

Federal Court



Cour fédérale

**Date: 20101210**

**Docket: IMM-2018-10**

**Citation: 2010 FC 1259**

**Ottawa, Ontario, December 10, 2010**

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

**BETWEEN:**

**VIDA ROBINSON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act* (IRPA) for judicial review of the decision of Roslyn Ahara, Member of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated March 9, 2010, that the applicant is not a Convention refugee and not a person in need of protection.

[2] This application for judicial review will be denied for the reasons set out below.

[1] The applicant is a citizen of Saint Vincent and the Grenadines. She worked as an auxiliary (part-time) police officer in the Grenadines.

[2] The applicant is fleeing abuse from a man with whom she had a relationship with, Mr. McDowall and with whom she had two children. She fears that if returned she will be killed by Mr. McDowall.

[3] The determinative issues in this case are delay in claiming, state protection and compelling reasons.

[4] The Board accepted that the applicant was abused over a period of more than 15 years. It stated that it considered the Chairperson's Guidelines as well as the contents of the medical reports before arriving at its decision.

[5] The appropriate standard of review for the issues raised is that of reasonableness given that they are questions of fact (*Dunsmuir v New Brunswick*, 2008 SCC 9).

[6] The applicant waited 11 years before filing for asylum. The Board analyzed her explanations for not filing her claim before. It considered her ignorance of the law, reliance on others and depressive state (Dr. Devin's psychological reports) and concluded that it was not satisfied with the applicant's explanations. In the circumstances of this case, the Court is of the opinion that the delay is of such a magnitude that it played a decisive role in the decision (*Espinosa*

*v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, [2003] F.C.J. No. 1680 (QL)).

It falls within a range of possible, acceptable outcomes (*Dunsmuir* at para 47).

[7] Having examined the evidence and the arguments, I find that the Board's decision with respect to state protection was reasonable.

[8] The Board relied on country conditions document to conclude that state protection was available to the applicant should she require to return. This assertion was also made in the context of the personal situation of the applicant. It must be remembered that the applicant's claim relates to her situation more than 17 years ago. It was therefore reasonable for the Board to say that the applicant failed to rebut the presumption of state protection even though she adduced some personal experiences by individuals who have difficulties obtaining state protection in her country.

[9] As regards to the compelling reasons advanced by the applicant, the Court recognizes that subsection 108(4) of the *Immigration Refugee Protection Act* (IRPA) does not apply here because the applicant was at no time found to be a Convention refugee. The Court stated in *B.R. v Canada (Minister of Citizenship and Immigration)*, 2006 FC 269, at para 31:

In *Kudar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 648; 130 A.C.W.S. (3d) 1003, I stated that in cases where there is no finding that at one time the applicant was a Convention refugee (or a person in need of protection), the cessation of protection does not come into play and consequently the exception allowing compelling reasons arising out of past persecution cannot be triggered. ...

[10] This citation is relevant to the case at bar.

[11] For the reasons above, I find that the Court's intervention is not warranted.

[12] No question for certification was proposed and none arise.

**JUDGMENT**

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

“Michel Beaudry”

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Judge

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

**DOCKET:** IMM-2018-10

**STYLE OF CAUSE:** VIDA ROBINSON  
and  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 7, 2010

**REASONS FOR JUDGMENT:** BEAUDRY J.

**DATED:** December 10, 2010

**APPEARANCES:**

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Rafeena Rashid FOR THE RESPONDENT

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