

Federal Court



Cour fédérale

Date: 20120130

Docket: IMM-4520-11

Citation: 2012 FC 119

BETWEEN:

NYOKA NFATITI WILLIAMS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER

HARRINGTON J.

[1] Ms. Williams, a citizen of St. Vincent and the Grenadines, came to Canada in 1995 when she was 15 years of age. She has remained here without status ever since. In December 2010, she filed a claim for refugee status, primarily based on fear of persecution by her brother. The decision-maker at the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada accepted that she feared her brother, and with good reason. However, he was also of the view that she had not rebutted the presumption of state protection, and so dismissed her claim. This is the judicial review thereof.

THE FACTS

[2] At the heart of this claim is a family property in St. Vincent. Ms. Williams' father died in 1993 leaving a property which included a house and two rental units. His wife, Naomi, was given a life interest therein and thereafter the property would be divided in equal shares between their two children, Jeremy and Nyoka, the applicant in this case.

[3] After graduating from high school in 1998, Jeremy joined Nyoka in Canada and resided here illegally for ten years. Unfortunately, he developed schizophrenia, and was eventually deported to St. Vincent in 2008. Upon return he lived in the family house. Matters deteriorated. He became more and more violent, and over time broke furniture, slapped his mother, pulled a chair out from under her and threatened relatives.

[4] The police were often called in, and always responded, although perhaps not as quickly as Mrs. Williams would like. He was committed to a psychiatric institution on several occasions, but on release would not take his medicine. Rather, he was a pothead.

[5] The father's will is a contentious issue. Jeremy wants his mother and sister to sign off, which they have refused to do. He wants to buy a van, which they think would be a bad idea.

[6] Eventually, Mrs. Naomi Williams left for Canada and claimed refugee status here. She was unsuccessful, and leave to judicially review that decision was dismissed. An application on humanitarian and compassionate grounds is pending.

[7] Her daughter Nyoka's refugee claim is largely based on her claim as a similarly situated person. However, by this time further medical information was in the file and leave was granted.

THE RPD'S DECISION

[8] The member succinctly summarized Jeremy's medical history in Canada, where he had been hospitalized, his violence, his deportation back to St. Vincent and his subsequent history.

[9] In the member's opinion, the heart of the problem is this:

Jeremy is angry at his mother and at the claimant, because of a property dispute. He wants to use jointly-held property to obtain a loan in order to buy a vehicle. His sister, the claimant, and his mother must give written consent, and neither will do so.

Jeremy calls his sister on the phone and threatens her. He wants a copy of the will, thinking it will allow him to borrow money.

The claimant is afraid of returning to SVG because of her violent, mentally-disturbed brother...

Having found the claimant generally credible and her subjective fear of Jeremy genuine... State protection is the determinative issue in this claim...

[10] He then went through some detail as to state protection. As a democracy, there is a strong presumption that state protection exists in St. Vincent and the Grenadines. Reference was made to a recent United States Department of State Report, and various Canadian reports. He concluded as follows:

[18] According to the claimant and her mother, the latter has called the police to the family home on five occasions in the last

several years and the police have always responded to her calls for assistance and have taken Jeremy, after a physical struggle to restrain him, to the Mental Health Centre where he has been committed for steadily increasing periods of time. At first, he would be detained for one or two weeks. At the present time, Jeremy who was committed some time in April 2011 remains in the custody of the Mental Health Clinic. According to the witness, he has been held in custody this time for approximately six weeks to date.

[19] The witness noted that, while the police have always responded to her calls for help, they were often slow to respond; on one occasion, at least, taking several hours. I also noted from her testimony that the police always sent about five officers to her home, knowing that they would likely have to confront Jeremy and physically restrain him. She also testified that her son is large and quite strong. I therefore find that while the police response time may have been less than perfect, it was adequate in that it seems reasonable to me that the police may have needed time to assemble a sufficient number of officers to send to be able to handle Jeremy.

THE APPLICANT'S SUBMISSIONS

[11] Counsel submits that the review of country conditions was not evenhanded. Reference was made to a number of decisions of this Court, including some of mine, which have held that state protection is illusory when it comes to the protection of female victims of domestic abuse in St. Vincent and the Grenadines. Particular reliance was placed on my decision in *Alexander v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1305, 357 FTR 222. I said at paragraph 7:

Since the Court is called upon to review the work of others, some judicial reviews are granted and others are not, depending on the rationale of the underlying decision. Nevertheless there are a great number of cases where judicial review has been granted on the basis that findings that there is state protection in St. Vincent and Grenadines were unreasonable. Without putting too fine a line on it, many of the women appear to have been in generally similar situations. See for instance: *Jessamy v. Canada (Minister of*

Citizenship and Immigration), 2009 FC 20; *Myle v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1073; *Myle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 871; *Codogan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 739; *Franklyn v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1249; *Fraser v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1154; *King v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 774; *Griffith v. Canada (Minister of Citizenship and Immigration)* (1999), 171 F.T.R.240.

[12] However, Ms. Alexander had been beaten up by her boyfriend. I had in mind sexual abuse cases as is clear by the opening words of that decision. I said at paragraph 1:

There is something very wrong in the relationship between men and women in St. Vincent and the Grenadines. Year after year, woman after woman washes up on our shores seeking protection from abusive, violent husbands or boyfriends. In fact, last year 495 refugee claims were filed by citizens of that country. Only ten other countries were the source of more claimants. In 10th place, with 551 claimants, was India. Considering India has a population of 1.2 billion and St. Vincent and the Grenadines 118,000, one has to wonder. If the cases which come to this Court by way of judicial review or stay applications are any indication, nearly all the claimants are women who assert domestic abuse.

[13] There is no suggestion whatsoever of abuse of that nature in this case.

[14] The evidence in *Alexander* and other cases is that the police had a “laissez-faire” attitude when it came to sexual relationships. However, in this case they always responded to Mrs. Williams’ calls. On one occasion, it took some time because they amassed five policemen in order to control Jeremy who is big and violent. They knew him and his propensities. Would it have been better for a single policeman to have come along and shot him dead?

[15] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] SCJ No 62 (QL), the Supreme Court states that a court reviewing a decision of an administrative tribunal may consider whether there is anything in the record not fully articulated which justifies the outcome.

[16] In this case, Mrs. Williams seems to have been safe as long as she stayed away from the family homestead, and as a similarly situated person the same may well hold true for her daughter. Mrs. Williams testified that on one occasion, Jeremy had thrown all of her belongings out of the house and said that she could not come back, and that his sister could not come back either because “he’s the man and his father leaved the place to him.”

[17] I have to conclude that the decision with respect to state protection was reasonable.

[18] Ms. Williams raises concerns that if she is obliged to return, she has no place to live except for the family home with her brother Jeremy. These are issues more properly raised in a request to apply for permanent resident status from within Canada on humanitarian and compassionate grounds.

[19] There may also be a tipping point in Jeremy’s condition. The psychiatric reports seem to indicate he is getting worse and worse. Indeed, at the hearing before the RPD, Jeremy was said to be in a psychiatric unit. There may be new information which would be available on a pre-removal risk assessment.

CERTIFIED QUESTION

[20] The applicant shall have one week to pose a serious question of general importance. If so, the respondent shall have one week thereafter to reply.

“Sean Harrington”

Judge

Ottawa, Ontario
January 30, 2012

FEDERAL COURT
SOLICITORS OF RECORD

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