Federal Court  Cour fédérale

Date: 20111213

Docket: IMM-7203-10

Citation: 2011 FC 1414

Ottawa, Ontario, this 13th day of December 2011

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

BETWEEN:

Enola Feria DARCY
Annamay Keyara DARCY

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*, S.C. 2001 c. 27, (the "Act") for judicial review of the decision of Cynthia L. Summers, a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), dated October 19, 2010, wherein the applicants were determined to be neither

Convention refugees within the meaning of section 96 of the Act nor persons in need of protection, as defined in subsection 97(1) of the Act.

[2] Enola Feria Darcy (the principal applicant) and her minor daughter Annamay Keyara Darcy are citizens of Saint Lucia. Their claim for refugee protection under sections 96 and 97 of the Act is based on the abuse they suffered from Mr. Andy Stanley, the principal applicant's former common-law spouse, and the lack of state protection from such abuse in Saint Lucia.

[3] The Board found that the principal applicant had failed to make reasonable efforts to benefit from the state protection available to her as a domestic violence victim in Saint Lucia.

[4] This matter raises the following issues:

1. Did the Board err in not considering the evidence of the applicants' added vulnerability should they return to Saint Lucia?
2. Did the Board err in concluding that the applicants did not rebut the presumption of state protection in Saint Lucia?

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[5] The first issue deals with the Board's appreciation of the facts and, therefore, must be considered based on a standard of reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 57 [*Dunsmuir*]).

[6] With respect to the second issue, it is established that the Board's assessment of the adequacy of state protection raises questions of mixed fact and law and is also reviewable based on a standard of reasonableness (*Hinzman v. M.C.I.; Hughey v. Minister of Citizenship and Immigration*, 2007 FCA 171 at paragraph 38; *Gaymes v. Minister of Citizenship and Immigration*, 2010 FC 801 at paragraph 9; *S.S.J. v. Minister of Citizenship and Immigration*, 2010 FC 546 at paragraph 16).

[7] In reviewing the Board's decision based on reasonableness, this Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable, and intelligible, falling outside the range of acceptable outcomes (see *Dunsmuir* at paragraph 47; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 59 [*Khosa*]). As the Supreme Court of Canada held in *Khosa*, at paragraphs 59 and 61, "it is not open to a reviewing court to substitute its own view of a preferable outcome . . . [nor is it] the function of the reviewing court to reweigh the evidence".

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1. Did the Board err in not considering the evidence of the applicants' added vulnerability should they return to Saint Lucia?

[8] The applicants submit that the Board erred in not considering the increased danger that arose since their departure – an issue they alleged was *sur place*. Conversely, the respondent submitted that no *sur place* issue arose on these points, and that the applicants had provided insufficient evidence to conclusively prove they would be in danger should they return to Saint Lucia.

[9] The difficulty with this *sur place* claim is that it is based on the birth of the Canadian-born daughter and a concern that Mr. Stanley would be more dangerous now that he knows the children's paternity. However, Mr. Stanley already knew that the principal applicant was pregnant when she left Saint Lucia. In addition, Mr. Stanley was already dangerous and had already threatened to kill the applicants on numerous occasions before they left Saint Lucia: in her oral testimony, the principal applicant referred to Mr. Stanley's past conduct and threats towards her and her children as the trigger for their departure. Furthermore, although the applicants allege that this level of danger has increased, it still pertained to the same type and source of danger – domestic violence and death threats from Mr. Stanley.

[10] Although the Board did not explicitly refer to the applicants' submission on the alleged increased danger, it did broadly address the question of state protection available to victims of such danger in Saint Lucia. This differs from other cases where the Board's failure to address an applicant's *sur place* claim was found to be a reviewable error. For example:

- In *Manzila v. Canada (Minister of Citizenship & Immigration)* (1998), 165 F.T.R. 313, this Court quashed a Refugee Division's decision due to its failure to deal with the applicant's activities since his arrival in Canada – activities that would have serious repercussions in his home country where there had been an important change of regime since his departure.
- Similarly, in *Liang v. Canada (Minister of Citizenship & Immigration)* (2000), 197 F.T.R. 303, this Court set aside a decision of the Convention Refugee Determination Division due to its failure to examine the treatment by Chinese authorities of first-time illegal migrants

versus that of smugglers – a risk that the applicant faced because he was wrongly publicized on Canadian television as the captain and owner of the smuggling boat.

[11] Unlike both of these cases, the Board in the case at bar did address the state protection available to the applicants due to their fear of domestic violence.

[12] Therefore, the Board's failure to specifically address the applicants' submissions on the increased danger does not automatically make its decision erroneous.

2. Did the Board err in concluding that the applicants did not rebut the presumption of state protection in Saint Lucia?

[13] The Board found that there would be adequate state protection available to the applicants should they return to Saint Lucia.

[14] The Board relied on two primary findings in making this determination: the applicants' failure to make reasonable efforts in obtaining state protection, and the adequacy of protection against domestic violence in Saint Lucia. In making these findings, the Board referred to the documentary evidence provided by the applicants, and acknowledged the recognized problem of domestic assault in the country. However, it then considered the principal applicant's failure to make reasonable efforts to obtain state protection during the five years that she was a victim of domestic violence in Saint Lucia, in addition to excerpts from the evidence that pointed to recent legislative and non-police efforts to remedy the problem of domestic violence within the country.

On this basis, the Board found that adequate protection would be available to the applicants upon their return to Saint Lucia.

[15] Notably, the principal applicant only sought protection from the Saint Lucia police once, and she did not file any complaints with the police regarding the poor quality of help she received on that one occasion. Moreover, aside from leaving her daughter with her mother, the principal applicant did not seek help from any other resources within the country, including the medical officers that she was in contact with during her two pregnancies and after being abused. At the hearing, the principal applicant explained that she was not aware of the available support centres or legal clinics, and that: "… back in the days, I was young, I did not care to look for proper, you know, proper help, I did not care."

[16] In addition, there was evidence that both governmental and non-governmental groups have taken steps to reduce the problem of domestic violence in Saint Lucia. This evidence, coupled with the fact that the principal applicant only approached the police once does not meet the threshold of "clear and convincing evidence" that state protection is unavailable (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 57). As stated by the Court in *Baku v. Minister of Citizenship and Immigration*, 2010 FC 1163 [*Baku*] at paragraph 15:

> . . . a member is required to evaluate an applicant's claim based on the specific situation of that applicant, and the state's ability to protect him or her given the specific circumstances.
>
> (Emphasis added.)

[17] Therefore, it was open to the Board to conclude that the applicants had not presented clear and convincing evidence of similarly situated individuals let down by the Saint Lucian authorities. The Board was aware of the problem of domestic violence in Saint Lucia. However, the Board engaged in a detailed analysis of the current situation in Saint Lucia and concluded that the country is currently taking steps to overcome this problem, and, although there is still work to be done, a good deal has been achieved. Hence, the Board's conclusion was reasonable, being based on the evidence before it.

[18] Furthermore, in its decision, the Board identified various resources, other than the police, that the applicants could rely on for protection in Saint Lucia. However, the applicants submitted that an assessment of the adequacy of state protection should be limited to the availability of police protection. Inversely, the respondent relied on *Baku* for the proposition that state protection can also be obtained from other resources. I agree. In *Baku*, the Court relied on existing jurisprudence in stating that: "state protection may be expected to be sought from sources other than the police, such as state-run agencies" (at paragraph 13).

[19] In summary, the Board reviewed the documentary evidence and acknowledged the applicants' submissions and arguments. Based on the totality of the evidence, it concluded that the applicants had not rebutted the presumption of state protection. Therefore, I am unable to conclude that the Board's decision was unreasonable: its finding regarding the adequacy of state protection was well within the range of possible, acceptable outcomes that are defensible in respect of the facts and law, being supported by the evidence before it. Hence, its decision was reasonable, being justified, transparent and intelligible.

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[20] For all the above-mentioned reasons, this application for judicial review is dismissed.

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

JUDGMENT

The application for judicial review is dismissed.

"Yvon Pinard"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-7203-10
STYLE OF CAUSE:	Enola Feria DARCY, Annamay Keyara DARCY v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 13, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	December 13, 2011

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