

Federal Court



Cour fédérale

Date: 20110420

Docket: IMM-4902-10

Citation: 2011 FC 327

Ottawa, Ontario, April 20, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

MARCIA AGATHA RALPH,
GARVIN GABRIEL RALPH,
SAGEENA NAKITA RALPH

Applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

AMENDED REASONS FOR ORDER AND ORDER

[1] The principal applicant, Marcia Agatha Ralph, is a citizen of St. Vincent and the Grenadines (SVG) who arrived in Canada in December, 2004 along with two of her three children (Minor applicants Garvin Garbriel Ralph and Sageena Nakita Ralph herein). The applicant's third child arrived in Canada independently. The applicant made a claim to the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) in February, 2009, based on abuse and violence by her two former partners in SVG. The Board found that the applicants were neither

Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, 2001, c. 27 (IRPA)*. The Board rejected the claim based on findings of credibility, noting the three and one half year delay in advancing the claim for status was indicative of a lack of subjective fear and that the applicant had failed to rebut the presumption of state protection. For the reasons that follow, this application for judicial review is dismissed.

[2] The applicant's claim was predicated on a fear of further abuse by her first partner, Joel, and her second partner, Onan. Onan arrived in Canada in 2005.

[3] The Board found that the applicant failed to prove that she had been abused by her first partner Joel, or that Joel continued to be a threat to her. Although there was some contradictory evidence as to when their relationship ended, the Board found that it ended in 1991. In her amended Personal Information Form (PIF), the applicant indicated that Joel came by her house once while she was living with Onan, but no reference was made to threats or violence, or, for that matter, to subsequent visits. The Board concluded that given the length of time since their relationship ended, some 19 years, there was no basis upon which it could be concluded that she had a reasonable basis for her fear.

[4] Upon Onan's arrival in Canada, the claimant resumed cohabiting with Onan, along with her children. The Board again drew a negative inference as to the applicant's subjective fear by reasons of the inability of the applicant to provide an explanation for behavior inconsistent with the very basis of her claim. The Board was clearly troubled by the fact that although the applicant fled SVG to escape her second partner Onan, they were again living as a family. To compound the Board's

concern the applicant testified that she left her two children behind with Onan, but in her original PIF she stated that she had brought her children with her. The claimant was asked by the Board to explain the inconsistency in what was considered to be a critical component of her claim. No response was provided, and the Board drew a negative inference.

[5] Finally, the applicant testified that Onan had sexually assaulted her daughter, who, then 13, became pregnant. When pressed by the Board to explain why this was omitted from her narrative, alternative explanations were tendered; either that she was pressed for time in completing her narrative or that her counsel had ill-advised her as to the significance of this issue. This too went to the applicant's credibility, in the Board's view.

[6] In sum, the Board's findings on credibility are well-rooted in the evidence, and the Board's conclusion that the claimant does not possess a well-founded fear of persecution in SVG is reasonable. I find the decision falls within a range of possible acceptable outcomes having regard to the law and facts.

[7] In light of these findings, and their implications for the subjective and objective fear components of the tests under sections 96 and 97 of the IRPA, it is unnecessary to address the issues related to state protection. In this regard, however, I note that I do not consider the reasoning or analysis with respect to the existence of state protection in SVG to be compelling.

[8] This application for judicial review is therefore dismissed.

[9] No question arises for certification.

ORDER

THIS COURT ORDERS that:

1. This application for judicial review is dismissed.
2. No question arises for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4902-10

STYLE OF CAUSE: MARCIA AGATHA RALPH, GARVIN GABRIEL
RALPH, SAGEENA NAKITA RALPH v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 15, 2011

AMENDED
REASONS FOR ORDER
AND ORDER:

RENNIE J.

DATED: APRIL 20, 2011

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