Federal Court  Cour fédérale

Date: 20091222

Docket: IMM-2815-09

Citation: 2009 FC 1305

Ottawa, Ontario, December 22, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JAMILAH ALEXANDER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] There is something very wrong in the relationship between men and women in St. Vincent and the Grenadines. Year after year, woman after woman washes up on our shores seeking protection from abusive, violent husbands or boyfriends. In fact, last year 495 refugee claims were filed by citizens of that country. Only ten other countries were the source of more claimants. In 10th place, with 551 claimants, was India. Considering India has a population of 1.2 billion and St.

Vincent and the Grenadines 118,000, one has to wonder. If the cases which come to this Court by way of judicial review or stay applications are any indication, nearly all the claimants are women who assert domestic abuse.

[2] In this case, the Refugee Protection Panel accepted that Ms. Alexander had been beaten up by her boyfriend, that she had taken refuge with her aunt on one of the Grenadine Islands, that the boyfriend had threatened to burn down her mother's house if she did not return to Kingstown, and that he continued to make terrifying threats by telephone.

[3] The only issue was that of state protection. The Panel found that St. Vincent and the Grenadines was a democracy and that Ms. Alexander did not "take all reasonable steps in the circumstances of this case to pursue the available state protection", and that "[she] did not provide any persuasive evidence of similarly-situated individuals let down by the state protection arrangements." The conclusion was that she had failed to rebut the presumption of state protection with clear and convincing evidence.

[4] Ms. Alexander only made a report to the police once. They ignored her because the complaint was made a few days after she was beaten up. Her answer to that was that her boyfriend had kept her locked up and she could not complain beforehand. Given the continuing threatening phone calls, the Panel thought she should have made further complaints.

[5] Taken at its face value, the decision appears to be reasonable. This Court is supposed to show deference to the RPD panels who allegedly have greater expertise in country conditions than the Court itself. However there comes a time when it becomes obvious that deference should be earned, particularly when the Panel apparently pays no attention to the cases coming out of this Court which specifically deal with St. Vincent and the Grenadines. The analysis of country conditions was clearly a pro-forma one, or what Madam Justice Snider called in *Alvandi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 790, a "cookie-cutter analysis."

[6] This Court does not sit in a *de novo* appeal and so cannot do its own country analysis. A Refugee Appeal Division would be in position to hear an appeal on a question of fact as per sections 110 and 111 of the *Immigration and Refugee Protection Act.* However, those sections have not been proclaimed in force.

[7] Since the Court is called upon to review the work of others, some judicial reviews are granted and others are not, depending on the rationale of the underlying decision. Nevertheless there are a great number of cases where judicial review has been granted on the basis that findings that there is state protection in St. Vincent and Grenadines were unreasonable. Without putting too fine a line on it, many of the women appear to have been in generally similar situations. See for instance: *Jessamy v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 20; *Myle v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1073; *Myle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 871; *Codogan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 739; *Franklyn v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1249;

Fraser v. Canada (Minister of Citizenship and Immigration), 2005 FC 1154; *King v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 774; *Griffith v. Canada (Minister of Citizenship and Immigration)* (1999), 171 F.T.R.240.

[8] Although the standard of review is reasonableness *(Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339*)* and although there may be more than one reasonable decision, either there is state protection available for persons in Ms. Alexander's situation or there is not. In *Siddiqui v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 6, Mr. Justice Phelan was reviewing a decision in which the *MQM-A* of Pakistan was found to be a terrorist organization. There had been earlier decisions to the contrary. I fully subscribe to what he said at paragraphs 17 and 18:

> [17] There is no strict legal requirement that the Board members must follow the factual findings of another member. This is particularly so where there is one of the "reasonableness" standards in play – reasonable people can reasonably disagree.
>
> [18] What undermines the Board's decision is the failure to address the contradictory finding in the *Memon* decision. It may well be that the member disagreed with the findings in *Memon* and may have had good sustainable reasons for so doing. However, the Applicant is entitled, as a matter of fairness and the rendering of a full decision, to an explanation of why this particular member, reviewing the same documents on the same issue, could reach a different conclusion.

[9] On the documentation before it, the Panel's reference to the *Domestic Violence Act 1995* is irrelevant, as it does not reply to the relationship Ms. Alexander was in, which in local parlance was termed a "visiting" relationship.

[10] Although it was acknowledged that there are serious problems in St. Vincent and the Grenadines, and that the situation is improving, I cannot escape the conclusion that this is a "good news" analysis. In the Board's own Response to Information Request of 18 November 2008, it quotes a representative of the St. Vincent and the Grenadines Human Rights Association to the effect that when female victims go to make reports they are served by gross, disrespectful, chauvinistic, young male police officers who feel that the victim asked for the treatment she received.

[11] Reference was made to the fact that there is no women's shelter in Kingstown. Had the Panel been following country conditions, and the decisions of this Court, it would surely would have picked up on what I said in *Myle*, 2007 FC 1073. It would have noted that earlier documentary evidence was to the effect that the Government had purchased a women's shelter which was being renovated in 2004. A year later it was assumed that the shelter was operational. The latest information indicates that there is no such shelter. How does this fit in with the serious efforts attributed to the Government?

[12] Even more disturbing is the recent decision in *Trimmingham v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1059. While that case was rendered after the Panel's decision in this case, the evidence shows that the Consul General of St. Vincent and the Grenadines wrote in May 2008 to in effect say the police were unable to protect the applicant. This is exactly the same situation as in *Canada (A.G.) v. Ward*, [1993] 2 S.C.R. 689, in which the Republic of Ireland admitted that it was unable to protect Mr. Ward. The Supreme Court referred that matter

back because Mr. Ward also had United Kingdom citizenship and had to take all reasonable efforts in all the countries which had a duty to protect him.

[13] I find absolutely astonishing that the IRB publishes information on country conditions but fails to mention that the Consul General has admitted that the state cannot guarantee the effectiveness of a restraining order. That would be relevant information in any assessment as would an analysis of the types of threats Ms. Trimmingham received as opposed to those received by Ms. Alexander.

[14] In the light of the above, no further analysis need be made of the finding that Ms. Alexander did not try hard enough to seek state protection. As Mr. Justice Urie noted in the Federal Court of Appeal in *Ward*, above, the inability of a state to protect may be because it turns a "blind eye" to the situation. Good intentions, if they are good intentions, are simply not enough. Why were there reports five years ago that the Government was renovating a women's shelter, while the latest reports indicate that there is no shelter at all?

[15] Although obviously written in a different context, consider the following words of Andrew Marvell, "The grave's a fine and private place, but none, I think, do there embrace". Small comfort to the family of those whose loved ones have been murdered that the perpetrator has been dealt with in accordance with law, after the fact. Speaking in that vein, whatever happened to the case where the police ignored a woman's complaints that her boyfriend was harassing her? Her head was

lobbed off at a bus stop in broad daylight. This incident is to be found in the case law (*Myle*, 2007 FC 1073, at para. 23) from this Court dealing with St. Vincent and the Grenadines.

ORDER

THIS COURT ORDERS that:

1. This application for judicial review is granted.
2. The Board's decision is set aside.
3. The matter is referred back to the Immigration and Refugee Protection Board for a fresh determination by a new Panel on the basis of the reasons states herein.
4. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2815-09
STYLE OF CAUSE:	*Jamilah Alexander v. MCI*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 16, 2009
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	December 22, 2009

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