Federal Court  Cour fédérale

Date: 20110926

Docket: IMM-414-11

Citation: 2011 FC 1095

Ottawa, Ontario, September 26, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

CATHY DEYMIA FRANCIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Cathy Deymia Francis came to Canada fleeing domestic violence in Saint Lucia. While not questioning the veracity of Ms. Francis' story of serious physical and sexual abuse suffered at the hands of her former domestic partner, the Refugee Protection Division of the Immigration and Refugee Board nevertheless dismissed her claim for refugee protection on the basis that adequate state protection was available to her in Saint Lucia.

[2] At the conclusion of the hearing I advised the parties that I would be allowing this application as I was satisfied that the reasons given by the Board for rejecting Ms. Francis' claim were inadequate. These are my reasons for coming to that conclusion.

Background

[3] Ms. Francis was physically and sexually assaulted by her partner on a number of occasions between July of 2008 and March of 2010. Several of these assaults resulted in serious physical injuries to Ms. Francis.

[4] According to Ms. Francis, she went to the police station after a particularly bad beating in order to make a report. She was told that the officer she was dealing with had more pressing things to attend to, and that she should "go home and give [her] man a good loving and all will be well". She says that she left the station in tears, not knowing what else to do.

[5] A second attempt to seek assistance from the police ultimately led to Ms. Francis obtaining a restraining order from the Family Court. This order did not, however, prevent Ms. Francis' partner from coming to her home and holding her prisoner for a week, during which time he assaulted her and burnt her hand with hot oil. Ms. Francis was finally able to call her son when her partner was sleeping, and the son then contacted the police.

[6] By the time an officer came to Ms. Francis' home, her partner had left. According to Ms. Francis, the police officer did nothing other than tell her to call the officer if she saw her partner around. Ms. Francis made a number of follow-up calls to the police in order to find out what was

happening, but it does not appear that any investigation of her allegations was ever carried out, nor was her former partner ever arrested or charged with an offence.

Analysis

[7] The Board's reasons consist of 12 paragraphs. The first six paragraphs provide factual background information and identify state protection as the determinative issue in the case. Paragraph seven is a three-page single-spaced extract of an IRB Response to Information Request with respect to the availability of state protection for women in Saint Lucia. The issue of state protection is dealt with in paragraphs eight to ten of the Board's reasons, and the last two paragraphs of the decision deal with the disposition of the case.

[8] Paragraph eight contains the Board's finding that adequate state protection mechanisms are available for battered women in Saint Lucia. The paragraph states, in its entirety, that:

> States are not required to provide perfect protection and, while the sources within the documentary evidence above are mixed, I find on a balance of probabilities based upon it that Saint Lucia has at least adequate state protection mechanisms for women in place.

[9] Ms. Francis argues the Board did nothing more than a "cookie cutter" analysis. I do not agree. The Board did no analysis whatsoever. All the Board did was cut and paste a lengthy extract from country condition information into its decision, and then state a conclusion.

[10] The information relied upon by the Board to support its finding of adequate state protection for female victims of domestic violence in Saint Lucia was not consistent. While portions of the

document suggested that police take complaints of domestic violence seriously, other portions of the same document question the adequacy of that protection.

[11] Moreover, some portions of the Response to Information Request that were included in the Board's decision actually suggest that there is little willingness on the part of the Saint Lucian police to investigate or prosecute individuals involved in domestic violence and few resources available to support battered women and their families.

[12] While recognizing that the evidence before it was indeed "mixed", the Board provided no explanation as to why it found that the portions of the Response to Information Request that supported a finding of adequate state protection should be given greater weight than those portions that led to the opposite conclusion. Indeed, there is no analysis whatsoever of the adequacy of the state protection available to battered women in Saint Lucia. As such, the Board's reasons are clearly inadequate.

[13] The Board does go on in paragraphs nine and ten of its decision to briefly examine Ms. Francis' own efforts to access state protection in Saint Lucia. After reviewing the treatment she received at the hands of the police, the Board concluded that "local failures to provide effective police [protection] do not amount to a lack of state protection *unless part of a broader pattern, and that has not been established here*" [emphasis added].

[14] I have already addressed the Board's failure to analyze the "broader pattern" in relation to the adequacy of state protection for victims of domestic violence in Saint Lucia. To the extent that

the Board based its finding regarding the inadequacy of Ms. Francis' own efforts to seek police protection on its finding regarding the "broader pattern", the reasons are similarly insufficient.

[15] Whether Ms. Francis should have been expected to attempt to do more than she did to access state protection in Saint Lucia depended on whether state protection could reasonably have been expected to be forthcoming.

[16] There is no requirement that a victim of domestic violence make repeated attempts to access state protection if the country condition information shows that the state in question is unwilling or unable to assist victims such as the claimant. The complete failure of the Board to come to grips with this fundamental question means that its reasons were insufficient and that the application must be allowed.

[17] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and

2. No serious question of general importance is certified.

‘Anne Mactavish”
Judge

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-414-11
STYLE OF CAUSE:	CATHY DEYMIA FRANCIS v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 21, 2011
REASONS FOR ORDER AND ORDER:	MACTAVISH J.
DATED:	September 26, 2011

APPEARANCES:

Richard Odeleye	FOR THE APPLICANT
Amy King	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Babalola, Odeleye Barristers and Solicitors North York, Ontario	FOR THE APPLICANT
Myles J. Kirvan, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT