Federal Court  Cour fédérale

Date: 20120214

Docket: IMM-5382-11

Citation: 2012 FC 210

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 14, 2012

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

Botoka RAMOKATE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), for judicial review of a decision dated July 15, 2011, by the Refugee Protection Division of the Immigration and Refugee Board (the panel), which determined that the

applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] For the following reasons, I find that the panel's decision is reasonable and that the application for judicial review must therefore be dismissed.

I. Facts

[3] The applicant, Botoka Ramotake, is a citizen of Botswana. She states that she began going out with one Thomas Dubani in July 2006. When he lost his job in June 2008, he became jealous and threatened to kill her. The applicant filed a complaint with the Botswanan authorities, who intervened quickly, ordering Mr. Dubani to stop threatening the applicant. As a result of this police intervention, Mr. Dubani discontinued his threats.

[4] In March 2009, the applicant permanently ended her relationship with Mr. Dubani. He allegedly then repeated his death threats. The applicant promptly filed another complaint against Mr. Dubani with the authorities, who immediately arrested him.

[5] Fearing that he would be released and carry out his threats, the applicant left her child with her sister and decided to flee her country to take refuge in Canada. Shortly after she arrived here, the applicant found out from her sister that Mr. Dubani had been released and had threatened her.

II. Impugned decision

[6] The panel noted that the applicant had not presented clear and convincing evidence that the Botswanan authorities could not protect her on her return. On the contrary, they demonstrated that they wanted and were able to protect her against Mr. Dubani because they intervened each time the applicant filed a complaint.

[7] On the other hand, the panel found that in recent years the Botswanan government has established a number of statutes, institutions and measures to protect female victims of domestic violence. The panel considered all the documentary evidence and acknowledged that the situation was not perfect, in light of, notably, the lack of financial resources, limited access to legal aid and lack of information about the available recourses. However, the panel concluded that this documentary evidence had to be assessed based on the applicant's specific situation.

III. Issue

[8] The only issue in this case is whether the panel erred by finding that state protection in Botswana was adequate.

IV. Analysis

[9] State protection is a question of mixed fact and law that falls within the panel's expertise. As such, it is subject to a reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Hinzman v. Minister of Citizenship and Immigration*, 2007 FCA 171 at paragraph 38, 282 DLR (4th) 413).

[10] The jurisprudence clearly establishes that a state is presumed to be capable of protecting its citizens unless there is such a breakdown of its institutions that they are no longer able to ensure order and safety. Next, the protection provided by the state must be adequate but does not need to be perfect. Last, the onus is on the claimant to show on a balance of probabilities that the state is incapable of protecting the claimant (see *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689 at page 725; *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraph 30, [2008] 4 FCR 636; *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189 at paragraph 7, 99 DLR (4th) 334; *Sanchez v Minister of Citizenship and Immigration*, 2008 FC 134 at paragraphs 10-12, 165 ACWS (3d) 336; *De Lourdes Gonzalez Duran v Minister of Citizenship and Immigration*, 2011 FC 855 at paragraphs 13 and 15).

[11] The tribunal gave a number of reasons for finding that the Botswanan state was capable of protecting its citizens who are facing domestic violence. First, in 2008, the government enacted the *Domestic Violence Act*, which enables victims of domestic violence to obtain immediate protection against their abuser. Second, police officers now take a course on human rights as part of their training at police college. It also appears that the police are determined to arrest and lay charges of uttering death threats against any man who threatens his spouse's life, and the authorities enforce the laws against rape. Last, the evidence establishes that the police have a good relationship with the employees of a battered women's shelter.

[12] It is true that the documentary evidence refers to certain weaknesses in the protection provided to female victims of domestic violence, as the panel acknowledged. The general situation that prevails in the country must, however, be assessed in light of the applicant's personal

experience. She is no doubt correct in submitting that the panel was required to assess the applicant's fear of persecution and the protection she could receive from the authorities in her country prospectively. That being said, she had to explain why the past would not be an indication of the future. In other words, she had to convince the panel that her situation had changed to such an extent that in the future she could no longer have access to the protection the police had provided to her in the past. I concur with my colleague, Mr. Justice Russell Zinn, when he wrote in *Sandoval v Minister of Citizenship and Immigration*, 2008 FC 868 at paragraph 16, 168 ACWS (3d) 1050:

> The Federal Court of Appeal in *Carrillo* held that one seeking to rebut the presumption of the adequacy of state protection must adduce "relevant, reliable and convincing evidence" which, on the balance of probabilities, satisfies the trier of fact that the state protection is inadequate. Where, as in this case, protection was sought and provided, an applicant will have a challenge to show that it was an aberration unless there has been some material change in personal or state circumstances. Here there was no such evidence.

[13] The situation is the same in this case. The applicant did not explain why the protection she was entitled to in the past would not be provided if she were to return to her country. At most, her counsel submitted that her persecutor could be even more determined as a result of his arrest and incarceration. However, this is pure speculation. It is just as plausible that, since the authorities successfully protected her in the past, they could do the same if she requested their services. In fact, it may well be that the applicant's departure impeded the police investigation and caused them to release Mr. Dubani for lack of evidence, as the panel noted.

[14] Taking into consideration all these circumstances, the applicant did not discharge her burden of establishing on a balance of probabilities that she will not have access to state protection on her

return to Botswana. For this reason, the application for judicial review must be dismissed. No question will be certified.

JUDGMENT

THE COURT RULES that the application for judicial review is dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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