

Date: 20070720

Docket: IMM-5041-06

Citation: 2007 FC 762

Ottawa, Ontario, July 20, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NICOLE AMANDA SIMMONS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant's Pre-Removal Risk Assessment (PRRA) concluded that state protection was available to her in St. Vincent and the Grenadines (St. Vincent) in respect of the spousal abuse which she had suffered. This is the judicial review of that PRRA decision.

II. FACTS

[2] The Applicant, a national of St. Vincent, came to Canada in 2002 at which time she made a refugee claim. The Immigration and Refugee Board (Board) found her story to be credible in regards to the spousal abuse claimed but rejected her claim on the grounds of the availability to her of state protection.

[3] During her PRRA process she filed an affidavit from her mother indicating that as late as December 2004, the Applicant's husband was still interested in her – presumably not in a benevolent way. She also filed a statement from a doctor that given her history (including her suicidal ideas) and the threats in St. Vincent, St. Vincent could not offer her proper treatment and that she would not be safe.

[4] The PRRA Officer noted the Board's conclusion as to state protection, the fact that in response to the Applicant's complaints of abuse, the police had taken action and that her husband continued to have a malevolent interest in her. The Officer determined that there was no new evidence on state protection since the Board's decision.

[5] The Officer accepted the doctor's report but found that the principal focus of the letter related to state protection. The report dealt with the state's ability to protect the Applicant from her wish to commit suicide. While acknowledging that she might have attempted suicide, there was insufficient evidence of the occurrence. Finally, the Officer noted that fear of committing suicide is not itself grounds for relief.

III. ANALYSIS

[6] The standard of review of PRRA decisions is patent unreasonableness on issues, fact, reasonableness on mixed questions of fact and law, correctness for issues of law and finally, reasonableness when considering the decision globally.

23. As to the appropriate standard of review to be applied to a decision of a PRRA officer, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540 (T.D.) at paragraph 19, Mr. Justice Mosley, after conducting a pragmatic and functional analysis, concluded that "the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness". Mr. Justice Mosley also endorsed the finding of Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458 (T.D.) at paragraph 51, that the appropriate standard of review for the decision of a PRRA officer is reasonableness *simpliciter* when the decision is considered "globally and as a whole". This jurisprudence was followed by Madam Justice Layden-Stevenson in *Nadarajah v. Canada (Solicitor General)*, [2005] F.C.J. No. 895 (T.D.) at paragraph 13. For the reasons given by my colleagues, I accept this to be an accurate statement of the applicable standard of review.

[7] The crux of the decision is whether the conditions in St. Vincent have changed as regards state protection generally or in respect of the Applicant particularly. The decision must be examined globally on a standard of reasonableness.

[8] Despite the Applicant's argument that the Officer committed legal errors, I can find none. The Officer did not require a nexus between s. 96 grounds and the s. 97 claim. The Officer found that there was insufficient evidence of fear that she would cause herself harm.

[9] It was noted that the Applicant had suicidal ideas throughout her life. While there was no assessment of the adequacy of psychological or psychiatric counselling available, there was no evidence that she could not have access to such counselling. To the extent that there was concern for the availability or adequacy of such care, that concern would not be a s. 97 ground since that concern is an exception to the risks covered by s. 97 in accordance with s. 97(1)(b)(iv).

[10] The Officer did not ignore documentary evidence that the police are not always effective especially where the perpetrator is a police officer or friend of a police officer. In fact, the husband, while alleged to have friends in the police force, had assaulted a police officer – an action not likely to garner friends in the police.

[11] The Officer did not conduct a review of the Board's decision on state protection nor was he/she required to do so. The Officer considered that finding along with all the other evidence before him/her, as required.

[12] The Applicant criticizes the Officer's weighing of the evidence but in my view, the Officer did exactly what was mandated by examining all the evidence, nothing was missed, and there is

nothing unreasonable in the Officer's approach to the evidence. It is not for the Court to substitute its weighing for that of the Officer.

[13] Taken as a whole, the Officer's decision was reasonable and therefore this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5041-06

STYLE OF CAUSE: NICOLE AMANDA SIMMONS

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 26, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: July 20, 2007

APPEARANCES:

Mr. Osborne G. Barnwell

FOR THE APPLICANT

Mr. Michael Butterfield

FOR THE RESPONDENT

SOLICITORS OF RECORD:

OSBORNE G. BARNWELL
Barrister & Solicitor
Toronto, Ontario

FOR THE APPLICANT

MR. JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT