

Federal Court



Cour fédérale

Date: 20111125

Docket: IMM-1794-11

Citation: 2011 FC 1363

Ottawa, Ontario, November 25, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ELAINE MICHELLE RICHARDS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Ms. Elaine Michelle Richards, is a citizen of St. Vincent and the Grenadines. She seeks judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) of the decision of the Immigration and Refugee Board, Refugee Protection Division that found that she was not a Convention refugee or a person in need of protection.

[2] For the reasons that follow the application for judicial review is granted.

BACKGROUND

[3] Ms. Richard's ex-partner, Keith, is a police officer in St. Vincent and the Grenadines. The applicant alleges that he was abusive towards her. She made a complaint to the local police inspector. The inspector refused to intervene describing the matter as a "family problem."

[4] Ms. Richards came to Canada in January 2001 and in 2004 tried to obtain permanent resident status through the sponsorship of her then Canadian citizen common law partner. She says that he also became abusive and the relationship ended in 2009, as did the sponsorship application. Ms. Richards then applied for refugee status and also applied for an exemption on humanitarian and compassionate grounds.

[5] Ms. Richards says she delayed in applying for protection because she was unaware of the protection afforded by Canada to refugees and was only informed by her immigration consultant of the possibility of applying for that status when the sponsorship application failed.

DECISION UNDER REVIEW

[6] The Board was satisfied with the applicant's credibility. The determinative finding was the availability of adequate state protection. The Board cited a decision by Mr. Justice Mainville (as he then was), *James v Canada (Minister of Citizenship and Immigration)*, 2010 FC 546, which referenced negative findings regarding the availability of state protection in the Board's national

documentation package in St. Vincent and the Grenadines: in particular, a request for information document regarding gender related violence.

[7] The Board found that the information in the package was not exclusively negative on the availability of state protection. The Board noted that the document on gender related violence cited by Justice Mainville in *James* had been updated and enumerated laws, procedures and services that were available to victims of violence in St. Vincent. The Board was not satisfied that the applicant had rebutted the presumption of state protection. It found that the applicant should have taken additional steps to access protection.

ISSUES

[8] In her written submissions, the applicant argued that her right to a fair hearing before the Board was breached by the incompetence of her counsel. She contended that she was denied an opportunity to be heard when her counsel did not adequately prepare her for the hearing and did not fully elicit her story when the Board member asked no more than four questions.

[9] At the hearing of this application, I advised counsel that the record before me did not appear to provide evidence that would rebut the presumption that counsel's conduct fell within the wide range of reasonable professional assistance: *R. v G.D.B.*, 2000 SCC 22, [2000] 1 SCR 520 at para 27. In the result, counsel restricted her arguments to the merits of the Board's finding that state protection would be available to the applicant in St. Vincent.

ANALYSIS

[10] Decisions regarding the availability of state protection concern issues of mixed fact and law and are reviewed on the reasonableness standard: *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38.

[11] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 at para 47.

[12] Here, the applicant submits that the Board erred by conflating state intentions with state practice, by ignoring evidence that protection is not available to the victims of gender related violence in St. Vincent and the Grenadines and by not considering the applicant's specific situation, notably the fact that her alleged abuser is a policeman.

[13] The respondent contends that as the applicant's failed complaint to the police occurred over 10 years ago, it was reasonable for the Board to give greater weight to the current country condition documentation. The respondent also submits that the Board did not ignore the fact that the applicant's abuser was a policeman. However, being a decade remove from the incident, the Board reasonably concluded that this was not sufficient to prove the inability of St. Vincent and the Grenadines to protect.

[14] While the member acknowledges that the evidence before the Board was contradictory and that documents in the National Documentation Package on St. Vincent and the Grenadines treat state protection for victims of domestic violence negatively, the member does not address the contradictory evidence nor does his reasons explain why he chose to prefer the evidence that demonstrated that state protection would be forthcoming.

[15] The bulk of the Board's decision is taken directly from document 5.3 of the National Documentation Package. This reference enumerates the existing legislation in St. Vincent, proposed legislative measures and the government's intentions regarding services for victims of domestic violence. This focuses more on good intentions and possible future measures than the actual protections in place. The jurisprudence is clear that findings of state protection cannot solely rely on government intentions and proposed legislations: *Clyne v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1670 at para 8; *Mitchell v Canada (Minister of Citizenship and Immigration)*, 2006 FC 133 at paras 9-10). Nor does the Board's decision mention the many documents in the record which outline the ineffectiveness of the measures summarized in the cited reference.

[16] For example document 5.3 in the package states:

In addition, when female victims go to make reports, they are served by gross, disrespectful, chauvinistic, young male officers who feel that the victim asked for what she received.

[...]

If there is a protection order, the victim often feels unprotected as the absence of shelters makes the document merely an empty academic order...

[17] Document 5.8 indicates:

In these situations [referring to cases of domestic violence], women are sometimes actively discouraged from pursuing their complaints under the Domestic Violence (Summary Proceedings) Act or may even be treated with contempt and hostility by member of the police.

[18] The Board does not address the evidence that supported the applicant's claim. Moreover the member did not explain why he found that the favourable elements contained in the evidence outweighed the negative information.

[19] As the respondent submits, the Board did consider the fact that the alleged agent of persecution was a policeman and that the applicant had tried to file a complaint to the police inspector but failed. The Board found, however, that since those events occurred over 10 years ago, the situation in St. Vincent and the Grenadines may have changed and that police protection might be forthcoming this time.

[20] Although it was open to the Board to find that there had been a change of circumstances owing to the passage of time above, a review of the totality of the evidence may have pointed to a different conclusion. In this regard, the Chairperson's Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution* indicate that the Board should consider all the relevant evidence related to gender related persecution. I note that Section C-3 of the Guidelines states:

A change in country circumstances, generally viewed as a positive change, may have no impact, or even a negative impact, on a woman's fear of gender-related persecution. In situations where a woman's fear is related to personal-status laws or where her human rights are being violated by private citizens, a change in country circumstances may not mean a positive change for the woman, as these areas are often the last to change. An assessment should be made of the claimant's particular

fear and of whether the changes are meaningful and effective enough for her fear of gender-related persecution to no longer be well-founded. [emphasis in the original]

[21] In conclusion, I am satisfied that the Board's decision does not meet the standard of justification, transparency and intelligibility as the member did not explain how he came to the conclusion that state protection was forthcoming despite the extensive evidence to the contrary.

[22] No serious questions of general importance were proposed and none will be certified.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted and the matter is remitted for reconsideration by a differently constituted panel. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1794-11

STYLE OF CAUSE: ELAINE MICHELLE RICHARDS

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 1, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** MOSLEY J.

DATED: November 25, 2011

APPEARANCES:

Erin Christine Roth FOR THE APPLICANT

Veronica Cham FOR THE RESPONDENT

SOLICITORS OF RECORD:

ERIN CHRISTINE ROTH FOR THE APPLICANT
Bellissimo Law Group
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario