

**Date: 20071107**

**Docket: IMM-3470-07**

**Citation: 2007 FC 1158**

**Toronto, Ontario, November 7, 2007**

**PRESENT: The Honourable Mr. Justice Lemieux**

**BETWEEN:**

**CAMILLE PRESCOTT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Camille Prescott (the applicant), a citizen of St. Vincent and the Grenadines (St. Vincent), seeks a stay of her removal from Canada scheduled for tomorrow pending the determination of her leave application from the August 9<sup>th</sup>, 2007 decision of a Pre-Removal Risk Assessment (PRRA) officer who found her not at risk under section 96 and 97 of *the Immigration and Refugee Protection Act* (the “Act”).

[2] The applicant arrived in Canada on October 5<sup>th</sup>, 2004, making a refugee claim two weeks later. She named as her agent of persecution, her ex-boyfriend Greg Gabriel (Gabriel) with whom she cohabitated during fourteen months. She claimed Gabriel physically abused her.

[3] On October 26, 2005, the Refugee Protection Division (the “RPD”) rejected her claim finding the applicant credible but failing to convince it adequate state protection for victims of domestic violence did not exist in St. Vincent. The RPD based its finding on the jurisprudence and on the fact, when she reported the only two instances of abuse in March and May of 2000, the police responded to her calls by taking written reports, coming to see her and searching for Gabriel unsuccessfully. The RPD noted she was not represented by legal counsel at the refugee hearing and that after leaving Gabriel during four and one half years she relocated regularly and had no further contact with Gabriel or the police.

[4] The applicant did not seek leave to the Federal Court in order to challenge the RPD’s decision.

[5] Her PRRA application was filed on February 28, 2007 with extensive submissions made by legal counsel on her behalf made on March 16, 2007. In support of her PRRA, she submitted an affidavit dated March 13, 2007 which on its face is significantly at variance with the RPD decision, and differs from her affidavit in support of this stay motion on the May 6, 2006 event referred to below involving another boyfriend. In her March 13, 2007 affidavit, she identified a new and second agent of persecution, Orlando Edwards (Orlando), a citizen of St. Vincent who came to Canada making a refugee claim which was refused. They met in December 2004 but broke up in April 2006 when she discovered Orlando was seeing another woman. She disposes he became very angry leading to an altercation on May 6, 2006 as a result of which the police were called in and led

to charges being laid against the applicant (but stayed by the Crown to facilitate removal) and the discovery of Orlando's lack of status in Canada, which apparently led to his removal to St. Vincent for which he blames the applicant and has threatened her children in St. Vincent and attempted an apparent kidnapping of her daughter.

[6] As noted on August 9<sup>th</sup>, 2007, the PRRA officer rejected her PRRA application for which leave is now being sought in this Court. Applicant's and Respondent's records have been filed along with the Applicant's reply. The file is ready for consideration by a Judge as to whether leave will be granted.

[7] In coming to his conclusion, the PRRA officer states he thoroughly reviewed and considered her PRRA application and submission as well as conducting independent research in St. Vincent's current country conditions as they relate to the applicant. In particular, he mentioned in his decision:

- The RPD's finding of adequate protection stating the RPD panel was cognizant of the fact that "violence against women still constitutes a serious problem in St. Vincent" but that the panel had found that there had been "significant steps had been taken to alleviate this problem".
- That in her PRRA submissions, the applicant "has essentially restated the same incidents which she articulated before the RPD as well as the new risk with Orlando Edwards".

- Refers to her affidavit of March 13, 2007 to detail her relationship with Orlando and the genesis of her fear of him.
- Refers to the documentary evidence submitted by applicant's counsel and concludes that the documents that post-date the RPD's decision "are generalized in nature and do not address the concerns noted by the RPD nor do they indicate that country's conditions in St. Vincent have worsened since the RPD's decision".
- The PRRA officer continued his analysis stating:

"I have nevertheless read and considered them in the context of an assessment of current country conditions. I find that the applicant has presented insufficient evidence to persuade me to come to a conclusion different than that of the RPD panel. I also find that country conditions have not worsened significantly in St. Vincent since the RPD decision. In these submissions, counsel has provided three affidavits from Pamela Cross who is presently a private legal consultant working with violence against women agencies and organizations across Ontario. While I find her qualifications and work history admirable, I do not find that she is an expert in country conditions in St. Vincent. The information that she provides in her affidavits is generalized material which related to the legislation and insight of domestic violence which existed at the time of the applicant's hearing."
- The PRRA officer then described the independent review of current country conditions in St. Vincent, he had performed. He concluded the current country conditions there "had not worsened significantly since the applicant's RPD rejection". He conceded:

”I acknowledge that violence against women remained a serious problem in St. Vincent however it is an issue that the government is aware of and is attempting remedy. A careful consideration of the documentary material does indicate that state protection is available to the applicant while Canadian jurisprudence in Zalzali establishes the premise that “protection may be adequate though no necessarily perfect”.

- The PRRA officer then referred to the USDOS-2005 report on St.Vincent in support of his view on the efforts undertaken by the Government of that Island: recognition domestic violence was a serious problem; the signing of international conventions on the prevention, punishment and eradication of violence against women; the enactment of legislation, the increased number of cases filed in Family Court recognizing that many cases of domestic violence remain unpunished because victims did not approach the police or want to prosecute offenders hence the Human Rights Commission of the country seminars of awareness on abused women’s rights. The USDOS refers to additional police training in the area of domestic violence and the need to bring charges if the evidence is sufficient.
- The PRRA officer then quoted the Federal Court of Appeal’s decision in Villafranca to the effect that the mere fact that state protection is not always successful will not justify not seeking that protection.
- The PRRA officer concluded based on her case before the RPD, the applicant would be able to obtain state protection from her agents of persecution; she got it in the

case of Gabriel and could obtain it in respect of Orlando. In the case of Orlando, he characterized his fear of his criminal behaviour which the police and government do not condone. It added St. Vincent provides its citizens with a social network (the police, judiciary, human rights groups (government and non-government) that can assist her.

[8] In her written memorandum, counsel for the applicant raised the following points as serious issues noting the test to be met is whether they are at the threshold of being frivolous and vexatious:

- The PRRA officer used the wrong legal test of state protection: serious efforts to deliver state protection rather than the existence of actual and effective state protection.
- The failure of the PRRA officer to deal with contradictory evidence on state protection in that he failed to mention let alone analyse evidence which was relevant and contradicted the finding on state protection. In particular, the PRRA officer failed to address the October 31, 2006 Response to Information Request (RIR) as well as the RIR of October 27<sup>th</sup>, 2005. He also discarded the affidavit evidence of Pamela Cross.
- The PRRA officer failed to provide adequate reasons.

[9] With respect, I am unable to agree with counsel for the applicant that the PRRA officer decision raises any serious issue she identified.

[10] First, I agree with her that the test for state protection is the ability of a state to deliver adequate (effective) state protection; serious efforts in attempting to deliver state protection does not suffice.

[11] The conclusion of the PRRA officer on this point is essentially based on the finding of the RPD. The RPD determined that the applicant actually received state protection from St. Vincent when she approached the State. In these circumstances, it is objectively unreasonable for the applicant not to be willing to approach the State for protective processes which may be available. In other words, her personal situation shows state protection was effective in her case.

[12] Her affidavit contradicts the finding of the RPD in her particular case. She says in one case, the police refused to take her complaint. I am not prepared to rely on this evidence as it would constitute a collateral attack on the RPD's formal decision.

[13] Second, I find no merit to the argument the PRRA officer ignored the evidence before him. The RIR of October 27, 2005 is corroborative of the PRRA officer's finding of adequate or effective state protection. Its source is a governmental and a police official in St. Vincent. The governmental official describes in particular the efficacy of how the Domestic Violence Act is

applied and how the Family Court's Protection and Occupational Orders function. The government official recognizes that "sometimes" the police effectiveness is not consistent or is inadequate. The standard of perfection is not required in terms of state protection in refugee law. The police official comments on the usefulness of protective orders.

[14] The RIR of October 31st, 2006, does not assist the applicant in her quest to establish no effective state protection. The comments of an immigration officer at the Canadian High Commission in Trinidad on the effectiveness of the Family Court system in St. Vincent as well as the effectiveness of its processes could not be corroborated by The Research Directorate of the IRB (see Applicant's record, pg. 98, first full paragraph). At the hearing, counsel for the applicant did not argue the PRRA officer erred in not attaching weight to the Pamela Cross affidavits. The balance of that RIR does not establish inadequate state protection in St. Vincent.

[15] In terms of lack of adequate reasons, I find no serious issue on the basis of Justice Snider's decision in *Cupid v. Minister of Citizenship and Immigration*, 2007, F.C. 176 at paragraphs 6 to 13.

[16] For irreparable harm, counsel for the applicant relied on the principle established in *Figuardo v. Canada (Minister of Citizenship and Immigration)*, 2005, 4 F.C.R. 387 at paragraph 45. *Figuardo* is premised on the existence of a serious issue which is not the case here. Irreparable harm has not been established.

[17] In the circumstances, the balance of convenience favours the Minister.



**ORDER**

**THIS COURT ORDERS** that this stay application is dismissed.

“François Lemieux”

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Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3470-07

**STYLE OF CAUSE:** CAMILLE PRESCOTT v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 5, 2007

**REASONS FOR ORDER:** LEMIEUX J.

**DATED:** November 7, 2007

**APPEARANCES:**

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