

Federal Court



Cour fédérale

Date: 20180313

Docket: IMM-1805-17

Citation: 2018 FC 282

Ottawa, Ontario, March 13, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MARIE JUANITA SEARGEANT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2016, Ms Marie Juanita Seargeant claimed refugee protection in Canada based on her fear of persecution by the police in Jamaica. A panel of the Refugee Protection Division (RPD) dismissed her claim, finding that her description of harassment and other alleged misconduct by the Jamaica Constabulary Force (JCF) was not supported by credible evidence. In addition, the

RPD concluded that Ms Seargeant had failed to show that state protection was unavailable to her in Jamaica.

[2] Ms Seargeant appealed the RPD's decision to the Refugee Appeal Division (RAD) arguing that the RPD had failed to consider the Chairperson's Gender Guidelines and the Guidelines on Vulnerable Persons, and her fragile psychological state. The RAD dismissed her appeal on the basis that Ms Seargeant had been treated fairly and sensitively at her hearing before the RPD. In addition, the RAD concluded that the RPD's finding on state protection was justified.

[3] Ms Seargeant submits that the RAD's decision was unreasonable for its failure to consider her claim according to the Gender Guidelines and the Guidelines on Vulnerable persons. She also contends that the RAD's state protection finding was unreasonable. She asks me to quash the RAD's decision and order another panel to reconsider her claim.

[4] I can find no basis for overturning the RAD's decision. The RPD and RAD treated Ms Seargeant with respect and provided her reasonable accommodations, including additional time to file her submissions. In addition, the evidence showed that the police in Jamaica acted appropriately in her dealings with them, and were able and willing to afford her protection. I must, therefore, dismiss this application for judicial review.

[5] There are two issues:

1. Did the RAD fail to comply with the applicable Guidelines?

2. Was the RAD's conclusion on the availability of state protection unreasonable?

[6] While Ms Seargeant raised an issue about the timing of the filing of the Minister's Further Memorandum, it is clear that she had more than two months to prepare for the hearing after she received that document. Ms Seargeant did not press the issue during the hearing.

II. Factual Background

[7] In 2013, the JCF charged Ms Seargeant with obtaining money by false pretences after her driver's license was found at a crime scene. Her bank accounts were frozen and she was placed on a watch list. She was ordered to appear in court to respond to the charges.

[8] Subsequently, a constable from the JCF contacted her, apologized for the error, and told her that the charges had been dropped. She also received a letter from a senior police superintendent who confirmed that she had been the victim of identity theft. The superintendent later informed her that the investigation was closed and the perpetrators had been brought to justice.

[9] Nevertheless, in 2014, the JCF informed Ms Seargeant that her assistance was required and asked her to appear at the police station to provide a handwriting sample. She refused. She also engaged counsel and contacted the Office of the Public Defender (OPD). The OPD wrote letters to the JCF requesting that Ms Seargeant be left alone. In response, the JCF advised her that their investigation may continue but there was no need for Ms Seargeant to be involved.

[10] Ms Seargeant felt threatened and harassed by the JCF, and believed that she was being persecuted because of the mental health challenges she experiences. She left Jamaica for Canada in 2015 and, a year later, sought refugee protection.

[11] The RPD rejected Ms Seargeant's refugee claim because she had failed to show that the JCF persecuted her or that she could not obtain state protection in Jamaica. It also concluded that she could obtain the medication she requires in Jamaica.

[12] On her appeal of the RPD's decision, the RAD allowed Ms Seargeant to tender fresh evidence relating to her medical condition and her communication with the JCF. While Ms Seargeant correctly pointed out that the RPD had failed to cite the relevant Guidelines, the RAD found that the RPD had considered her application with sensitivity to her gender and mental illness. The RAD also agreed with the RPD's conclusion that Ms Seargeant had failed to rebut the presumption that state protection was available to her in Jamaica. In fact, her evidence about her contacts and interactions with the JCF served to prove the existence of state protection. Further, the evidence showed that, in Jamaica, Ms Seargeant had received, and would be able in the future to obtain, the medical treatment she requires.

III. Issue One - Did the RAD fail to comply with the applicable Guidelines?

[13] Ms Seargeant submits that the RAD failed to recognize that she is a vulnerable person.

[14] The RAD demonstrated respect for the Guidelines in the way it addressed Ms Seargeant's circumstances. The RAD accommodated Ms Seargeant before and at the hearing (as had the RPD), and drew no negative inferences from delays on her part.

[15] The proceedings before the RPD and the RAD are not tainted by any failure to treat Ms Seargeant with respect and dignity.

IV. Was the RAD's conclusion on the availability of state protection unreasonable?

[16] Ms Seargeant maintains that the JCF disrespects the citizens of Jamaica and incites fear in ordinary people like her. She suspects that, without the involvement of lawyers on her behalf, she would have been wrongfully prosecuted and convicted. She argues that the RAD did not appreciate the depth of the JCF's corruption and malfeasance when it found that she had failed to show an absence of state protection in Jamaica.

[17] With respect, I cannot agree with Ms Seargeant's submissions.

[18] The evidence shows that due process unfolded in the legal proceedings in which Ms Seargeant was involved. The JCF had valid grounds to involve her in its investigation. Appropriate steps were taken later when it became clear she bore no responsibility for the crimes in question. There is no evidence that Ms Seargeant was singled out or harassed because of her gender or mental health status.

[19] Therefore, I cannot conclude that the RAD's decision on the issue of state protection was unreasonable.

V. Conclusion and Disposition

[20] The RAD treated Ms Seargeant appropriately and did not arrive at an unreasonable conclusion when it found that Ms Seargeant had failed to show an absence of state protection in Jamaica. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-1805-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
and no question of general importance is certified.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1805-17

STYLE OF CAUSE: MARIE JUANITA SEARGEANT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 10, 2018

JUDGMENT AND REASONS: O'REILLY J.

DATED: MARCH 13, 2018

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