Date: 20080724

Docket: IMM-2644-07

Citation: 2008 FC 903

Ottawa, Ontario, July 24, 2008

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MICHAELA CECILE LAURINE FERGUSON, ZACCARY CLAYTON CLOUDEN, TRAVISH NATHANIEL DENIS CLOUDEN AND DWAYNE MICHAEL FERGUSON

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Michaela Ferguson (Michaela) and her three minor children (the Children and, collectively, the Applicants) seek Judicial Review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2002, c. 27 (the Act) of a negative decision (the Decision) made on May 8, 2007 by a Pre-Removal Risk Assessment Officer (the PRRA Officer).

BACKGROUND

[2] The Applicants, all citizens of Grenada, arrived in Canada on visitors' visas on October 12, 2004 and shortly thereafter made a refugee claim without the assistance of counsel. They based their claim on the devastation Hurricane Ivan had caused in Grenada in September 2004 including the destruction of the Applicants' home and Michaela's business. In a decision dated July 21, 2005, their refugee claim was denied.

[3] In their claim, the Applicants did not allege that they also feared Michaela's former common-law spouse who is the father of two of the Children (the Spouse). This fear was first mentioned in an application for permanent residence on humanitarian and compassionate grounds which was submitted on August 10, 2006 (the H&C Application). This fear was repeated in the Pre-Removal Risk Assessment which is the subject of this Judicial Review.

[4] Michaela claims that her Spouse beat her and threatened to kill her, especially when he was drunk or high on drugs. She also claims that he had beaten the Children and that they feared him and had suffered emotional trauma as a result of his violence. She provided a letter from the police confirming that on March 24, 2004 she reported an incident in which he had forcefully removed her from her workplace, beaten her and threatened to kill her. She also provided a copy of a doctor's report that was made for the police following her report. It confirmed that she had suffered a large bruise on her left arm.

[5] Michaela claims that if she were to return to Grenada, she would be forced to depend on her Spouse. She states that because her home and business have been destroyed and because all her other relatives are in temporary shelters, she will have nowhere else to turn for financial support.

[6] On May 8, 2007, the PRRA Officer denied the Applicants' H&C Application and also made the Decision. The PRRA Officer found insufficient objective evidence that the Applicants would be at risk if they returned to Grenada. The PRRA Officer also found that, in any event, adequate state protection would be available.

ISSUES AND STANDARD OF REVIEW

[7] The Applicants submit that the PRRA Officer made three reviewable errors. First, she imposed too high a burden of proof. Second, she failed to address aspects of the Applicants' fears. And, finally, the Applicants submit that the PRRA Officer erred when she concluded that they had failed to rebut the presumption of state protection.

[8] In my view, according to the principles set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, these are all questions to be reviewed using reasonableness as the standard. The applicable burden of proof and the presumption of state protection are legal matters within the expertise of the PRRA PRRA Officer and the extent of the Applicant's fears is a question of fact.

DISCUSSION

(i) Burden of Proof

[9] The PRRA Officer stated "I do not find sufficient objective evidence to persuade me that the principal applicant's former common-law spouse is still interested in harming her or the minor applicant should they return to Grenada at this time." Later in the Decision, the PRRA Officer adds "[t]he applicants had an opportunity to submit any new evidence that would persuade me to arrive at a different conclusion from the Refugee Protection Division of the Immigration and Refugee Board, however, they have not done so."

[10] The Applicants say that the PRRA Officer's use of the word "persuade" suggests she used a burden of proof greater than the balance of probabilities. I disagree. "Persuade" like "show" or "satisfy" is a word which indicates that the decision maker has found the evidence adequate and trustworthy. The word alone does not suggest the burden of proof. Rather, one must look to the context to find the burden of proof.

[11] The importance of context is illustrated in the decisions to which the Applicants referred. For instance, in *Petrescu v. Canada (Solicitor General)* (1993), 73 F.T.R. 1, Justice Danièle Tremblay-Lamer held that the Refugee Division's use of the word "persuade" in its decision meant in that context "absolutely convinced" and thus imposed too high a burden of proof. However, Justice Frederick Gibson concluded in his decision in *Flores v. Canada (Minister of Employment*

and Immigration) (1994), 77 F.T.R. 137, that the Convention Refugee Determination Division's (CRDD) use of "persuaded" in that context did not impose too high a burden. The error that Gibson J. found was not that the CRDD used the word "persuaded" but that it considered whether the claimant "would be at risk".

[12] There is no basis in the language used elsewhere in the Decision for concluding that the word "persuade" is synonymous with "absolutely convinced" or otherwise sets too high a burden of proof. Rather, in the Decision, the PRRA Officer described the correct test which was whether the Applicant faced more than a mere possibility of persecution for any of the Convention grounds (*Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593).

(ii) The Applicants' Fears

[13] In her submissions to the PRRA Officer, Michaela claimed that "I will be forced to depend on the father of my two younger children" if the Applicants returned to Grenada. The Applicants' fear was that this dependency would make them vulnerable to Michaela's Spouse. In the Decision, the PRRA Officer concluded that:

> I do not find sufficient objective evidence to persuade me that the principal applicant's former common-law spouse is still interested in **harming** her or the minor applicant should they return to Grenada at this time. However, even if the principal applicant's former common-law spouse was still interested in **targeting** her or the minor applicants upon return to Grenada, based upon objective documentary evidence, it is my finding that adequate protection would be available for the applicants if required.
>
> [my emphasis]

[14] Clearly, whether Michaela's Spouse is interested in targeting the Applicants is not relevant on the facts of this case. I agree with the Applicants that it does not matter whether he would target them if they are forced to go to him for help.

[15] However, the use of the word "harming" in the above quotation does apply to circumstances in which they seek his assistance. For this reason, I have concluded that the PRRA Officer did address this aspect of the Applicants' fears and decided that there was no objective evidence that he would harm them if they sought his help.

[16] The Applicants also claim that the PRRA Officer erred when she ignored the fact that Michaela's Spouse is the father of the two younger children. They argue that he would want to remain in touch with his sons and thus would not leave the Applicants alone. However, there was no evidence to suggest that the Spouse has been trying to locate the Applicants.

(iii) State Protection

[17] The PRRA Officer concluded that:

> After a consideration of the facts of this application and the documentary evidence in the reference, I find that the government of Grenada would not be unwilling or unable to provide the applicants with adequate protection if required.

[18] The PRRA Officer referred to the "Country Reports on Human Rights Practices – 2006" on Grenada by the U.S. Department of State (the DOS Report) as well as a Response to Information

Request GRD100710.E to the Immigration and Refugee Board of Canada dated December 6, 2005 (the Response).

[19] In addition to quoting at length from the DOS Report which largely supported the view that state protection was available, the PRRA Officer quoted the Response's conclusion which stated that:

> Grenada faces some serious challenges in the area of domestic violence. Women in situations of abuse are not, however, without resources. A woman can seek protection through her network of family and friends, the police, an NGO such as the LACC, government-run programs such as Cedars shelter, or with legal remedies such as pressing charges and seeking protection orders in court.

[20] The problem is that the PRRA Officer did not refer to the discussion which preceded this conclusion. It showed that there were limits to state protection available for women and discussed the difficulties they faced when going to the authorities. By simply quoting the positive conclusion without referring to the analysis, the PRRA Officer essentially conveyed an overly optimistic impression of the Response.

[21] Having identified this error, the question is whether this error is material given that the DOS Report did support the PRRA Officer's conclusions.

[22] The PRRA Officer also considered the Applicants' own evidence about their experience with the authorities. When Michaela told the police on March 24, 2004 that her Spouse had grabbed her and beaten her, the authorities considered the matter seriously. They took her report and referred

her for medical treatment to confirm her injuries. No further action was taken because Michaela asked the police not to pursue the matter.

[23] The PRRA Officer clearly stated that her conclusion about state protection was based on a careful reading of "the facts of this application and the documentary evidence". The PRRA Officer was entitled to place considerable weight on the Applicants' evidence about their own positive experience. These circumstances combined with the DOS Report meant, in my view, that the PRRA Officer did not make a material error by failing to mention that the evidence in the Response was equivocal.

CONCLUSION

[24] I am satisfied that the PRRA Officer made no reviewable errors. She applied the correct burden of proof, properly considered the Applicants' fears and based her Decision about state protection on sufficient and proper evidence. For these reasons, the application will be dismissed.

JUDGMENT

UPON reviewing the material filed and hearing the submissions of counsel for both parties in Toronto on Monday, February 25, 2008;

AND UPON being advised that no questions are posed for certification;

NOW THEREFORE THIS COURT ORDERS AND ADJUDGES that, for the reasons given above, the Application is hereby dismissed.

"Sandra J. Simpson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MICHAELA CECILE LAURINE FERGUSON, ZACCARY CLAYTON CLOUDEN, TRAVISH NATHANIEL DENIS CLOUDEN AND DWAYNE MICHAEL FERGUSON v. MINISTER OF CITIZENSHIP AND IMMIGRATION
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