

**Date: 20080528**

**Docket: IMM-4581-07**

**Citation: 2008 FC 685**

**Toronto, Ontario, May 28, 2008**

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

**BETWEEN:**

**TANESHA WISDOM-HALL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is an adult female citizen of Jamaica. She arrived in Canada in February, 2005 claiming to be a visitor and has remained in Canada, without status, ever since. The Applicant made a claim for refugee status on the basis that she feared violence from a former boyfriend and that the state of Jamaica would not be able to provide adequate protection. That claim was rejected in a decision of the Immigration Refugee Board of Canada dated September 28, 2007. The applicant seeks judicial review of that decision. For the reasons that follow, I will allow the application and set aside the decision of the Board.

[2] The circumstances of this case are more unusual than many of those in which women fear violence from men they have known should they return to their country of origin. In this case, the Applicant came to Canada without experiencing violence in her native country, Jamaica. While in Canada, she met Andre, also a Jamaican citizen living in Canada, through the internet. They began living together and a violent relationship developed. The record shows that Andre threatened to beat and to kill the Applicant. The Applicant made a complaint to the police in Canada. Andre was charged and convicted of violent crimes, having pled guilty and deported to Jamaica as a consequence.

[3] The Applicant fears that if she were to be returned to Jamaica, Andre would find her and make good on his threats to kill her. The parties acknowledge that laws exist in Jamaica purporting to provide a measure of protection for women who fear violence or are in violent relationships. The Applicant submissions were referred to by the Board at page 2 of the Reasons:

*“The core of her position is found at page 4 where she states “It is not possible to provide effective state protection when there is reluctance by the authorities to protect women””*

[4] The Board’s response is peculiar. It says:

*“The law as it exists does not support the position that there is reluctance at the political level to protect women”*

[5] The Board goes on to say:

*“Counsel points out at page 5 that laws on their own to (sic) not establish that state protection is available. However, I find this too speculative as to how the authorities will react should this client return to Jamaica today”*

[6] The Board member continues in his reasons to focus on efforts of the state that he says are “*not always perfect*” and concludes that he is “*satisfied that Jamaica has put in place a system of laws*” that will provide women adequate, if not perfect, protection.

[7] In coming to this conclusion, the Board member did not address the evidence before him as to how matters actually were addressed in Jamaica. For instance, the United States Department of State Country report in Jamaica for 2006 in evidence says that “*violence against women was widespread*” and there was a “*general reluctance by the police to become involved*” and that there were “*reports of sexual harassment of women by police*”.

[8] The Board member erred in concluding that test to be applied was one requiring only a view of the laws in place and the expectations that they might be adequate rather than addressing the realities as to what was happening here and now. In order for adequate state protection to exist, a government must have both the will and the capacity to implement effectively its legislation and programmes. The correct approach to the issue was carefully set out by Shore J. in *Streanga v. Canada (MCI)*, 2007 FC 792 at paragraphs 14 to 19:

*14 Public pronouncements and public awareness, as well as services for women who have already been victimized, do not amount to state protection. In light of the evidence of the serious inadequacies of the Romanian police (particularly concerning the amount of corruption in the police force) in combating and preventing human trafficking, the PRRA Officer's reliance on the standard of "serious measures" is wrong.*

*15 The Applicant submits that the PRRA Officer has erred in viewing the legal test as one of "serious measures". The Federal Court in *Elcock v. Canada (MCI)*, [1999] F.C.J. No. 1438 (T.D.)*

*(QL), at paragraph 15, established, that for adequate state protection to exist, a government must have both the will and the capacity to effectively implement its legislation and programs:*

*Ability of a state must be seen to comprehend not only the existence of an effective legislative and procedural framework but the capacity and the will to effectively implement that framework.*

**16** *In Mitchell v. Canada (MCI), [2006] F.C.J. No. 185, 2006 FC 133, the Federal Court determined that the evaluation of state protection involves evaluating a state's "real capacity" to protect its citizens. The Court noted that it is an error to look to a state's good intentions and initiatives, if the real capacity of the state to protect women from violence was still inadequate.*

**17** *In Garcia v. Canada (MCI), [2007] F.C.J. No. 118, 2007 FC 79, the Federal Court held that a state's "serious efforts" to protect women from the harm of domestic violence are not met by simply undertaking good faith initiatives. The Court stated at paragraph 14:*

*It cannot be said that a state is making "serious efforts" to protect women, merely by making due diligence preparations to do so, such as conducting commissions of inquiry into the reality of violence against women, the creation of ombudspersons to take women's complaints of police failure, or gender equality education seminars for police officers. **Such efforts are not evidence of effective state protection which must be understood as the current ability of a state to protect women...***

*Garcia elaborates on the meaning of "serious efforts" at paragraph 16:*

*... the test for "serious efforts" will only be met where it is established that the force's capability and expertise is developed well enough to make a credible, earnest attempt to do so, from both the perspective of the woman involved, and the concerned community. The same test applies to the help that a woman might be expected to receive at the complaint counter at a local police station. That is, are the police capable of accepting and acting on*

*her complaint in a credible and earnest manner? Indeed, in my opinion, this is the test that should not only be applied to a state's "serious efforts" to protect women, but should be accepted as the appropriate test with respect to all protection contexts.*

**18** *Justice La Forest stated in Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689 at 724 that "it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness."*

**19** *Evidence of improvement and progress by the state is not evidence that the current response amounts to adequate, effective protection. As held in the Federal Court decision of Balogh v. Canada (MCI), [2002] F.C.J. No. 1080 (QL) at paragraph 37, a state's willingness to provide protection is not enough:*

*I am of the view that the tribunal erred when it suggested a willingness to address the situation...can be equated to adequate state protection.*

[9] In the Board's decision here, there is no examination of the evidence as to how, as a practical matter today, the state of Jamaica can effectively protect women such as the Applicant against persons who threaten to kill her such as Andre who was deported in Jamaica because the Applicant had the courage to report him to the police in Canada.

[10] The Application is allowed. There is no question for certification. No order as to costs.

**JUDGMENT**

**For the Reasons provided:**

**THIS COURT ORDERS that:**

1. The application is allowed;
2. The matter is returned for redetermination by a different Officer;
3. There is no question to be certified;
4. No Order as to costs.

"Roger T. Hughes"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4581-07

**STYLE OF CAUSE:** TANESHA WISDOM-HALL v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 28, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Hughes, J

**DATED:** May 28, 2008

**APPEARANCES:**

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