

Date: 20110627

Docket: IMM-6136-10

Citation: 2011 FC 782

Ottawa, Ontario, June 27, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

**KAREN ADELIN KNIGHTS
R'KEEM JESIAH KNIGHTS**

Applicants

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 September 16, 2010, wherein the Board determined that the applicants were not Convention refugees or persons in need of protection.

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

Background

[3] Karen Adeline Knights (the applicant) is a citizen of Trinidad and Tobago (Trinidad).

[4] In October 2007, the applicant was the victim of a violent rape and robbery in her home in Trinidad. She reported the assault to the police who detained her attacker the following day. The police also took a written statement from the applicant.

[5] The applicant was harassed by several members of the community, urging her not to follow through with testifying against her assailant. She testified at an enquiry in April 2008 and the case was sent to the High Court for trial.

[6] The applicant's attacker was charged and remained in custody until he was released on bail in August 2008. The applicant heard that her attacker was released on bail while visiting her sister in Canada. Instead of returning to Trinidad, she remained in Canada and claimed refugee protection.

Board's Decision

[7] The Board reviewed the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* and noted that women making gender-related claims of persecution may face special obstacles when testifying on sensitive matters.

[8] The determinative issue for the Board was state protection.

[9] The Board reviewed the jurisprudence from the Supreme Court and the Federal Court of Appeal noting that refugee protection is a surrogate protection and that there is a presumption that states can protect their citizens which can only be rebutted by clear and convincing evidence of the state's inability to protect.

[10] The Board found that Trinidad is a democratic country which generally respects human rights. While acknowledging that the evidence shows that domestic violence is a serious problem, the Board reviewed the services available for female victims of domestic violence including training of police forces and shelters.

[11] The Board focused on the applicant's experience. Her assailant was detained the same day she reported the assault to the police, he was charged with the offences and committed to stand trial. He was then released on bail. The Board found that the applicant received adequate protection from the state.

[12] The Board considered the profile of the perpetrator, finding that he was a local criminal who the applicant could not tie to any particular gang or show that he has influence over the state authorities.

[13] The Board noted that the applicant approached the police at other times for assistance with threats and harassment. She chose not to follow their advice of getting a restraining order on one occasion and on another occasion, did not provide sufficient identifying information for the police to assist her.

[14] The Board acknowledged that due to gang-related crime, witnesses to crime are at a higher risk of violence in Trinidad. The Board also referenced documentary evidence that the criminal system is operating with insufficient resources. However, the Board concluded that the applicant had received adequate state protection and that protection would be forthcoming if she were to return to Trinidad.

[15] The Board also rejected the compelling reasons argument made by the applicant's counsel. It found that this only applies where there has been a change in circumstances and the applicant would have been a refugee but for that change. The Board did not consider this to be the case.

Issues

[16] The issues are as follows:

1. What is the appropriate standard of review?

2. Did the Board err in its analysis of state protection?

Applicants' Written Submissions

[17] The applicant submits that the Board ignored evidence that six state witnesses were shot last year in Trinidad, as well as evidence that the criminal system is in a state of collapse. The Board's conclusion that state protection is available despite this evidence was unreasonable. The Board did not assess the personal circumstances of the applicant as a woman returning to Trinidad to act as a prosecution witness in her assault.

[18] The applicant also argues that the Board's finding that she could have pursued other avenues of recourse for protection was not applicable.

[19] The applicant further submits that the Board erred in emphasizing the efforts of the state not the effectiveness of the efforts. The Board erred in finding that willingness of the state to provide protection for victims of gender violence establishes the effectiveness of such protection. The applicant submits that the effectiveness of state protection must form part of the Board's analysis of the adequacy.

Respondent's Written Submissions

[20] The respondent submits that the Board applied the appropriate legal test for assessing state protection. The Board determined that the protection offered by a state need not be perfect but that

the state must undertake serious efforts to protect its citizens. The respondent emphasizes that the settled test for assessing state protection is the adequacy not effectiveness of the protection. It is also not enough for the applicant to show that her state has not always been effective at protecting people in her situation.

[21] The Board reasonably determined that state protection was available to the applicant in her circumstances. The Board also noted that she had received adequate protection relating to the assault prior to arriving in Canada. The police responded to her situation and the judicial system worked in her case.

[22] The respondent argues that the Board did not ignore evidence of the applicant's fear as a witness in her trial. The Board accepted that there is violent gang-related crime and witnesses face a higher risk. However, the Board examined the profile of the assailant and noted that he was a local criminal and not tied to any particular gang. The Board acknowledged the evidence contrary to its position but reasonably determined though that the deficiencies in policing were not generalized.

Analysis and Decision

[23] **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).

[24] Assessments of the adequacy of state protection 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).

[25] **Issue 2**

Did the Board err in its analysis of state protection?

I find, for the following reasons, that the Board did not err in its analysis of state protection.

[26] The Board correctly applied the test for assessing state protection. The Board found that it must assess the adequacy of the protection provided by Trinidad (see *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraphs 18, 19 and 30; *Cosgun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 400). While the Board must assess whether the protection was adequate as opposed to effective, it must also consider the quality of the institutions providing that protection (*Katwaru v Canada (Minister of Citizenship and Immigration)*, 2007 FC 612 at paragraph 21). The Board did so in this case.

[27] The Board considered the specific circumstances of the applicant. It noted that she was violently raped and robbed in her home. It considered the actions of the police in responding to her assault as well as the behaviour of the judiciary. The Board acknowledged counsel's submission that "since the claimant testified at the enquiry and would be subpoenaed to testify at the High Court trial, there is even greater risk to the claimant". The Board then assessed the identity of the applicant's perpetrator finding that he was a local criminal in a small community who is not tied to any particular gang. The Board concluded that the applicant's perpetrator is unlikely to have strong

influence on state authorities to obtain impunity. This was a reasonable analysis of the specific circumstances of the applicant's situation.

[28] Further, the Board did not ignore the evidence before it, as submitted by the applicant. The Board acknowledged that violence against women is a serious problem in Trinidad. It reviewed how the police respond to gender violence; that there are police being trained to deal with these crimes; that legal aid, shelters and crisis centers are available; and that there is a government division devoted to gender affairs. The Board directly stated that it recognized that the "bulk of violent crime in Trinidad is gang-related, and witnesses to crime are at a higher risk." It further directly noted that one article describes the criminal justice system as being in a state of "virtual collapse". However, the Board determined that while there are discrepancies in documentary sources, adequate state protection exists for victims of gender abuse. It found that the evidence demonstrates that police corruption and deficiencies are not generalized and are being addressed by the government.

[29] Given the above comments, I cannot find that the Board's assessment of the availability of state protection in Trinidad was outside of the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" as per the reasonableness standard in *Dunsmuir* above, at paragraph 47.

[30] As such, I would dismiss the application for judicial review.

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

JUDGMENT

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

“John A. O’Keefe”

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.

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 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,

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) 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

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) 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.

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 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

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

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

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-6136-10

STYLE OF CAUSE: KAREN ADELINE KNIGHTS
R'KEEM JESAJAH KNIGHTS

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 1, 2011

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

DATED: June 27, 2011

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