

Federal Court



Cour fédérale

**Date: 20150827**

**Docket: IMM-386-15**

**Citation: 2015 FC 1017**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Montréal, Quebec, August 27, 2015**

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

**BETWEEN:**

**DELICINA SYLVIA HARRY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Preliminary**

[18] [T]here is serious evidence in support of the Board's finding of availability of state protection. Considering that the Board is presumed to have considered all the evidence before it (*Florea v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL)) and it is under no obligation to refer to every piece of evidence (*Kumar v. Minister of Citizenship and Immigration*, 2009 FC 643), it would be inappropriate for this Court to substitute its own appreciation of the facts to that made by the Board.

[15] [T]he Board was certainly entitled to consider the applicant's delay in claiming when assessing her subjective fear of persecution. However, delay is not normally determinative of a claim (*Espinosa v. Minister of Citizenship and Immigration*, 2003 FC 1324). This is precisely what the Board found in this case. While it did express concerns over the subjective fear of the applicant based on her behaviour, the Board ultimately concluded that the delay was not decisive, and still concluded that the applicant was credible regarding her story. There is nothing unreasonable about the Board's conclusion on this matter.

(As per Justice Yvon Pinard in *D.D.N. v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1167 at paras 18 and 15)

## II. Introduction

[1] This is an application for judicial review under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision by which the Refugee Protection Division [RPD] rejected the applicant's refugee protection claim, concluding that the applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

## III. Facts

[2] The applicant is a citizen of St. Vincent and the Grenadines [St. Vincent] and is 55 years old.

[3] The applicant met her husband when she was about 17 years old and then moved in with him in Trinidad. They married in November 1981 and had three children.

[4] The applicant's spouse was constantly aggressive and violent towards her. The applicant wanted to leave him but did not do so because of the threats he made against her.

[5] One day, the police came to see the applicant's spouse and warned him to stop hitting the applicant. However, the applicant's husband continued to hit her, which prompted the applicant's daughter to file a complaint with the police. Although nothing came of this complaint, the applicant's husband forced his daughter to leave the house for daring to file a complaint with the police.

[6] The applicant was able to move to St. Vincent to flee her husband, but a few years later, he convinced her to come back to live with him. Her husband started beating her again.

[7] The applicant then fled to the United States in 2003. The applicant's mother, who lived there, decided to sponsor the applicant in the United States.

[8] In 2005, the applicant's spouse divorced her *in absentia*.

[9] In 2008, the applicant returned to St. Vincent to be with her daughter, who had cancer. The applicant's husband heard that she was back and made several aggressive attempts to see her.

[10] When the applicant returned to the United States, while her sponsorship application was still pending, her mother died. The applicant therefore decided to come to Canada on November 29, 2011, to claim refugee protection.

[11] On December 23, 2014, the RPD dismissed the applicant's refugee protection claim.

#### IV. Impugned decision

[12] The RPD concluded that although the applicant had shown that she was a victim of domestic violence, she had not rebutted the presumption of state protection in St. Vincent.

[13] The RPD found that the applicant was credible and attributed her omissions or vague recollections to her vulnerable state.

[14] In its state protection analysis, the RPD noted that St. Vincent is a multiparty parliamentary democracy. The applicant therefore had to provide clear and convincing evidence to rebut the presumption of state protection.

[15] In its reasons, the RPD identified domestic violence as a problem in St. Vincent and recognized that although perpetrators of this sort of violence may be subject to criminal prosecution, there is no legislation criminalizing domestic violence *per se*.

[16] The RPD noted that according to the documentary evidence, the authorities in St. Vincent have taken action to sensitize the police forces and the general public to the realities of domestic

violence. Among other initiatives, the authorities set up a special police unit, a crisis centre and aid and prevention programs to fight domestic violence. The RPD acknowledged evidence suggesting that protection for victims of domestic violence is inadequate in St. Vincent. However, the RPD concluded that such evidence did not constitute [TRANSLATION] “clear and convincing” evidence that would rebut the presumption of state protection.

[17] The RPD also noted that the applicant had not made any effort to ask the authorities for protection. The RPD considered the applicant’s testimony to the effect that she was uneducated, was young and naive, was not aware of the recourses available to her and did not want to leave her husband.

[18] However, the RPD found that these explanations became unacceptable when the applicant was informed by the police that charges could be brought against her husband. According to the RPD, at that moment, the applicant became aware of the availability of state protection but decided not to avail herself of his opportunity.

#### V. Legislative provisions

[19] The following provisions are relevant to the applicant’s refugee protection claim:

##### **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

##### **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

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, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals

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 avait sa résidence habituelle, exposée :

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) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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

in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(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 also a person in need of protection.

#### **Exclusion – Refugee Convention**

**98.** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

ne le sont généralement pas,

(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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

#### **Exclusion par application de la Convention sur les réfugiés**

**98.** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

## VI. Analysis

[20] The Court finds that the RPD's decision is reasonable on the basis of the evidence and testimony in the record.

[21] It was reasonable for the RPD to conclude that, after receiving advice from medical personnel and the police, the applicant should have filed a complaint with the police against her

husband. The applicant's alleged naïveté became untenable once these state entities suggested possible courses of action to her (see: *Navarro v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ 463).

[22] The RPD demonstrated through a clear analysis of all the subjective and objective evidence that there was a possibility for the applicant to obtain state protection.

[23] Moreover, the RPD considered, based on the answers given by the applicant, the violent behaviour of her spouse from the perspective of a person with battered woman syndrome. To this end, the IRB applied Guidelines 4 and 8 dealing with vulnerable persons appearing before the IRB and women refugee claimants fearing gender-related persecution. The IRB's result was nonetheless reasonable, given that the applicant's narrative indicates that she spent a rather long period of time outside her country before claiming refugee protection and instead initially tried to be sponsored by her mother in the United States. The only reason the applicant was not sponsored, according to her, was because her mother died before completing the necessary steps to sponsor her.

## VII. Conclusion

[24] On the basis of this Court's analysis, the application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review be dismissed. There is no question of importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Michael Palles

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

**DOCKET:** IMM-386-15

**STYLE OF CAUSE:** DELCINA SYLVIA HARRY v THE MINISTER OF  
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