

Federal Court



Cour fédérale

Date: 20190416

Docket: IMM-488-18

Citation: 2019 FC 461

Ottawa, Ontario, April 16, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

**JULIA ISABELLA ST. CROIX
KYMARA DESIR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants are a mother and daughter who are citizens of Saint Lucia. They arrived in Canada in April 2012. When they arrived, Ms. St. Croix was 47 years of age and Kymara was 12. Ms. St. Croix claimed refugee protection on her own behalf and on behalf of her daughter on

the basis that she feared continuing domestic abuse at the hands of a former common law partner, Alexander Henry.

[2] According to Ms. St. Croix, she and Mr. Henry had been in a relationship for about a year between November 1986 and December 1987. Ms. St. Croix alleged that Mr. Henry had been abusive during the relationship and that this abuse had continued over the two and a half decades since she left him until she finally fled to Canada with her daughter. She alleged, among other things, that Mr. Henry had attacked her many times intending to kill her, that he had raped her, that he had broken into her house several times, that he had threatened her with a large rock on a public street, and that he had attempted to kill her by poisoning her water storage supply. Mr. Henry has severe drug and alcohol abuse problems and was often intoxicated. Ms. St. Croix claimed that she had reported him to the police numerous times but they never acted on her complaints. She said this was because Mr. Henry came from an influential family, several local police officers were his friends, and he was a mechanic and he serviced the local police vehicles for free. Throughout the entire time in question, Ms. St. Croix and Mr. Henry both lived in Anse-La-Raye, a small fishing village.

[3] The applicants' claims were heard by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, on November 6, 2017. In a decision dated December 27, 2017, the RPD rejected the claims. The applicants now apply for judicial review of this decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The applicants submit that the RPD member's credibility findings are

unreasonable, that the member erred in her assessment of the documentary evidence, and that the member's state protection analysis is unreasonable.

[4] For the reasons that follow, I do not agree with the applicants. As a result, the application for judicial review is dismissed.

II. DECISION UNDER REVIEW

[5] The RPD member was satisfied that the applicants had established their personal identities as citizens of Saint Lucia. However, the member rejected the claims because of the cumulative effect of several credibility concerns, which she set out in her reasons. The member also found, in the alternative, that the applicants had failed to rebut the presumption of state protection in Saint Lucia.

[6] With respect to the credibility of the claims, the member made a number of findings, including the following:

- Ms. St. Croix's allegation that Mr. Henry had tried to kill her many times over the span of 25 years was not plausible because she had managed to escape all of his attacks;
- Ms. St. Croix claimed to have reported Mr. Henry to the police numerous times and it was not credible that the police would not take action against him, especially with respect to something as serious as attempted murder;
- Ms. St. Croix alleged that Mr. Henry had caused her serious injuries on several occasions but she provided little corroborative medical evidence;
- Ms. St. Croix claimed that Mr. Henry was able to act with impunity because he came from an influential family but she did not mention this important fact in her original narrative. Instead, she claimed originally that the police refused to do more than warn him or give him a slap on the wrist because they dismissed her complaints simply as

lovers' disputes. She stated that her reports "became jokes to laugh about in the yard when he went over to work on their vehicles." She continued: "I think it proved they were all manly and it was looked upon as controlling your family or handling your business." However, in a supplementary narrative filed several years later and just prior to the RPD hearing, Ms. St. Croix claimed that the police "were wary of [Mr. Henry] because of his family's name as his father back then had clout with the authorities." She added for the first time that Mr. Henry "was able to being [*sic*] transferred to the mental hospital time after time to get fake documents to avoid prosecution by law" after several of the many times he had attacked her;

- Ms. St. Croix did not produce any evidence to corroborate Mr. Henry's alleged status in the community or the influence of his family. She did file statements from several individuals claiming to have first-hand knowledge of him, including Lyzandra St. Croix (the daughter of Ms. St. Croix and Mr. Henry), yet none of them mention his being from a powerful and influential family;
- It was not credible that the politician for whom Ms. St. Croix worked for five years did not seek the assistance of the police on her behalf, despite the fact that Mr. Henry had harassed Ms. St. Croix and attacked her several times at her workplace and elsewhere while she worked for him;
- The letters and affidavits Ms. St. Croix filed in support of her claim had little probative value because they did not corroborate key aspects of the claim;
- Family members who provided statements are motivated to support Ms. St. Croix and Kymara because the family has demonstrated a desire to live in Canada (another of Ms. St. Croix's four daughters is a permanent resident of Canada and a third had her own pending refugee claim).

[7] The member's negative assessment of Ms. St. Croix's credibility was a sufficient basis for rejecting the claims. The member also found, in the alternative, that the applicants could obtain state protection in Saint Lucia should they require it. The member considered that Saint Lucia is a functioning democracy with effective political and judicial systems in place. There was an official apparatus geared to providing protection to its citizens, including measures relating specifically to victims of domestic abuse. In such circumstances, claimants must exhaust all courses of action reasonably open to them to rebut the presumption of state

protection. The member found that the applicants had failed to do so, primarily because she found Ms. St. Croix's "testimony with regards to alleged assaults and police interaction to be untrustworthy."

III. STANDARD OF REVIEW

[8] It is well-established that this Court reviews the RPD's assessment of the evidence before it on a reasonableness standard (*Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at paras 6-15 [*Hou*]). This standard applies to the RPD's factual findings, including its credibility determinations (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at para 5; *Nweke v Canada (Citizenship and Immigration)*, 2017 FC 242 at para 17), and its interpretation of documentary evidence (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 21). This standard also applies to the RPD's assessment of the availability of state protection, provided that the RPD applied the correct test (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 22; *Kina v Canada (Citizenship and Immigration)*, 2014 FC 284 at para 24).

[9] It is implicit in the reasonableness standard that this Court shows deference to the RPD's credibility findings (*Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 7). The RPD is well-placed to assess credibility (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 (FCA) at para 4 (QL); *Hou* at para 7). It has the advantage of observing the witnesses who testify and it may have expertise in the subject matter that the reviewing court does not share, including with respect to country conditions

(Rahal v Canada (Citizenship and Immigration), 2012 FC 319 at para 42; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 821 at para 58).

[10] Reasonableness review “is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome” (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). The reviewing court examines the decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determines “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

IV. ISSUES

[11] As stated above, the applicants challenge the decision of the RPD on the following three grounds:

- a) the member’s credibility findings are unreasonable;
- b) the member erred in her assessment of the documentary evidence; and
- c) the member’s state protection analysis is unreasonable.

[12] For the reasons that follow, I have found that the member reasonably concluded that Ms. St. Croix's allegations were not credible. As a result, it is not necessary to address the errors alleged in the member's alternative basis for dismissing the claim – namely, that the applicants had failed to rebut the presumption of state protection.

V. ANALYSIS

A. *Are the member's credibility findings unreasonable?*

[13] The applicants acknowledge that the determinative issue is credibility. They submit that the member's findings concerning the credibility of Ms. St. Croix's allegations of ongoing abuse by Mr. Henry are unreasonable. They contend that the member engaged in conjecture and speculation, that she unreasonably expected the agent of persecution, Mr. Henry, to have acted rationally, and that she conducted a microscopic examination of the evidence. I do not agree.

[14] The member's essential finding was "that the principal claimant's whole story has a sense of not being plausible." As set out above, the member identified several discrete elements of the story that led her to this conclusion. The member added that she was "aware that none of the credibility concerns raised here may be sufficient, each on its own, to negate this claim, but taken cumulatively, they do." In my view, this finding was reasonably open to the member on the evidence before her.

[15] The only part of the member's discussion which caused me concern is the following:

I do accept that some men become obsessed with a particular person. However, according to the principal claimant this man not

only was harassing her, but he allegedly beat her, raped her, accosted her, has been threatening to kill her, and had attempted to kill her multiple times for many years before she came to Canada in 2012. For example, she recounted that he poisoned her water and that he tried to stone her. To me, it does not seem plausible that this man has been so unsuccessful in his attempts. After all, he is an adept mechanic. The claimant's explanation that she has just been lucky because always someone came along to stop him from killing her stretches credulity.

[16] Perhaps the member could have expressed herself better here, but that does not amount to reviewable error. As I read this paragraph, what the member is trying to explain is why, even though she was prepared to find that Ms. St. Croix may have been abused by Mr. Henry at some point, she did not find it plausible that the abuse was as extensive or as serious as Ms. St. Croix alleged, and therefore did not find the basis of the claim for protection credible. Put another way, it was not unreasonable for the member to find that Ms. St. Croix's good fortune went only so far as an explanation and that the more plausible explanation was that Mr. Henry had not been out to kill her for more than two decades, or even at all.

[17] This conclusion is also supported by the member's findings about the surrounding circumstances, as Ms. St. Croix presented them, such as the absence of any meaningful police response to the alleged abuse. On Ms. St. Croix's own account, she had been willing to seek out the assistance of the police and, in fact, had done so several times. However, for various reasons suggested by Ms. St. Croix, the police never responded effectively during the twenty-five years of alleged abuse. The shifting nature of her explanations for the failure of the police to intervene was another relevant factor the member reasonably considered in concluding that Ms. St. Croix was exaggerating the extent of the abuse she suffered.

B. *Did the member err in her assessment of the documentary evidence?*

[18] The applicants submitted a number of documents to corroborate their allegations. These included written statements from other members of their family and from two of Ms. St. Croix's ex-partners; two letters dated November 19, 2012, from Dr. Desmond Long, a physician in Saint Lucia, documenting treatment Ms. St. Croix had received at his clinic for over seven years for anxiety (the cause of which is not stated) and for an assault causing multiple soft tissue injuries in June 2011; a letter dated October 8, 2012, on the letterhead of the Office of the Director of Public Prosecutions in Saint Lucia, signed by Solomon Poyote PC 214, documenting contacts Ms. St. Croix had had with the police in Anse-La-Raye regarding Mr. Henry in 2011 and early 2012; an affidavit from Flavia Cherry dated May 23, 2012, concerning the availability of state protection in Saint Lucia for women fleeing violent situations; various news articles about domestic violence in Saint Lucia; and a report dated November 15, 2017, concerning Ms. St. Croix from Natalie Riback, a registered psychotherapist.

[19] For the most part, the applicants' objections to the member's assessment of the documentary evidence are simply objections to the weight the member gave that evidence. It is not for me to re-weigh the evidence. The member's determination that the documentary evidence did not offset the inherent incredibility of Mr. St. Croix's allegations was reasonably open to her.

[20] To address a few examples, the member reasonably found that the letter from PC Poyote provided little support for Ms. St. Croix's claims. The basis of his assertion that "the Anse La

Raye Police is [*sic*] knowledgeable of a common law relationship between Miss Julia St. Croix and Mr. Alexander Henry” and that this relationship “was abusive and violent in nature” is left unstated. The author of the letter summarizes “some” of the reports on file but does not include the actual reports or explain why only some were summarized. Read together with Dr. Long’s report, at best this letter suggests that Mr. Henry had assaulted Ms. St. Croix in June 2011.

(According to Ms. St. Croix, this assault happened just outside the office where she worked.)

However, the claims for protection turned on the applicants’ alleged fear of returning to Saint Lucia because Ms. St. Croix had been the victim of many much more serious attacks over a significant period of time. Even though other documentary evidence demonstrated that domestic abuse and sexual violence against women were serious problems in Saint Lucia, this was simply consistent with Ms. St. Croix’s allegations; it was not corroborative of them.

[21] As well, it was open to the member to consider the fact that other close members of the applicants’ family had settled in Canada when determining what weight to give to their statements in support of the refugee claims. The member did not simply dismiss the statements because they were from family members; rather, she gave a specific reason for finding that they did not carry much weight. This was just one among many relevant considerations relied on by the member and she did not give it undue significance in her analysis.

[22] Finally, it was open to the member to find that the failure of individuals who would have been in a position to know about it to mention the impunity Ms. St. Croix alleged Mr. Henry enjoyed because of his family’s status casts further doubt on her claim that this was why the police had never intervened effectively despite repeated complaints about him. This is not a

peripheral detail. It related directly to one of the key problems the member reasonably identified with the claims – namely, the failure of the police to act despite allegedly being asked for assistance repeatedly. It was reasonably open to the member to reject Ms. St. Croix's explanation, especially considering its late appearance in her narrative and the absence of corroboration.

[23] Once this explanation was rejected, it was also open to the member to find that the police would have responded differently had Ms. St. Croix actually made the serious complaints against Mr. Henry she said she had made to them during all the years of abuse. Evidence of such a response could have been valuable corroboration for Ms. St. Croix's account. However, the member did not treat its absence as a reason to disbelieve Ms. St. Croix. Rather, the member reasonably assessed the potentially corroborative evidence and found it wanting with respect to the core elements of the claims for protection. As a result, the claims had to stand or fall with Ms. St. Croix's account itself because that account was largely uncorroborated. On this basis, it was not unreasonable for the member to conclude that Ms. St. Croix had failed to discharge her burden of establishing her case with credible and trustworthy evidence.

VI. CONCLUSION

[24] Considering the member's reasons as a whole, there is no basis for me to intervene. The reasons reflect a reasonable weighing of the most salient aspects of the evidence. The member was careful to state that her assessment of Ms. St. Croix's credibility was a cumulative one. No single consideration was necessarily sufficient for rejecting the claims. The member certainly disbelieved Ms. St. Croix, at least with respect to the extent of the alleged abuse, but this was

based on a fair and reasoned assessment of the evidence. The member's conclusion that Ms. St. Croix had been in an abusive relationship with Mr. Henry at some point was reasonably supported by the evidence. The difficulty for the applicants is the member did not find any of the potentially corroborative evidence to be sufficient to meet her central concern about Ms. St. Croix's credibility – namely, that she had exaggerated the extent and nature of that abuse in order to buttress her claim for refugee protection. This conclusion was reasonably open to the member. The reasons explain why the member reached the result she did, and they demonstrate that this result falls within the range of acceptable outcomes that are defensible on the facts of the case and the applicable law.

[25] The application for judicial review must, therefore, be dismissed.

[26] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-488-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-488-18

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