Federal Court  Cour fédérale

Date: 20230427

Docket: IMM-9616-21

Citation: 2023 FC 619

Toronto, Ontario, April 27, 2023

PRESENT: Madam Justice Go

BETWEEN:

KISHON KAYON MATTHIAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Kishon Kayon Matthias, is a 30-year-old citizen of Saint Vincent and the Grenadines [SVG]. The Applicant grew up in an abusive household and has suffered from incidents of domestic abuse throughout her life. In 2008, The Applicant was raped by a man named Pius Alvis, who was convicted and sentenced for 15 years in prison. Pius Alvis has since been released and is alleged to be threatening the Applicant's life.

[2] The Applicant arrived in Canada in July 2012 and filed a refugee protection claim. The Refugee Protection Board [RPD] accepted her claim, finding her testimony credible and concluded that she will be at risk from Pius Alvis. The RPD described the protection the Applicant would receive in her home country as "an inconsistent and ineffective protection system", and therefore found it "unreasonable should the [Applicant] require State protection in [SVG], to expect her to access it."

[3] Due to criminality, the Applicant's refugee claim was terminated in December 2019.

[4] The Applicant applied for a Pre-Removal Risk Assessment [PRRA] under subsection 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the grounds of gender-based violence she would face in SVG. In a decision dated July 7, 2020, a PRRA officer [Officer] rejected her application on the ground that she provided insufficient evidence to establish that state protection would not be available to her [Decision]. The Applicant seeks judicial review of the Decision.

[5] I grant the application based on the reasons set out below.

II. Issues and Standard of Review

[6] The Applicant is self-represented in this application. Prior to the hearing, I invited the parties to make additional submissions on the issue of state protection. I received written submissions from the Respondent, but no submissions from the Applicant. At the hearing, I

again asked the parties to address the issue of state protection, which is in my view, the determinative issue.

[7] As per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], I will apply the reasonableness standard to review the Decision.

[8] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov* at para 100.

III. Analysis

[9] In the Decision, the Officer found that the Applicant provided insufficient evidence to establish that state protection would be unavailable to her in SVG. As such, the Officer found that the Applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of *IRPA*.

[10] I find the Decision unreasonable for two reasons. First, the Officer conducted a selective analysis of the evidence and ignored evidence that contradicted their findings. Second, the Officer failed to conduct an individualized assessment of state protection.

Officer's selective analysis of the evidence

[11] In the Applicant's written submissions in support of her PRRA application, prepared by her then-counsel, the Applicant alleged that she faces severe gender-based violence at the hands of Pius Alvis and his family members in SVG. The Applicant provided evidence that Pius Alvis was released from custody in December 2018 and continues to make threats against her. The Applicant also provided country condition evidence detailing the prevalence and severity of physical and sexual violence against women in SVG.

[12] With regards to state protection, the Applicant provided evidence demonstrating the "climate of impunity" within which Pius Alvis operates and the widespread attitudes of victim-blaming in SVG. The Applicant cited many documents showing the ineffectiveness and often re-traumatizing nature of the state's responses to incidents of gender-based violence.

[13] In response to the country condition evidence submitted by the Applicant, the Officer noted:

> I accept that situation for women in [SVG] is not ideal. The applicant has submitted numerous articles and reports in regard to the rise of physical and sexual violence against women, as well as reports regarding the treatment of women. However, I do not find that all women are subject to violence, and I find that the government has taken active, favourable steps towards addressing concerns and improving the situation, including the adoption of the Domestic Violence Act and a national action plan on gender-based violence (as per the *Concluding Observations on Saint Vincent and the Grenadines* in the absence of its second periodic report submitted by the applicant). While the report notes existing deficiencies and concerns, I do not find them sufficient to dispel the presumption of available state protection. I find that country conditions overall indicate the government's willingness to confront the issue of

> violence against women, and the ability to effectively respond to such incidents.
>
> [Emphasis added]

[14] As a preliminary note, it is unclear why the Officer mentioned not "all women are subject to violence." Surely, that is not the threshold required to rebut the presumption of state protection.

[15] More importantly, the Officer's conclusion about the SVG government's "ability to effectively respond" to gender-based violence appears to be contradicted by several of the reports submitted by Ms. Matthias' former counsel. For instance, a 2019 United Nations Human Rights Committee report noted operational deficiencies within the *Domestic Violence Act*, which was adopted in 2015 as a measure to combat the prevalent gender-based violence in the country:

> 18. While welcoming the adoption in April 2015 of the Domestic Violence Act, the Committee is concerned about reports of the high prevalence of domestic violence, sexual violence and abuse, including high rates of rape, which disproportionately affects women and children and is often underreported because of a lack of trust between victims and law enforcement authorities. The Committee is also concerned about the narrow definition of rape and incest, the absence of statutory prohibitions of marital rape and sexual harassment, and the lack of a comprehensive definition of gender-based violence in the Criminal Code (arts. 2, 6, 7, and 26).

[16] A 2018 United States Department of State report also noted:

> The law does not specifically prohibit sexual harassment, although authorities could prosecute such behavior under other laws. Local human rights groups and women's organizations considered enforcement ineffective.

[17] In the Decision, the Officer referred to two more recent reports to support its findings: the US Department of State 2019 Country Report on Human Rights Practices dated March 11, 2020 [US 2019 Report], and a 2020 report on SVG from Freedom House. Having reviewed these reports, I note that neither of them speak to the issue of the effectiveness of state protection for victims of gender-based violence in SVG. The US 2019 Report confirms that domestic violence remains "a serious and pervasive problem", and that civil society reported "the lack of public education efforts in perpetuating an environment of insensitivity to sexual abuse victims." Notably, none of these reports from the immediate past years suggest that the ineffective protection for victims of gender-based violence noted in earlier country condition reports no longer holds true.

[18] The Respondent submits that the Officer was clear in their analysis and that their rationale for refusing the application was reasonable. The Respondent submits that there was nothing in the manner with which the police handled the Applicant's previous assault that suggested that state protection was not available to her, or would not be available should she return to the country.

[19] However, as the Applicant points out, when she first reported the rape, the police did not take her report right away. Rather, the police put her in a cell where she stayed overnight – the same cell in which the police later placed the perpetrator, without any protection. After the perpetrator was arrested, the Applicant reported to the police that she received further threats from the perpetrator's family. The Applicant was told by the police that there was nothing further they could do to protect her.

[20] The Officer noted in the Decision:

> I find that the applicant's own unfortunate experience also demonstrates the willingness and ability of authorities in arresting, successfully prosecuting, convicting and incarcerating perpetrators of violence and sexual assault against women.

[21] In making this finding, I find that the Officer failed to take into account the Applicant's subsequent report of threat and the resulting police inaction.

[22] Referring to a letter from the police authority in SVG, the Respondent submits that the police in SVG were aware of the threats made by Pius Alvis against the Applicant since his release, and acknowledged that the Applicant "seems to be scared for her life." The Respondent argues it was reasonable for the Officer to note that the letter "does not indicate that any formal complaints have been filed, or that the police is unable to offer her help or offer protection."

[23] I note, however, that the letter also does not indicate that the police would be protecting the Applicant, despite being aware of the threats made by Pius Alvis' family against her.

[24] The Respondent further submits that the system in Canada would not have done anything differently in a case like the Applicant's, given that the perpetrator was arrested, brought to trial and convicted of the rape. Whether this is true or not is irrelevant. I need not decide whether the system in Canada fares any better than that of SVG when it comes to protecting victims of gender-based violence. I only need to determine whether the Officer reasonably concluded that there is state protection for the Applicant in SVG.

[25] For the reasons set out above, I find the Officer's finding that the Applicant has provided insufficient evidence to rebut the presumption of state protection unreasonable. The Officer conducted a selective analysis of the evidence and ignored evidence that contradicted their conclusion, namely the country condition evidence outlined above and the evidence submitted by the Applicant about her own experiences of approaching the police for help. As such, the Decision lacks the requisite intelligibility, transparency and justification of a reasonable decision.

Failure to conduct an individualized assessment of state protection

[26] An individualized inquiry is needed to assess whether state protection is available: *Belle v Canada (Citizenship and Immigration)*, 2012 FC 1181 at para 20.

[27] In this case, the Applicant provided a detailed affidavit of her own experiences in seeking state protection after she was raped and when she received further threats following the perpetrator's arrest. In finding that the presumption of state protection has not been rebutted, the Officer failed to adopt an individualized, case-by-case assessment of state protection: *Da Souza v Canada (Citizenship and Immigration)*, 2010 FC 1279 [*Da Souza*] at para 6. Instead, the Officer relied on their assessment of the country condition evidence to dismiss the individualized concerns that the Applicant raised.

[28] This failure was evident in the Officer's dismissal of evidence with respect to the Applicant's alleged threats and lack of support from her family. The Officer similarly dismissed the Applicant's concerns about her emotional state if she is deported to SVG.

[29] As noted in *Da Souza*:

> [18] It is clear from *Ward*, above, that the fact a claimant did not approach the state for protection will not automatically defeat a claim. An objective assessment must be undertaken to establish if the state is able to protect effectively. In other words, the test is whether effective state protection may be reasonably forthcoming. What has to be determined, in each case is whether it was objectively unreasonable for the claimant not to have sought the protection. If it was not objectively unreasonable for Ms. Da Souza not to have sought state protection, she need not have approached the police in St. Vincent. The answer to this question is a matter of the evidence produced on the point.
>
> [19] The fundamental error the PRRA Officer made in this case is that he did not engage in any analysis to answer that question. The PRRA Officer acknowledges violence against women remains a serious problem in St. Vincent. He did not confront the contrary evidence found in the two Country reports concerning St. Vincent he relied on. He ignored other relevant documentation. More particularly, he ignored the numerous decisions of this Court which have determined no state protection was available to women subject to domestic violence in St. Vincent in the particular circumstances of the facts in those cases. I rely on my colleague Justice Sean Harrington decision in *Alexander v Canada (The Minister of Citizenship and Immigration)*, 2009 FC 1305 and the cases he cites at paragraph 7 of his reasons.
>
> [Emphasis in original]

[30] While in this case, the Applicant did attempt to seek state protection, Justice Lemieux's comment in *Da Souza* about the need for officers to confront contradictory evidence, and the need for a case-by-case assessment, at para 6, is equally applicable to the case at hand.

IV. Conclusion

[31] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[32] There is no question for certification.

JUDGMENT in IMM-9616-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back for redetermination by a different decision-maker.

3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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