

Federal Court



Cour fédérale

Date: 20230922

Docket: IMM-7951-22

Citation: 2023 FC 1276

Ottawa, Ontario, September 22, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

CHRISTINA MANDY BELLE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision by the Refugee Appeal Division [RAD], dated July 22, 2022, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a citizen of Barbados. She fears her uncle, who assaulted her in the past, threatened her family, was arrested for murder in 2013, and was due to be released from prison at the end of 2022. The RAD dismissed her application because of the availability of adequate state protection as well as viable Internal Flight Alternatives [IFA].

[3] The Applicant seeks judicial review of that decision. Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to discharge her burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Factual Background

[4] The Applicant is a citizen of Barbados. She fears harm from her maternal uncle who has previously assaulted the Applicant and members of her family.

[5] The RAD dismissed the Applicant's appeal from an RPD decision on March 15, 2021, following a hearing held on February 5, 2021 [first RAD hearing]. The Applicant sought judicial review to the Federal Court, and based on a consent judgment dated September 2, 2021, the case was sent back to be re-determined by the RAD.

[6] The RAD's second decision was made on July 22, 2022, and is now before the Court on this judicial review.

III. Decision Under Review

[7] The RAD dismissed the Applicant's appeal because of the availability of adequate state protection and the existence of viable IFAs for the Applicant.

[8] The RAD found that the evidence, viewed cumulatively, did not establish that the Applicant faces a serious possibility of persecution or that her life or safety is jeopardized by relocating to the IFA of either St. Lucy or St. Andrew, Barbados.

[9] The RAD reviewed the new evidence submitted by the Applicant, stating that the onus is on the Applicant to establish that the proposed new evidence meets the admissibility requirements pursuant to Rule 29(4) of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules]: the document's relevance and probative value, any new evidence the document brings to the appeal, and whether the Applicant with reasonable effort could have provided the document on first instance to the RPD.

[10] The RAD accepted all the new evidence except an affidavit by the Applicant's sister dated February 16, 2021. The RAD rejected the affidavit and found that while it may be relevant to the appeal, its content did not provide any new substantive information. The panel noted that the Applicant's sister entered Canada on December 13, 2019, but this does not explain why the information in the affidavit was not provided in the Applicant's record before the RPD. Further, the panel stated that an appeal to the RAD is not an opportunity to correct a deficient record. The

RAD held that an oral hearing was not required pursuant to section 110(6) of IRPA, as there are no credibility issues arising out of the admissible, new evidence.

[11] The RAD held that it was undisputed that the Applicant suffered physical, psychological, and sexual violence by her uncle while living with her family in St. Barnabas Heights, St. Michael, Barbados. The RAD also reviewed the *Gender Guideline* and found that the Applicant had established a clear nexus to the Convention as a woman facing gender violence. The RAD reviewed the issue of gender-based violence in Barbados, citing it as a major concern with origins deeply rooted in patriarchal attitudes.

[12] The RAD then held that state protection was available because Barbados is a democratic country with an impartial judiciary, and the civilian authorities maintain effective control over the police service. The RAD also highlighted legislative mechanisms that exist to protect victims of domestic violence.

[13] Regarding adequate state protection, the RAD noted that the police services have been responsive to past instances of violence perpetrated by the uncle. Specifically, the Applicant testified that prior to the 2013 arrest, her uncle had been detained two previous times for criminal activities.

[14] On viable IFAs, the RAD recognized that Barbados is geographically small, but that this did not exclude the possibility of safe or reasonable options. The RAD held that, upon reviewing all of the evidence, the Applicant does not face a serious possibility of persecution or risk of

harm if removed from her home in St. Michael. On whether it is objectively reasonable for the Applicant to consider the proposed IFAs, the RAD found that the Applicant has not met her burden, but does note that the Applicant may face difficulties with housing and employment. The Applicant is 37 years old and has four children. The Applicant has an undergraduate degree in history, and was previously self-employed as a make-up artist in Barbados. The RAD found that moving to an IFA would not be unduly harsh.

IV. Issues and Standard of Review

[15] The Applicant raises the following issues:

1. The RAD erred by not admitting the Applicant's sister's affidavit as new evidence; and
2. The RAD erred in its assessment of the availability of state protection, and the existence of viable IFA options.

[16] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (para 99). A decision may be unreasonable if the decision maker misapprehended the evidence before it (paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (para 100).

V. Analysis

A. *Admissibility of new evidence and the first RAD hearing*

[17] The Applicant argues that the RAD erred by excluding her sister's affidavit. By stating that the affidavit did not contain any new information, the Applicant argues that the RAD adopted a too narrow approach leading to an unreasonable outcome, and that there is content in the affidavit that is considered "new."

[18] The Applicant relies on the first RAD hearing and argues that at that time, she mentioned that her sister also had left Barbados because of her fear of her uncle. The RAD at that time asked questions about the relevance of similarly situated individuals to the Applicant's forward-looking risk, and asked the Applicant to submit evidence of her sister's refugee claim. The Applicant argued that her sister's affidavit is responsive of the RAD's request.

[19] The Applicant argues that the RAD excluded her sister's affidavit on the grounds that it did not contain any "new" information and therefore did not meet the statutory requirement under s. 100(4) of the IRPA and Rule 29(4) of the RAD Rules. In the Applicant's view, paragraphs 9 to 11 of her sister's affidavit present new and material evidence that arose after the RPD's rejection of the Applicant's claim. The information is also relevant because it corroborates the Applicant's fear. The Applicant further argues that the information goes to a determinative issue, was not known to the Applicant or the RPD before the claim was rejected, and arose after the date when the Applicant made her refugee claim. Finally, the Applicant notes that the RAD's decision contains no analysis of her testimony during the first RAD hearing.

[20] In my view, the RAD was not unreasonable in refusing to admit the affidavit of the Applicant's sister. First, in relation to the Applicant's use and citation of the transcript of the first RAD hearing to challenge the decision under review, the Applicant may not rely on transcript or evidence from the first RAD hearing to bolster arguments on judicial review, given that the decision has been set aside. The reliance on evidence from the first RAD hearing has no impact on the RAD's second hearing of the appeal. The new RAD panel was free to reach its own conclusions on the facts and arguments presented to it (see *Patricks v Canada (Citizenship and Immigration)*, 2023 FC 745 at paras 16-20, *Tran v Canada (Citizenship and Immigration)*, 2020 FC 215 at para 75, *Ouellet v Canada (Attorney General)*, 2017 FC 586 at para 27, *Burton v Canada (Citizenship and Immigration)*, 2014 FC 910 at para 30).

[21] As for paragraphs 9-11 of the sister's affidavit, the RAD's finding that the evidence is not substantively new or material to the claim, and that the information does not relate to events occurring after the RPD's decision, is reasonable. The RAD does note that the affidavit corroborates the Applicant's testimony, and that the sister left for Canada on December 13, 2019, which is after the RPD's decision rejecting the Applicant's claim. However, the affidavit contains information that occurred while the Applicant was still in Barbados, as well as other general information that only corroborates the Applicant's claim, without pointing to specific events having occurred after the Applicant's departure from Barbados or after the RPD's decision. The RAD's decision that the affidavit does not explain why the information could not have been provided in the Applicant's record, and that it does not bring new relevant information to the appeal, is therefore reasonable.

B. *Assessment of adequate state protection*

[22] To rebut the presumption of adequate state protection on a balance of probabilities, the Applicant must focus on actual or real operational adequacy rather than the state's efforts writ large (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at paras 20-21; *Bito v Canada (Citizenship and Immigration)*, 2022 FC 1370; *St. Brice v Canada (Citizenship and Immigration)*, 2023 FC 1139).

[23] The Applicant argues that the RAD did not address the Applicant's testimony of her own experiences engaging with the police, and resulting lack of state protection or faith in the police. The evidence provided in the Applicant's narrative of several incidents of violence with her uncle, other family members, and neighbours was not considered on redetermination nor mentioned when assessing state protection. The Applicant also argues that the police's oversight of her uncle, which includes that he observe a curfew and report to the police every day at 9:00 a.m., falls short of "police oversight" because it gives him ample time to travel across Barbados and harm the Applicant anywhere she may be. The police is therefore ineffective and negligent.

[24] The Respondent argues that the RAD reasonably assessed the country condition documents, noting both the positive and negative findings with respect to gender-based violence in Barbados. The Respondent notes that, as held by the RAD, in the Applicant's own experience, the police did meaningfully act and respond to prior occasions of violence concerning the uncle. The Respondent argues that the availability of state protection does not require the police to deter criminal activity, but rather, the ability to respond to such circumstances. The Respondent argues

that perfect protection is not the standard, but rather, whether the state is willing and able to protect, and whether that protection is effective. The standard is not perfect protection, but adequate protection (*Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at paras 24-25).

[25] In this case, in my view, the RAD properly reviewed and summarized evidence that supported its decision on adequate state protection. The RAD also applied the *Gender Guideline* and analysed the information that might suggest gender-based violence. The RAD concluded that Barbados is a democracy with a generally respected and impartial judiciary and a civilian control over police services. The common law and several statutes also protect individuals against domestic and sexual violence. While the mechanisms are not perfect, and the police response sometimes slow, the police is responsive to complaints and required to respond, prepare a report and keep records. The RAD held that the Barbados police protection was adequate for the Applicant, as they did arrest and detain the uncle following complaints. The police meaningfully acted when presented with credible evidence, and therefore state protection is reasonably forthcoming.

[26] The RAD's reasons relating to the adequacy of state protection are therefore reasonable. The RAD considered the objective evidence, including objective evidence that illustrated that state protection is not perfect and that police response is sometimes slow, and ruled that state protection was nevertheless adequate. The RAD's reasoning is intelligible, transparent, and justified (*Vavilov* at paras 15, 98).

C. *Viable IFAs are reasonable*

[27] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) at paragraph 10. The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under subsection 97(1) of the IRPA in the proposed IFA location, and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at para 18; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17). The Applicant bears the burden of demonstrating that the proposed IFAs are not viable.

[28] The Applicant relies on the small geographic size of Barbados, stating that the Applicant faces risk anywhere on the island. Further, the terms of release that her uncle is subject to are not stringent enough to ensure the Applicant's protection. The Applicant describes St. Lucy and St. Andrew as "comfortable commuting distances" from Bridgetown, places where her uncle could reasonably travel back and forth from on any day.

[29] The Applicant argues that her personal circumstances of being a single mother of four children, and needing to re-establish herself in a new place while also hiding from her uncle, rises to the level of undue hardship. The rural nature of the IFAs proposed by the RAD would exacerbate the challenges of finding suitable housing and employment, deeming both IFA options unreasonable.

[30] In my view, the Applicant has not met the burden of demonstrating that either St. Lucy or St. Andrew, Barbados are not reasonable IFAs in the circumstances. In its reasons, the RAD stated that the possibility of an IFA cannot be excluded, as all of the harm experienced by the Applicant has occurred at or near her family residence. Even if Barbados is relatively small at about 430 square kilometers, the RAD held that its size was not sufficiently small to deem the proposed IFA locations unsafe or unreasonable. The RAD also noted that the Applicant has not been the subject of her uncle's harm since 2002, she has not been threatened since he was incarcerated, and that there is insufficient evidence to conclude that her uncle would be motivated and capable to pursue the Applicant in these new locations. On that basis, the RAD found that the Applicant did not face a serious possibility of persecution or face a risk of section 97 harm if she relocated in the IFA locations. Those conclusions are reasonable on the basis of the evidence and arguments presented to the RAD.

[31] On the issue of hardship, the RAD acknowledged that finding housing, employment, and other social factors may pose hardship, but not to the level required to render a proposed IFA unreasonable. The RAD noted that the Applicant is a single mother of four, but also noted her

strengths, including that she is educated, and has had previous employment. Those conclusions are reasonable in the context of this case.

[32] In my view, the RAD's decision on the potential IFAs is reasonable. The Applicant has failed to demonstrate that relocating to a proposed IFA would be objectively unreasonable. The RAD's reasoning as to why the Applicant has viable IFAs is intelligible, transparent, and justified (*Vavilov* at paras 15, 98). The RAD's findings on the potential IFAs are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene.

VI. Conclusion

[33] The RAD's decision is reasonable. The RAD did not err on the admissibility of new evidence, and conducted a reasonable assessment of the availability of adequate state protection and viable IFAs.

[34] The Applicant's application for judicial review is dismissed.

[35] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-7951-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7951-22

STYLE OF CAUSE: CHRISTINA MANDY BELLE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2023

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: SEPTEMBER 22, 2023

APPEARANCES:

Seyfi Sun FOR THE APPLICANT

Nicole Paduraru FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario