Federal Court  Cour fédérale

Date: 20111213

Docket: IMM-1482-11

Citation: 2011 FC 1412

Ottawa, Ontario, this 13th day of December 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

Rebecca Kathleena WILLIAMS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the "Act") by Rebecca Kathleena Williams (the "applicant"). The Board determined that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant was born on March 30, 1953 and is a citizen of Saint Vincent. She left Saint Vincent and arrived in Canada on September 28, 2004. On October 28, 2009, the applicant made a claim for refugee protection as a person in need of protection.

[3] The applicant fears returning to Saint Vincent because she believes that she will be hurt by Randolph Williams, her husband whom she has been separated from since December 23, 2001. The two were married on August 2, 1980.

[4] The applicant's Personal Information Form (PIF) explains that after October 1980, Williams began to physically, mentally and verbally abuse her and her children. She details a litany of incidents when Williams severely beat her, several times until she was unconscious, and sometimes with objects such as a 2x4 piece of wood which has left her with permanent hearing loss.

[5] In October 2001, Williams viciously attacked the applicant and threatened her with a knife. She escaped but was ultimately tracked down by Williams to several locations, each time threatening to kill her and then himself.

[6] In April 2002, the applicant came to Canada and stayed with her son until returning to Saint Vincent in May 2003 to attend her mother's funeral. Williams appeared at the funeral with a machete and knife and threatened the applicant. Williams continued to track and threaten the applicant until she left again for Canada in 2004.

[7] The applicant had contacted the police about the abuse but was not given any help. The most recent report to the police was in or before 2004: the applicant was uncertain of the date. The applicant did not receive help after filing her complaint. It is unclear from the transcript how many times the applicant has contacted police but there was at least one occasion in or before 2004.

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[8] The Board accepted that the applicant had been abused for a long period of time and credibility was not at issue. The Board noted that there was no information before it to suggest that the applicant is suffering from post-traumatic stress disorder.

[9] The determinative issue was state protection. The Board quoted a long portion of the country documentation package for Saint Vincent. The quotation reveals nearly entirely positive information on the handling of domestic violence by the police, the justice system and in legislation.

[10] Faced with the mixed nature of the country documentation, the Board noted that it would be problematic if refugee protection was granted in these circumstances. It was also mentioned that Saint Vincent had not been given a chance to protect the applicant in over six years.

[11] The Board noted that the applicant had shown the wherewithal to approach the police on at least one occasion in the past. This led to the Board's conclusion that it is "not objectively unreasonable for me to find that the claimant is now capable of complaining to the Saint Vincent police and would be capable of complaining to them if she were to return there".

[12] The Board concluded that the presumption that Saint Vincent authorities would be reasonably forthcoming with serious efforts to protect the claimant if she were to return, had not been rebutted by the applicant.

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[13] There is one issue to be determined in this application, and the applicant presents two arguments on this issue:

a. Was the Board's decision on state protection reasonable?

i. Did the Board err by not explaining how positive evidence on the availability of state protection outweighed the negative evidence?

ii. Did the Board err in emphasizing the length of time since the applicant had last sought state protection?

[14] Questions as to the adequacy of state protection concern mixed facts and law and are reviewable on the standard of reasonableness (*Mendoza v. Minister of Citizenship and Immigration*, 2010 FC 119). Therefore, the Board's conclusions on this issue must fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para 47).

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i. <u>Did the Board err by not explaining how positive evidence on the availability of state protection outweighed the negative evidence?</u>

[15] The applicant argues that the Board in this case committed the same error as the decision maker in *James v. Minister of Citizenship and Immigration*, 2010 FC 546 [*James*]. However, *James* can be distinguished from the case at hand. In *James*, the Board ignored the evidence contained in the country documentation on the unavailability of state protection in Saint Vincent. Also, particularly important in *James* was the Court's finding that it was "disturbing" for the decision maker to have imposed an obligation on a child to seek state protection during the period she was being sexually abused.

[16] In the case at bar, the Board was not selective and did not ignore the negative evidence about the availability of state protection in Saint Vincent. In paragraph 8 of its decision, the Board incorporates by reference the negative aspects which are quoted in *James*, and at paragraph 9, the Board accepts these negative aspects. It then states at paragraph 11 that the information is mixed. Paragraph 12 evinces the Board's reasoning:

> In my view, it is enormously problematic for the surrogate notion of refugee protection if grants of it were to occur in the face of state protection evidence this mixed and in circumstances where the last chance the state was given to protect the claimant occurred such a long time ago – more than six years ago.

[17] The applicant relies on *Lewis v. Minister of Citizenship and Immigration*, 2009 FC 282, as quoted in *James*:

> . . . In my view, the Board was obliged to explain why it found that the favourable elements contained in the evidence outweighed the negative parts. In the absence of that assessment, I find that the Board's decision was unreasonable in the sense that it was not a defensible outcome in light of the facts and law . . .

[18] The Board, at paragraph 12 of its decision, conducts such an analysis by considering both the negative and positive evidence on the availability of state protection. Since the applicant has not given the state a chance to protect her in more than six years, there is insufficient evidence establishing that she would not be protected upon her return to Saint Vincent. As the respondent argues, the Board looked at the totality of the evidence and found that the applicant had not rebutted the presumption that a state is capable of protecting its citizens. The Board is saying (albeit in different words than *James* directs) that it prefers the favourable elements because there is not sufficient negative evidence to show that state protection would be unavailable to the applicant.

ii. Did the Board err in emphasizing the length of time since the applicant had last sought state protection?

[19] The applicant also submits that the Board was fixated on the length of time that has passed since she last approached the police in Saint Vincent for protection.

[20] In my view, the Board made a reasonable finding in relation to the length of time since the applicant had last sought protection. At paragraph 3 of its decision, the Board does accept that the applicant had complained to the police in or before 2004, but that she did not receive protection. This finding, however, does not mean that the Board was suggesting that the applicant must periodically seek protection from the police. Rather, at paragraph 12, the Board is suggesting that this evidence, even if accepted, derives from so long ago that it is not indicative of the current availability of state protection in Saint Vincent. In other words, as the respondent argues, the Board found that the applicant's attempt at seeking protection from the state was inadequate.

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[21] On the whole, the Board's decision that state protection in Saint Vincent would be reasonably forthcoming to the applicant was reasonable. The Board properly analyzed the evidence before it, applied the relevant law and came to a reasonable determination. The application for judicial review is therefore dismissed.

[22] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board, determining that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1482-11
STYLE OF CAUSE:	Rebecca Kathleena WILLIAMS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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