Federal Court  Cour fédérale

Date: 20110308

Docket: IMM-3722-10

Citation: 2011 FC 269

Ottawa, Ontario, March 8, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SHAMIKA SHONETTE RYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks an order setting aside a May 5, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board (the Board), which found the applicant to be neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). The application is brought pursuant to subsection 72(1) of the *IRPA*. For the reasons that follow, the application for judicial review is dismissed.

[2] The applicant fled to Canada from St. Vincent and the Grenadines in 2008 allegedly because of her violent ex-boyfriend, who was a police officer and was jealous of her other male friends. The applicant arrived in Canada on July 8, 2008 and made her refugee claim on July 29, 2009, over a year later. When the applicant entered Canada she did not declare herself as a refugee; she merely told the port authorities that she was entering Canada for a vacation.

[3] The applicant claimed she could not return to St. Vincent because her ex-boyfriend remained a threat to her. Her claim was heard on April 29, 2010 and denied on May 5, 2010, with the finding that she was neither a Convention Refugee nor a person in need of protection.

[4] The Board rejected the applicant's claim for refugee protection for three reasons: she lacked subjective fear since she took over one year to claim refugee protection; her allegation that she was still being pursued by her ex-boyfriend was not believable; and there was adequate state protection in St. Vincent for victims of domestic violence. Each of these findings was in issue before this Court on review.

[5] The Board accepted that the applicant was abused by her ex-boyfriend for a period of several months in 2008 and that the abuse took the form of sexual assault towards the end of the relationship on three occasions. However, the Board did not believe that the applicant's ex-boyfriend continues to pursue her at present.

[6] The Board noted that the applicant omitted several facts from her Personal Information Form (PIF), all of which she advanced to explain the delay in making her claim. The PIF was silent

on key aspects of her testimony before the Board; the applicant's mother called her in June 2009 to tell her that her ex-boyfriend continues to pursue her; that her ex-boyfriend regularly makes visits to demand funds and to ask for the whereabouts of the applicant; and that when her mother refuses to pay during these monthly visits, he beats her up. Finally, while the telephone call was the determinative event which triggered her claim for status, neither the telephone call, the beating of the mother and the monthly demands for money by her former boyfriend appear in the narrative.

[7] The applicant was asked by the Board to explain their omission. The exchange between the Board and the applicant was as follows:

> MEMBER: You said earlier that Curtis was always beating up your mother. Why is this not in the PIF?
>
> CLAIMANT: Since I go to Canada he was beating up my Mom cause he think she was telling lies, but not all the time. Like once a month he comes for money and sometimes she don't give him she start like being violent towards her.
>
> MEMBER: Why is this not in your PIF?
>
> CLAIMANT: I wanted to say it – like I don't want to write everything in the PIF. I wanted to like ---
>
> MEMBER: Why not?
>
> CLAIMANT: Cause I just like want to say more to you.

[8] It was reasonable for the Board to reject this explanation. The Board weighed the evidence before it, and based on the testimony, such conclusion was open to it on the record.

[9] The applicant also contends that the Board misconstrued her evidence. While several examples of this are offered, I will deal only with three of the most serious examples of alleged

misunderstanding of the evidence. The applicant alleges that she never testified that she acted cautiously so as not to come to the attention of the police or the Immigration Authorities. However, the transcript confirms that the applicant in fact made such a statement and that the Board did not misstate her testimony. The Board also found that the applicant did not provide a clear explanation as to why she stayed in Canada for over a year without regularizing her status. The applicant takes issue with the Board's findings at paragraph 11 of the decision: "in assessing subjective fear, the panel stated, at paragraph 11 of its decision, that the applicant testified that she acted cautiously so as not to come to the attention of the police or the Immigration Authorities." Counsel argues that the applicant never made this assertion and the panel's reference to this fact amounts to a material misstatement of facts. Ms. Ryan very clearly made such an assertion as evidenced by the transcript of the hearing:

> MEMBER: At first. When did you realize you were illegal?
>
> CLAIMANT: Well, after I see I was going to school, getting school, and then after at the school board they give me something and from there I saw it was not legal.
>
> MEMBER: It was your what?
>
> CLAIMANT: When I go into school
>
> MEMBER: Yes.
>
> CLAIMANT: ---they give you your form like---
>
> MEMBER: Yes.
>
> CLAIMANT: ---and from there I saw I was illegal.
>
> MEMBER: And who put that down?
>
> CLAIMANT: The school cause —
>
> MEMBER: The school?
>
> CLAIMANT: Yeah.

MEMBER: So they knew you were illegal?

CLAIMANT: Yeah.

MEMBER: Did the school take any action?

CLAIMANT: No.

MEMBER: Did you come to the attention of immigration?

DESIGNATED REPRESENTATJVE: No.

CLAIMANT: No.

MEMBER: Did you realize you could have been deported?

CLAIMANT: I know I could have been deported, but I tried to keep it on the down low.

MEMBER: Tried to keep it what?

CLAIMANT: I tried to keep it on the down low, like don't get in violence and stuff like that, cause that's what you get when like if the police got to find out you can get deported.

MEMBER: So you tried to keep

DESIGNATED REPRESENTATIVE: Behave herself.

CLAIMANT: I behave myself.

MEMBER: You what?

CLAIMANT: I tried to behave myself and don't get anything.

MEMBER: Don't get into any trouble?

CLAIMANT: Yeah
[Emphasis added]

[10] It is clear that, as the Board found, "the applicant testified that she acted cautiously so as not to come to the attention of the police or the Immigration Authorities."

[11] It is well established that the Board, in assessing a subjective fear of persecution, can take into account the claimant's behaviour, and delay is an important factor. While not a determinative factor, in the absence of any credible explanation, it may assume a decisive role. The Board had before it evidence that the applicant was aware that she could be deported, but took no steps to make a claim. The record was also clear that even after the important telephone call, she waited one month before making a claim. No reviewable error arises from the conclusions drawn by the Board as to the applicant's explanation.

[12] I will turn to the second alleged material misstatement of the evidence. Counsel for the applicant argues that the Board made an error at paragraph 16 of its decision where it states that the "claimant asked her parents not to approach state authorities." Ms. Ryan did make such a statement but it was only in reference to her mother:

> CLAIMANT: Yeah, I tell my family. And my Mom wanted to like report it to his boss but I tell --I beg my Mom "Please don't do it because you're going to cause me more danger than what he's doing to me". Because my Mom wanted to go and tell his boss "Oh, you need to throw him out of the force because he's not good and stuff' but I beg my Mom "Please don't go."

[13] The applicant clearly states that she begged her mother not to report her ex-boyfriend to his boss, presumably a more superior police officer. But she did not say "parents." The applicant said "Mom." Ms. Ryan testified that she did not speak to her father, that he was a vagrant and that he had never been in her life. The use of the word "parents" would thus appear to be an error but it is, on any reading of the decision, immaterial.

[14] Finally, counsel for the applicant also takes issue with the finding of the Board at paragraph 20 of the decision, which states:

> [t]here is no corroborative evidence from the claimant's mother nor [sic] any supportive evidence from the claimant that she has been sending money to provide to her perpetrator via her mother. Therefore, we do not find this portion of the claimant's testimony to be credible."

[15] Counsel argues that the applicant never stated that she had been sending money to her mother to provide funds for the perpetrator. The applicant's testimony was that her assailant continued to search for her, under the guise of recovering all the money he gave the applicant during the time she was with him. However, the text of a letter tendered in evidence by the applicant was:

> Mama ask me to beg you to please send us anything you can before the end of September. Curtis says he is coming to collect money from us by the end of September and if we don't have anything for him, he will cause us problem.

[16] The Board's conclusion is a reasonable inference to be drawn from this letter, and as such cannot be revisited even though a different interpretation may be offered.

[17] The crux of the applicant's second argument is that the Board made a material error in its assessment of the evidence. The applicant contends that this error vitiates the Board's finding with respect to both delay and subjective fear. The central error is found in paragraph 10, where the Board states:

> However, according to the claimant, in June 2008 she received a phone call from her mother indicating continuing pursuit on the part of the perpetrator because he had heard she had returned to St. Vincent. It was as a result of this phone call that the claimant decided to make a refugee claim.

[18] The applicant was not in Canada in June 2008. She left for Canada in July 2009. The Board was clearly in error. That said, if the decision must be read as whole, as it must, it is clear that the Board did not misunderstand the evidence before it and that the error, was immaterial to the Board's disposition of the matter. At many points throughout the reasons, the Board indicates that it clearly understood the call to have been made in June 2009. See for example, Reasons for Decision, paragraphs 3, 4, 9 and 16. While there is an error in the date, there is no error in the chronology of events expressed and understood by the Board.

[19] The Board continued to examine the issue of state protection, and concluded that:

> Similarly, in this case, the panel does not find that the police and judicial system of St. Vincent are so ineffective as to be inadequate, and that for that reason it should find that state protection is not available. Moreover, there are cases from the Federal Court that have upheld the Board's decisions on the availability of state protection in St. Vincent for victims of gender-based violence. [*Dean, Gilda Oustrid v M.C.I.* (F.D., no. IMM-155-09), Lagacé, July 31; 2009 FC 772; *Samuel, Roxie Mulassa v M.C.I.* (F.C., no. IMM-3505-08), Barnes, Feb. 24, 2009; 2009 FC 198; *Young, Cecile v M.C.I.*, (F.C. no. IMM-4933-07), Lagacé, May 21, 2008; 2008 FC 637; *Adams, Joan v M.C.I.* (FC, No. IMM-3820-06), Barnes, May 17, 2007; 2007 FC 529.] It is noted in *Samuel*, that evidence was adduced that the authorities were in fact taking appropriate action, despite the presence of family members of her persecutor on the police force and acknowledging domestic violence as being a serious problem. The preponderance of the objective evidence regarding current country conditions suggest that, although not perfect, there is adequate state protection in St. Vincent for victims of domestic violence.

[20] In this case the Board concluded that state protection was not so ineffective as to be inadequate. In reaching this conclusion the Board undertook a thorough and balanced review of the evidence, acknowledging both the serious nature of domestic abuse in St. Vincent and the

limitations on the state to assist. In any event, given the facts as found by the Board, there is no evidentiary basis on which the presumption of state protection could be rebutted. In light of the standard of review, the Board's decision in this regard cannot be assailed.

[21] The application for judicial review is therefore dismissed.

[22] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SHAMIKA SHONETTE RYAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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