



Date: 20171123

Docket: IMM-1976-17

Citation: 2017 FC 1063

Ottawa, Ontario, November 23, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ROBERTSON, MARLON DELANO HAYNES-
ROBERTSON, JENNISE ADONIS (A.K.A.
ROBERTSON, JENNISE) ROBERTSON,
JAVIER MARLON (A.K.A. ROBERTSON,
JAVIER) (A.K.A. ROBERTSON, JAVIER
MARLON J.) ROBERTSON, JAYLISE RHEA
(A.K.A. ROBERTSON, JAYLISE)**

Applicants

and

**THE MINISTER OF IMMIGRATION
REFUGEE AND CITIZENSHIP
AND CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2015, Mr Marlon Delano Robertson and his family sought refugee protection in Canada after receiving threats from a gang member in their home state of St Vincent. Mr Robertson had identified the gang member as the perpetrator of a robbery.

[2] A panel of the Immigration and Refugee Board dismissed Mr Robertson's claim, finding that he had not established that state protection was unavailable to him and his family in St Vincent. Mr Robertson appealed to the Refugee Appeal Division; the RAD endorsed the Board's conclusion.

[3] Mr Robertson now seeks judicial review of the RAD's decision, arguing that the decision was unreasonable because it placed too onerous a burden on him to show an absence of state protection, and because it reflected an unbalanced assessment of the documentary evidence on the issue of state protection. Further, the other family members submit that the RAD erred by failing to consider the Chairperson's Gender Guidelines and international conventions on the rights of children. Collectively, the applicants ask me to quash the RAD's decision and order another panel to reconsider their claims.

[4] I agree that the RAD's conclusion on state protection was unreasonable because it failed to take account of evidence showing that persons in Mr. Robertson's circumstances cannot obtain state protection in St Vincent. On that basis, I will grant this application for judicial review. I need not deal with the other issues the applicants raised.

II. Was the RAD's decision unreasonable?

[5] The RAD confirmed the Board's conclusion that St Vincent is a democratic state with an independent judiciary, a functioning police service, and a mechanism for addressing police abuse and corruption. In addition, the RAD noted that the police did offer Mr Robertson some protection – they investigated the allegation that the gang member had committed a robbery, and

that he had shot Mr. Robertson after Mr Robertson had accused him of that crime. The police arrested the gang member, but released him because of a lack of evidence. Finally, the RAD noted that most countries are unable to provide the kind of protection that Mr Robertson was seeking.

[6] The Minister contends that the RAD's decision was not unreasonable on the evidence. The evidence showed that St Vincent had implemented measures aimed at combating gang violence, and addressing improper police behaviour. Further, the Minister refers to evidence showing that police had responded to Mr Robertson's concerns. If he was unsatisfied with that response, says the Minister, he should have laid a complaint with the police oversight committee.

[7] I disagree with the Minister's submissions.

[8] The relevant question is whether the evidence relating to state protection shows that Mr Robertson and his family would be likely to face a risk to their lives, or to cruel and unusual treatment or punishment if they returned to St Vincent.

[9] The evidence revealed that Mr Robertson had been threatened and shot by the alleged robber. Mr Robertson sought police protection numerous times, to no avail. Gang members came to the family home, and confronted Mr Robertson at a bus stop. The children were afraid to go out.

[10] Additional evidence, not cited by the RAD, showed that police in St Vincent simply do not protect witnesses or victims of gang violence, including their family members, who are targeted by gangs. Uttering threats is a crime in St Vincent, but it is prosecuted only when the threat is actually carried out. Therefore, it is highly unlikely that police would respond meaningfully to the kind of allegation Mr Robertson had made.

[11] Given the RAD's failure to cite important evidence contradicting its conclusion on state protection, I find its decision unreasonable.

III. Conclusion and Disposition

[12] Mr Robertson and his family will likely face a risk to their lives or of serious mistreatment if they return to St Vincent. The RAD unreasonably concluded that the evidence showed that that risk would be mitigated by the state protection available to them. That conclusion failed to take account of evidence to the contrary and, therefore, was unreasonable. Accordingly, I will allow this application for judicial review. Neither party proposed a question for certification, and none is stated.

JUDGMENT IN IMM-1976-17

THIS COURT'S JUDGMENT is that:

1. The application is allowed, and the matter is returned to another panel of the RAD for reconsideration;
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1976-17

STYLE OF CAUSE: ROBERTSON, MARLON DELANO HAYNES-ROBERTSON, JENNISE ADONIS (A.K.A. ROBERTSON, JENNISE) ROBERTSON, JAVIER MARLON (A.K.A. ROBERTSON, JAVIER) (A.K.A. ROBERTSON, JAVIER MARLON J.) ROBERTSON, JAYLISE RHEA (A.K.A. ROBERTSON, JAYLISE) v THE MINISTER OF IMMIGRATION REFUGEE AND CITIZENSHIP AND CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: NOVEMBER 23, 2017

APPEARANCES:

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