Federal Court Cour fédérale

**Date: 20100804**

**Docket: IMM-6333-09**

**Citation: 2010 FC 802**

**Ottawa, Ontario, August 04, 2010,**

**PRESENT: The Honourable Madam Justice Bédard**

**BETWEEN:**

**SYDNEY HAROLD ROCQUE**
**MARENE ELVINA STAPLETON**
**SYDNISHA OMESIA ROCQUE**
**RASHIDE ENRIKAI ROCQUE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP**
**AND IMMIGRATION CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**[1]** This is an application for judicial review submitted pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "*Act*") of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), dated November 23, 2009, where it determined that the Applicants were neither Convention refugees within the meaning of section 96 of the *Act* nor persons in need of protection as defined by section 97 of the *Act*.

**CONTEXT**

[2] The principal Applicant claimed refugee status along with his spouse and their two minor children. He and his family are from Saint Vincent and the Grenadines (Saint Vincent). The Applicants based their claim on the following allegations: In August 2007, their minor daughter was assaulted and raped by a neighbour (W.) who was a well-known gang member and drug dealer. The Applicants made a complaint to the authorities and W. was arrested and charged with assault. Shortly after, the family began to receive threats from W., his family and his gang member associates, who pressured them to drop the charges. The Applicants allegedly made a report of the threats to the police and to the prosecutor, but to no avail. At the trial, the Applicant's daughter refused to give evidence against W. and the case was dismissed.

[3] The Applicants claim that the acts of intimidation and the threats continued even though the criminal case had been dismissed because they were perceived as "informers". They further alleged that they reported the threats to the police, again to no avail. Feeling unsafe and unable to get the authorities to arrest the perpetrators, the plaintiffs left Saint Vincent for Canada July 30, 2009, and they claimed refugee protection on August 18, 2008. They based their claim on their fear of persecution based on their membership in a particular group and on the risk of cruel and unusual treatment or punishment or danger of torture posed by W. and his associates should they return to Saint Vincent.

## THE DECISION UNDER REVIEW

[4] The Board concluded that the claimants were neither Convention refugees nor persons in need of protection.

[5] With respect to the claim for Convention refugee status, the Board concluded that it was not covered by any of the grounds provided for by the Convention. In addition, the Board dismissed the Applicants' claim that they were "persons in need of protection" on the basis of two main findings: first, the Board found that the Applicants had not provided credible, plausible and consistent evidence to support their claim about the risk to their life. Second, the Board found that the Applicants had not rebutted the presumption of availability of state protection.

## ISSUES

[6] The Applicants contend that the Board made an unreasonable assessment of the evidence and of their credibility and that, therefore, it erred in concluding that they had not proven the basis of their claim and that they had not rebutted the presumption of availability of state protection.

[7] This case raises two issues: that of credibility and that of availability of state protection. The Applicants' credibility came into play with respect to the facts on which they based their refugee claim but it also came into play, to a certain point, with respect to the issue of availability of state protection.

[8] The issue of state protection is determinative in this case (*Rodriguez v. Canada (Citizenship and Immigration)*, 2005 FC 153; *Sran v. Canada (Citizenship and Immigration)*, 2007 FC 145; *Munoz v. Canada (Citizenship and Immigration)*, 2008 FC 648; *Houshan v. Canada (Citizenship and Canada)*, 2010 FC 650; *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, I will not discuss the other issue. Since I have concluded, for the reasons that follow, that there is no reviewable error in the Board's conclusion on state protection, there is no need to address the other issue.

**STANDARD OF REVIEW**

[9] The jurisprudence has made it clear that questions about the adequacy of state protection is a mixed question of fact and law and is to be reviewed according to a standard of reasonableness (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171. The same standard applies to the assessment of evidence and credibility (*Dunsmuir v. New-Brunswick*, 2008 SCC 9; *Ndam v. Canada (Citizenship and Immigration)*, 2010 FC 513; *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 798. The Court must not substitute its own view even if an alternative outcome appears preferable, nor is it its role to reweigh the evidence.

**ANALYSIS**

[10] The Board concluded that the Applicants had not rebutted the presumption of availability of state protection. The Board articulated its finding in the following manner:

> [23] Finally, there is the issue of state protection. States are presumed to be able to protect their citizens. Saint-Vincent is a parliamentary democracy with a functioning judiciary [(8)]. There are very clear laws to protect individuals such as the principal claimant and members of his family against assaults [(9)]. The protection need not be

> perfect, and even if the claimants had difficulty with respect to one police authority in one police station, it does not mean that the entire police department nationwide is corrupt. Given that the panel has already determined to be a lack of credibility with respect to the documentation produced and the documentation not produced, it does not believe that the claimants have rebutted, with clear and convincing evidence, an absence of state protection. They are not "persons in need of protection".

[11] In my view, the Board's conclusion was not unreasonable.

[12] First, the Board applied the correct principles.

[13] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Justice La Forest explained as follows the underlying philosophy of the refuge protection regime, and the central importance of the presumption that the home state provides protection to its citizens:

> At the outset, it is useful to explore the rationale underlying the international refugee protection regime, for this permeates the interpretation of the various terms requiring examination. International refugee law was formulated to serve as a back-up to the protection one expects from the state of which an individual is a national. It was meant to come into play only in situations when that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other states becomes engaged. For this reason, James Hathaway refers to the refugee scheme as "surrogate or substitute protection", activated only upon failure of national protection; see *The Law of Refugee Status* (1991), at p. 135. With this in mind, I shall now turn to the particular elements of the definition of "Convention refugee" that we are called upon to interpret. (page 709) [emphasis added].

[14] There is a presumption that a state is capable of protecting its citizens (*Ward*; *Hinzman*) and an individual has a duty to seek protection from his or her country of origin before seeking asylum in Canada. The presumption of availability of state protection can only be rebutted where the claimant demonstrates that his or her country of origin is unwilling or unable to protect its citizens

or that his or her attempt to seek protection was useless (*Sran v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 145).

[15] In order to rebut that presumption, "clear and convincing confirmation of a state's inability to protect must be provided" (*Ward*, above, at page 724).

[16] In *Hinzman*, above, the Federal Court of appeal reiterated the principle that it had enunciated in *Kadenko v. Canada (Sollicitor General) (1996)*, 143 D.L.R. (4th) 532: "the more democratic a country, the more the claimant must have done to seek out the protection of his or her home state" (*Hinzman* at paragraph 45). In such a case, claimants "required to prove that they exhausted all domestic avenues available to them without success before claiming refugee status in Canada" (*Hinzman* at paragraph 46) [emphasis added].

[17] It has also been said on several occasions by the Court that the fact that problems have been encountered with one representative or a small group of representatives from law enforcement does not necessarily mean that state protection is not available; thus, that will not automatically lead to a conclusion that the entire police force or other state authorities are unwilling to offer support. (*Martinez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 343; *Luthra v. Canada (Citizenship and Immigration)*, 2008 FC 1053).

[18] In *Kadenko*, above, Justice Decary, discussed the extent to which an Applicant must attempt to seek protection from his or her country in order to rebut the presumption:

> **3** In our view, the question as worded must be answered in the negative. Once it is assumed that the state (Israel in this case) has political and judicial institutions capable of protecting its citizens, it is clear that the refusal of certain police officers to take action cannot in itself make the state incapable of doing so. The answer might have been different if the question had related, for example, to the refusal by the police as an institution or to a more or less general refusal by the police force to provide the protection conferred by the country's political and judicial institutions.
>
> **4** In short, the situation implied by the question under consideration recalls the following comments by Hugessen J.A. in Minister of Employment and Immigration v. Villafranca:[1]
>
> No government that makes any claim to democratic values or protection of human rights can guarantee the protection of all its citizens at all times. Thus, it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation. . . .
>
> **5** When the state in question is a democratic state, as in the case at bar, the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.[2]

[19] In this case, the Board concluded that Saint Vincent is a parliamentary democracy with an effective judiciary and that there are in force in that jurisdiction clear laws protecting persons such as the Applicants from assault. This conclusion was based on the evidence, among which were included the Saint Vincent and the Grenadines National Documentation Package and the Country Reports on Human Rights Practices for 2008. Having read all the documentary evidence presented to the Board regarding the country conditions, I am of the view that the Board’s finding was not unreasonable and that it did not make this finding without regard to the evidence.

[20] The Board also discussed the sufficiency of the Applicants' attempts to seek protection from the police. Despite its negative credibility findings, the Board's comment about the Applicants' attempts to obtain protection is expressed in such a way as to suggest that it addressed this point without questioning the truthfulness of the Applicants' story. The comment reads as follows: "The protection need not be perfect, and even if the claimants had difficulty with respect to one police authority in one police station, it does not mean that the entire police department nationwide is corrupt." I find nothing unreasonable in that conclusion considering the evidence about the country conditions and about the Applicants' alleged attempts to seek protection in their home state.

[21] No question was proposed for certification under paragraph 74(d) of the *Act*, and no such question will be certified.

## JUDGMENT

**THIS COURT ORDERS AS FOLLOWS:**

The application for judicial review is dismissed.

"Marie-Josée Bédard"

Judge

# FEDERAL COURT

## SOLICITORS OF RECORD

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|---|---|
| **DOCKET:** | IMM-6333-09 |
| **STYLE OF CAUSE:** | SYDNEY HAROLD ROCQUE ET AL v. MCI |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | July 21, 2010 |
| **REASONS FOR JUDGMENT:** | Justice Marie-Josée Bédard |
| **DATED:** | August 4, 2010 |

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