

Federal Court



Cour fédérale

Date: 20100305

Docket: IMM-4252-09

Citation: 2010 FC 256

Ottawa, Ontario, March 5, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

HAZELL URENIA ISAACS ET AL

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants, Ms. Hazell Isaacs and her three children, as well as her sister, Keisha Isaacs, and her minor daughter, are citizens of St. Vincent and the Grenadines (SVG). They are challenging the legality of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated August 4, 2009, rejecting their claim for refugee protection.

[2] The principal applicants, Hazell and Keisha, are the daughters of Ms. Lisa Ava Isaacs, who herself obtained refugee status on February 17, 2005. The principal applicants allege that their

mother's former spouse (namely, the same man their mother feared, a man named Duncan) had assaulted and raped them when they were young. Essentially, the panel found them not to be credible; furthermore, they failed to discharge their burden of proof in showing that state protection was not available to them.

[3] As for Keisha, she testified that Duncan had raped her when she was ten years old and not sixteen, as she had stated in her PIF. She was unable to explain this discrepancy other than to retort that she did not always remember everything but that she had flashbacks from time to time. Moreover, in her own mother's PIF there is no mention of Keisha having been raped by Duncan, yet there is a reference to an incident involving one of her other daughters.

[4] As for Hazell, she claims that the first incident with Duncan occurred after her mother had left SVG. Given that the mother had left in 2002 and that the incident described by the applicant in her PIF took place in 2006, the panel asked her what had happened during the intervening four years. The applicant stated that Duncan had raped her several times during that period. When the panel inquired as to why she had not included this important detail in her PIF, the applicant stated that the incident that occurred in 2006 was the first time Duncan had beaten her, and that this incident was therefore different from the others. The panel was entitled to reject this explanation.

[5] As for the details about the incident that had allegedly occurred in 2006, Hazell did not mention in her PIF that Duncan had tried to get into her house through the window. Moreover, the panel did not understand why she would have gone out the door when Duncan was not inside the

house. She contradicted herself when she was asked if she had cried out when she got out of the house. She stated that she only had one neighbour, but the panel confronted her with photos submitted by the applicants that show a house fairly close to Hazell's. Finally, the panel found that the photos show that the window through which Duncan allegedly tried to break in was quite high up and seemed to be too small for an average-sized man to squeeze through.

[6] The panel also found it implausible that either Hazell's spouse or Keisha's husband would have tolerated Duncan insulting, harassing or fondling their spouses, especially given the fact that the photos submitted to the panel show Duncan to be an elderly man.

[7] In the final analysis, this application for judicial review must fail because the general finding of non-credibility can be reasonably supported by the evidence in the record. The panel's reasoning is clear and articulate. The many contradictions and implausibilities noted by the panel emerge from the evidence in the record. It also appears that the panel took the *Chairperson's Guidelines Relating to Women Refugees Fearing Gender-Related Persecution* into account. When the panel found the applicants not to be credible, it also noted that their testimony at the hearing was neither clear nor spontaneous. Moreover, there are significant discrepancies between their testimony and the information in their Personal Information Forms (PIFs).

[8] In this case, the panel's findings are not seriously challenged by the applicants. The reasonableness of the decision "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the

decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law’’ (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47). Regardless of the fact that the applicants have explanations for the contradictions noted by the panel and that they disagree with some of its findings of fact, the general finding of non-credibility certainly falls within the range of possible, acceptable outcomes.

[9] Given the legality of the general finding of non-credibility, there is no need to visit the subsidiary issue of state protection.

[10] For the above reasons, the application for judicial review must be dismissed. No question of general importance was raised by the parties.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4252-09

STYLE OF CAUSE: **HAZELL URENIA ISAACS ET AL**
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 18, 2010

REASONS FOR JUDGMENT
AND JUDGMENT: MARTINEAU J.

DATED: MARCH 5, 2010

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