

Federal Court



Cour fédérale

Date: 20110627

Docket: IMM-4888-10

Citation: 2011 FC 778

Ottawa, Ontario, June 27, 2011

**PRESENT:** The Honourable Mr. Justice O'Keefe

**BETWEEN:**

**PERLETHA AVERISA PETER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 12, 2010, wherein the applicant was determined not to be a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant requests that the decision be set aside and the claim remitted for redetermination by a different member of the Board.

### **Background**

[3] Perletha Averisa Peter (the applicant) is a citizen of St. Vincent and the Grenadines (St. Vincent).

[4] In 2005, the applicant began a relationship with Desroy John (DJ) who she then lived with for several years. Over time, DJ became violent and controlling with the applicant.

[5] In June 2007, the applicant decided to leave DJ while she was two months pregnant. He tried to stop her and threatened to kill her. The applicant alleged that DJ assaulted her so badly that she had a miscarriage and a neighbour took her to a local clinic where she was treated.

[6] The applicant and her mother approached the police about the abuse, but the applicant states that they did not take a report and treated the incident as a lovers quarrel.

[7] Following her miscarriage, the applicant's mother took her to the family home. The applicant stayed there until her mother arranged for her to go to Canada where they had a family friend.

[8] The applicant arrived in Canada in 2007. She lived at the home of the family friend for several years where she was required to cook, clean and care for the woman's children without pay.

[9] In January 2010, the applicant fled this woman's house to a local church. She claimed refugee protection in March 2010.

### **Board's Decision**

[10] The Board reviewed the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* (the Gender Guidelines) and noted that women making gender-related claims of persecution may face special obstacles when testifying on sensitive matters. The Board stated that it was sensitive to cross-cultural misunderstandings and the social, cultural, traditional and religious norms impacting the applicant's testimony.

[11] The Board found the determinative issues to be credibility, delay and state protection.

[12] The Board reviewed jurisprudence from this Court and the Federal Court of Appeal finding that inconsistencies and contradictions may be a basis to make a negative credibility finding.

[13] The central concern for the Board was the absence of corroborating medical documentation of the applicant's miscarriage. The Board did not find the applicant's explanation that she did not think the hearing would occur so quickly to be a reasonable explanation for the lack of documentation because the applicant knew the date of the June hearing from April 22, 2010. The

Board found it unreasonable that the applicant did not personally take steps to secure medical documentation by writing to the clinic. The Board found it implausible that the medical clinic would refuse to issue a report about a serious medical issue such as a miscarriage. In the absence of persuasive evidence, the Board concluded that there was insufficient evidence that the applicant suffered a miscarriage and abuse by DJ.

[14] The Board also drew negative inferences from the following:

- The applicant's failure to mention a facial scar that she alleged was a result of abuse by DJ at any point before the hearing;
- The implausibility that in the three years since leaving St. Vincent, the applicant's mother would not have mentioned any contact between DJ and the applicant's family in St. Vincent and then mentioned it after the applicant had submitted her Personal Information Form (PIF);
- That the applicant's mother's letter did not mention abuse the applicant suffered from DJ prior to June 2007 and the applicant's explanation that her mother did not know of the abuse despite the very small size of the community in which they lived was implausible.

[15] The Board also concluded that there is no reliable evidence that DJ is still looking for the applicant.

[16] The Board gave little probative weight to the submitted psychologist's report. The Board found the report to be only as valid as the truth of the facts on which it was based and given the Board's negative credibility findings, it found the probative value of the report to be low.

[17] The applicant did not claim refugee protection until she had been in Canada for over two years. The Board found the applicant's explanation for delay – being mistreated by the family friend - to be untrustworthy as she had not made a report to any official in Canada about this mistreatment. The Board found delay to be inconsistent with a person living in fear of persecution.

[18] Finally, the Board concluded that there is adequate state protection in St. Vincent. The Board noted that St. Vincent is a democracy with an independent judiciary indicating a strong presumption of state protection. The Board considered several reports on domestic violence in St. Vincent noting the laws against it and the ability for victims to apply for protection orders. It also highlighted police training on domestic violence. The Board found that the applicant approached the police one time without any medical documentation of the abuse she suffered. The Board concluded that the applicant did not take reasonable steps to seek state protection and did not provide evidence of similarly situated individuals let down by the state.

### **Issues**

[19] The issues are as follows:

1. What is the appropriate standard of review?
2. Did the Board err in finding that delay defeated the applicant's subjective fear?
3. Did the Board err in its assessment of the applicant's credibility?
4. Did the Board err in its state protection analysis?

**Applicant's Written Submissions**

[20] The applicant submits that the Board erred in requiring corroborating evidence for the applicant's allegations.

[21] Further, the applicant argues that the Board erred in making a negative credibility finding based on minor inconsistencies or omissions. Credibility findings which result in a negative decision must be about issues central to the issue of the applicant's persecution.

[22] The applicant also submits that the Board erred in its treatment of the psychologist's report. The Board should not have determined the applicant not to be credible before assessing all of her evidence, including the psychologist report.

[23] Further, the applicant argues that the Board did not have regard for the totality of the evidence in making its findings on state protection. The Board rejected the applicant's evidence that she went to the police on a number of occasions and protection was not forthcoming. This was not contradicted by evidence that there is not a complete breakdown in St Vincent or that it is a democracy. The Board ignored the Response to Information Request (RIR) VCT 102962.E that states that police are not effective in combating domestic violence in St. Vincent. The Board failed to address how any measures put in place to combat domestic violence are not translated into protection in reality.

[24] Finally, the applicant submits that the Board erred in rejecting her explanations for the delay in claiming refugee protection that she was exploited by someone who said that she would help her regularize her status. The Board's insistence that the applicant should have reported the woman is unreasonable.

[25] Given the multiple errors, according to the applicant, the Board's decision cannot stand.

### **Respondent's Written Submissions**

[26] The respondent submits that the Board's credibility findings were reasonable. It was open to the Board to assess the plausibility of the applicant's story by considering it and the manner in which she told it and testing this against the other evidence and the probabilities which a practical and informed person would recognize. The Board was also entitled to make findings based on implausibilities, common sense and rationality. The presumption of truth does not apply until an applicant has established to the Board that he or she is generally credible.

[27] Given the Board's credibility findings, it was open to the Board to draw an adverse inference from the applicant's failure to provide medical documents corroborating her claim. The applicant's miscarriage was an important element of her claim as it related to the abuse from her former boyfriend and precipitated her leaving St. Vincent. The Board found that the applicant had not taken reasonable steps or provided a reasonable explanation for the lack of corroborating documentation.

[28] The respondent further submits that the Board did not err in assigning little weight to the psychologist's report. Since the Board doubted the applicant's veracity, it doubted the account that she gave the psychologist. In addition, the psychological condition could not inherently prove the facts alleged by the applicant.

[29] Delay in claiming refugee protection was relevant for the Board's assessment of the applicant's statements and actions, according to the respondent. The respondent highlights however, the Board was entitled to reject the applicant's claim on the basis of lack of credibility alone.

[30] Finally, the respondent submits that the Board conducted an exhaustive review of the documentary evidence on state protection. The applicant contacted the police only once in St. Vincent. A single refusal by the authorities will not meet the high threshold necessary to rebut the presumption of state protection. The applicant did not provide clear and convincing evidence that St. Vincent would not provide adequate protection.

### **Analysis and Decision**

[31] **Issue 1**

#### **What is the appropriate standard of review?**

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).



[32] Assessments of credibility are essentially pure findings of fact and it was Parliament's express intention that administrative fact finding would command this high degree of deference (see *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at paragraph 46). This Court must not substitute its assessments for those of the Board unless the applicant can demonstrate that the findings of fact were made in a perverse or capricious manner without regard to the material before it (see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 (FCA) at paragraph 24).

[33] Assessments of the adequacy of state protection also raise questions of mixed fact and law and is also reviewable against a standard of reasonableness (see *Hinzman, Re*, 2007 FCA 171 at paragraph 38).

[34] **Issue 2**

Did the Board err in finding that delay defeated the applicant's subjective fear?

I find the Board's handling of the applicant's explanation regarding delay in claiming refugee protection in Canada to be harsh. The applicant testified, and the Board accepted, that she was held as an indentured servant for several years when she arrived in Canada. The Board found, however, that her delay in claiming refugee protection was evidence of a lack of subjective fear because she did not go to the authorities after escaping from the woman with whom she lived. Given her lack of immigration status and the conditions she lived under for several years in Canada, this seems an unreasonable conclusion.

[35] That said, the Board accepted that while delay may form part of its analysis, it rarely is the basis of rejecting a refugee claim. The Board also considered the issues of credibility and state protection. For this reason, the Board's conclusions on delay do not affect the overall reasonableness of the Board's decision, as the determination can stand on the other grounds alone.

[36] **Issue 3**

Did the Board err in its assessment of the applicant's credibility?

The Board made a negative credibility finding based on several implausibilities or inconsistencies between the applicant's PIF and her oral testimony, as well as the lack of corroborating evidence.

[37] Mr. Justice James Russell held in *Higbogun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 445 at paragraph 39, that "inconsistencies and contradictions create a perception of a lack of credibility." Further, inconsistencies in a refugee claim may be held against an applicant (see *Sun v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1255). The Board is in the best position to assess the oral testimony and evidence presented by the applicant and to draw inferences from that evidence. The Board's negative inferences were based on common sense and not outside the range of reasonable conclusions.

[38] Concerning corroborating evidence, the applicant's claims rest primarily on the abuse she suffered during one incident where she then suffered a miscarriage.

[39] Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, states that the onus is on the applicant to provide acceptable documents to establish the elements of her claim. Pursuant to Rule 7, a claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them. The Board reasonably found that the applicant had not provided any documentary evidence or sufficiently explained why that was the case. The applicant's response to the Board's question of why she herself did not attempt to secure a medical report from the clinic was "I have no reason" (tribunal record, page 176). It was reasonable for the Board to consider this to be an insufficient explanation for the lack of evidence supporting her claim.

[40] Concerning the psychologist report, where the report is based entirely on the applicant's story, which the Board disbelieves, it is open to the Board to afford the report little weight (see *Ameir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 876 at paragraph 27). The report in this case was not based on independent evidence but rather evidence emanating directly from the applicant. It was reasonable for the Board to afford it low probative weight. In addition, the respondent is correct to note that the applicant's psychological condition could not inherently prove the facts that she alleged.

[41] **Issue 4**

Did the Board err in its state protection analysis?

The applicant submits that the Board ignored evidence before it in assessing state protection.

[42] Contrary to the applicant's submissions, there was only evidence before the Board that she approached the police in St. Vincent on one occasion, not several. It was reasonable for the Board to find that a single incident of refusal of assistance by the authorities may be insufficient to rebut the presumption of state protection (see *Kadenko v Canada (Minister of Citizenship and Immigration)*, 143 DLR (4th) 532, [1996] FCJ No 1376 (FCA) at paragraph 5; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134 at paragraph 9).

[43] The applicant also had the opportunity to present evidence of similarly situated people let down by the state protection arrangement (see *Ward v Canada (Minister of Employment and Immigration)*, [1993] 2 SCR 689).

[44] The applicant pointed to one document that she argues is evidence of a lack of adequate state protection which the Board did not refer to. This RIR VCT102962.E indicated that police officers have limited knowledge on domestic violence and few treat the issue seriously and can be disrespectful or impatient with victims.

[45] There is a presumption that Board members have considered all of the evidence before them (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD)). The Board need not summarize all of the evidence in its decision so long as it takes into account evidence which may contradict its conclusion and its decision is within the range of reasonable outcomes (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL); *Rachewiski v Canada (Minister of Citizenship and Immigration)*, 2010 FC 244 at paragraph 17).

[46] While the Board did not specifically refer to the RIR mentioned by the applicant, I do not find its content demonstrative of similarly situated people let down by the authorities in St. Vincent such that it is contrary to the conclusion reached by the Board on the adequacy of state protection.

[47] Given the above analysis, I would dismiss the application for judicial review.

[48] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

[49] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

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Judge

## ANNEX

**Relevant Statutory Provisions***Immigration and Refugee Protection Act, SC 2001, c 27*

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.



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

**DOCKET:** IMM-4888-10

**STYLE OF CAUSE:** PERLETHA AVERISA PETER  
- and -  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 25, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** June 27, 2011

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