canada. It was certainly open to the RPD to infer from this testimony that Shonda Stacy did not feel real fear from Eddy Charles. Given this testimony and considering that no other evidence was submitted in this regard, it was certainly reasonable for the RPD to conclude that the Applicant Shonda Stacy has failed to discharge her burden that she faced a reasonable risk of persecution at the hands of Eddy Charles should she return to Saint Vincent. The RPD's decision surely falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[52] For the aforementioned reasons, this Court finds that the RPD's decision regarding the four Applicants is reasonable.

[53] The parties were invited to submit questions for certification but none were proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied. No question is certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: ZETA LOUVIAN FRANÇOIS ET AL v THE
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**REASONS FOR JUDGMENT
AND JUDGMENT:** NOËL J.

DATED: December 5, 2013

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