

Federal Court



Cour fédérale

Date: 20120504

Docket: IMM-5528-11

Citation: 2012 FC 535

Ottawa, Ontario, May 4, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

**AGNES PAULINA MATTHEWS
NICOLI EZEKIEL MATTHEWS
JANNET MATTHEWS
NICOLEEN EUGENA MATTHEWS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Agnes Paulina Matthews and her three children, Jannet Matthews 29, Nicoli Ezekiel Matthews 19 and Nicoleen Eugena Matthews 17 (all together the Applicants), pursuant to section 72(1) of the *Immigration and refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of the Immigration and refugee Board (the Board), rendered on

July 25, 2011, where the Board concluded that the Applicants are neither Convention refugees nor persons in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

[2] Ms. Agnes Paulina Matthews is the designated representative for her minor daughter, Nicoleen Eugena Matthews.

[3] For the following reasons, this application for judicial review is dismissed.

II. Facts

[4] Ms. Matthews is a 57-year-old woman from St-Vincent and the Grenadines.

[5] In 1976, she met George Crook. Together, they had one child. In 1978, Ms. Matthews ended their relationship after almost 3 years of partnership. Two days after their break-up, Mr. Crook stabbed Ms. Matthews 5 times in her arm, neck and back. She was hospitalized for 10 days.

[6] Shortly after the incident, Mr. Crook committed suicide.

[7] In June 1996, Ms. Matthews met Simon Durrant who moved with her and her eight children. After a few months, Ms. Matthews realized that Mr. Durrant was possessive and jealous. He would often physically abuse her.

[8] Ms. Matthews never complained to the police, thinking it was useless.

[9] She left St-Vincent for Canada in September 1997. She lived with her cousin in Montreal.

[10] In June 1998, Mr. Durrant arrived in Montreal. Ms Matthews allowed Mr. Durrant to live with her but told him that she would call the police if he ever abused her again.

[11] Three months later, she found Mr. Durrant masturbating in front of her daughter's picture. She expelled Mr. Durrant who left the house without complaining.

[12] Ms. Matthews stayed in Canada looking for a sponsorship. Her friend advised her to apply for refugee protection but she refused, thinking she would not be eligible. She brought her children Jannet, Nicoli and Nicoleen to Canada. However, she could not enrol her two youngest children in school. Consequently, she returned to St-Vincent.

[13] Before she left for St-Vincent, Ms. Matthews heard that Mr. Durrant had raped a woman in Montreal and that he would be deported.

[14] In 2007, while in St-Vincent, Mr. Durrant asked Ms. Matthews out again but she categorically refused.

[15] In December 2007, Ms. Matthews and her children discovered that Mr. Durrant had killed their cousin, Orlando Ricardo Louie. He was convicted and institutionalized in a psychiatric institution. This was Mr. Durrant's second criminal conviction. Fearing that he would be released

again in a short period of time, Ms. Matthews flew back to Canada on February 28, 2008. Her three children followed shortly thereafter.

[16] In March 2010, Ms. Matthews' son, Nicoli, was apprehended by a Montreal police officer. The Officer discovered that the Nicoli had no status in Canada. The Applicants subsequently decided to file a refugee claim.

[17] The Board concluded that the Applicants were neither Convention refugee nor persons in need of protection under sections 96 and 97 of the *IRPA*. It found that the Applicants would not be at risk in St-Vincent and that state protection was available.

III. Legislation

[18] Sections 96 and 97 of the *IRPA* provide as follows:

Convention refugee	Définition de « réfugié »
<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p>

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont

that country,

généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issues and standard of review

A. Issues

[19] The Court must answer the following questions:

1. Did the Board err in concluding that the Applicants were not persons in need of protection under sections 96 and 97 of the IRPA?

2. Did the Board err in determining that state protection in St-Vincent was available to the Applicants?

B. Standard of review

[20] Questions of state protection involve determinations of fact and mixed fact and law. They concern the relative weight assigned to evidence, the interpretation and assessment of such evidence, and whether the Board had proper regard to all of the evidence presented in reaching a decision (*Hippolyte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 82).

[21] The standard of review applicable to the Board's determination of the applicants' objective and subjective fear is reasonableness (see *Moreno v Canada (Minister of Citizenship and Immigration)*, 2011 FC 841 at para 7).

[22] The Supreme Court of Canada, at paragraph 47 of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9, specified that reasonableness “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”.

V. Parties' submissions

A. Ms. Matthews' submissions

[23] Ms. Matthews affirms that her testimony is deemed to have been accepted by the Board since it did not question her credibility (see *Moreno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 993).

[24] As the Board states in its decision, the Applicants must prove that there is a serious possibility or more than a mere possibility that they face a prospective risk of persecution (see *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 [Adjei]).

[25] The Board wrote: “[t]he panel finds that in the unlikely event that Simon Durrant would be released from the institution where he is currently living, the claimants would not be at any more risk of harm than other members of the community of Rose Bank” (see the Board’s decision at para 26).

[26] Ms. Matthews alleges that this conclusion is unreasonable because Mr. Durrant is a very dangerous individual. The Board considered the letter from Mr. Charles Matthews, Justice of the Peace of Rose Bank. In assessing the letter, the Board, according to Ms. Matthews, failed to consider that Mr. Durrant “vowed to kill her because he felt that she has abandoned him” (see letter of Charles Matthews, Justice of the Peace at page 81 of the Applicants’ record). Ms Matthews affirms that this statement is central to her claim and runs contrary to the Board’s conclusion. The

Board failed to take in consideration Mr. Durrant's dangerous profile (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[27] Furthermore, the Board determined that the letter was speculative in nature. However, Ms. Matthews claims that the Board dismissed her statement with speculation of its own and determined that Mr. Durrant would not be released because of his criminal history. Ms. Matthews submits that there was no evidence adduced before the Board to justify such speculation. There was equally absence of evidence introduced as to what measures would be undertaken should Mr. Durrant be released. The Board erred in making such speculations (see *Zhang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 533).

[28] Ms. Matthews also alleges that the Board applied the wrong legal test to state protection by failing to address whether the state of St-Vincent and the Grenadines could provide them with effective protection (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at page 724). Under the particular circumstances of this case, the Board should have considered the effectiveness of restraining orders in St-Vincent according to Ms. Matthews who relies on *Alexander v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1305 at para 13, where Justice Harrington stated "I find absolutely astonishing that the IRB publishes information on country conditions but fails to mention that the Consul General has admitted that the state cannot guarantee the effectiveness of a restraining order".

[29] Therefore, Ms. Matthews submits that the Board's conclusion on the issue of state protection is unreasonable and not based on relevant evidence given the present circumstances of the case.

B. Respondent's submissions

[30] The Respondent alleges that the lack of subjective fear in this case is sufficient to reject this refugee claim. Mr. Durrant did not bother Ms. Matthews for at least 14 years. He is presently institutionalized and there is no evidence to show that his release is imminent. Therefore, the Board's conclusion on Ms Matthews' lack of subjective fear is reasonable.

[31] The Respondent asserts that Ms Matthews has failed to establish that the Board did not consider Mr. Durrant's death threat towards Ms. Matthews. The Respondent underlines that the Board is presumed to have considered all the evidence (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1 [*Florea*]).

[32] The Federal Court has recognized that St-Vincent is "a democratic country that is willing and able to protect its citizens, even if this protection is not always perfect" (see *S.H.R v Canada (Minister of Citizenship and Immigration)*, 2010 FC 802 at para 19-20; *G.O.A.D. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 772 at para 20).

[33] The Board, according to the Respondent, correctly assessed the documentary evidence. The state of St-Vincent has shown in the past that it is willing and capable of protecting its citizens

against Mr. Durrant. He was arrested twice and sentenced to prison after committing crimes against its citizens. The Respondent also notes that Ms Matthews never filed a complaint with the police.

[34] The Respondent reiterates that the Board is presumed to have considered all the evidence. It is further alleged that the documentary evidence adduced before the Board about domestic violence is irrelevant to the case because Ms. Matthews' relationship with Mr. Durrant ended 14 years ago. Therefore, Ms Matthews has failed to adduce any evidence to prove that the state of St-Vincent and the Grenadines is unable and unwilling to protect her and her children.

VI. Analysis

[35] In *Adjei cited above* at paras 7 and 8, the Federal Court of Appeal wrote the following:

[7] We would adopt that phrasing, which appears to us to be equivalent to that employed by Pratte J.A. in *Seifu v Immigration Appeal Board* [1983] FCJ No 34 (A-277-82, dated January 12, 1983):

... [I]n order to support a finding that an applicant is a Convention refugee, the evidence must not necessarily show that he "has suffered or would suffer persecution"; what the evidence must show is that the applicant has good grounds for fearing persecution for one of the reasons specified in the Act.

[8] What is evidently indicated by phrases such as "good grounds" or "reasonable chance" is, on the one hand, that there need not be more than a 50% chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a "serious possibility", as opposed to a mere possibility.

[36] The Board determined that the Applicants failed to demonstrate a well-founded fear of harm in St-Vincent. It found that Mr. Durrant poses a danger to the community at large but is unlikely to be released in the near future. And, in the event of his release, the psychiatric facility would take necessary measures to ensure the safety of the community.

[37] It was reasonable for the Board to determine that Justice of the Peace Matthews' letter is mere speculation. However, the Board cannot reject documentary evidence with speculation of its own. In *Ukleina v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1292, [2009] FCJ No 1651 at para 8, the Court held that "It has been long established, however, that findings of fact based on speculation are inherently unreasonable. The key facts found in this case fall within the realm of speculation. They were not reasonable inferences drawn from established facts". The Court agrees with Ms. Matthews that the Board's inferences were not based on established fact or evidence.

[38] However, these speculations are not determinative of the present case because the Board also found that Ms. Matthews' relationship with Mr. Durrant had ended long ago and that between 2002 and 2007, Simon Durrant had not harmed or posed a threat to Ms. Matthews while in St-Vincent. This conclusion, in the Court's view, is central to the case and inextricably linked with the issue of state protection.

2. *Did the Board err in determining that state protection in St-Vincent was available to the Applicants?*

[39] The Applicants argue that the Board failed to consider the ineffectiveness of restraining orders in St-Vincent. They also allege that the Board wrongfully applied the legal test of state protection.

[40] In *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668, [2011] FCJ No 840 at para 26, the Court held that “[t]he Board is not obliged to prove that [a state] can offer the Applicant effective state protection, rather, the Applicant bears the legal burden of rebutting the presumption that adequate state protection exists by adducing clear and convincing evidence which satisfies the Board on a balance of probabilities. The quality of the evidence will be proportional to the level of democracy of the state”.

[41] The Board wrote, in paragraph 27 of its decision, that “Saint Vincent and the Grenadines is a multiparty, parliamentary democracy with a population of approximately 118, 000. The Royal Saint Vincent and the Grenadines Police, is the only security force in the country. There are approximately 850 members of this police force. The law requires judicial authority to issue arrest warrants. Police apprehended persons openly, and detainees may seek judicial determinations of their status after 48 hours if not already provided . . .”. It determined that state protection in St-Vincent and the Grenadines was available and that it took necessary steps to arrest Mr. Durrant on two separate occasions.

[42] Ms. Matthews alleged that the Board ignored contrary evidence found in the record. It is trite law that the Board is presumed to have considered all of the evidence on file and is not obliged to comment on every piece of evidence contrary to its findings (see *Florea*, cited above).

[43] Furthermore, Ms. Matthews never went to the police to file a complaint. In *Leon v Canada (Minister of Citizenship and Immigration)*, 2011 FC 34, [2011] FCJ No 57 at paras 21, 22 and 23, the Court made the following remark:

[21] In general, a person must seek assistance from the authorities before concluding that the state is not able to provide adequate protection, but that is not necessary in all cases. As the Supreme Court stated in *Ward*, at paragraph 48:

... A refugee may establish a well-founded fear of persecution when the official authorities are not persecuting him if they refuse or are unable to offer him adequate protection from his persecutors ... however, he must show that he sought their protection when he is convinced, as he is in the case at bar, that the official authorities -- when accessible -- had no involvement -- direct or indirect, official or unofficial -- in the persecution against him.

This is not true in all cases. Most states would be willing to attempt to protect when an objective assessment established that they are not able to do this effectively. Moreover, it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness.

[22] However, the onus is on the applicant to establish that it was not reasonable to require that he or she seek the protection of his or her country in order to justify his or her failure to do so.

[23] In *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376, 143 DLR (4th) 532, (FCA), Décary J.A. stated that the burden of proof rested on the applicant and was proportional to the level of democracy in the country in question.

[44] In the present case, Ms. Matthews never sought state protection. There was also no evidence to establish that she would be at risk while seeking state protection. The Board further considered the fact that authorities had, on two occasions, arrested and condemned Mr. Durrant for his crimes.

[45] In the case at hand, it was reasonable for the Board to conclude that state protection in St-Vincent was adequate. The onus was on the Applicants to establish that it was unreasonable to seek state protection in St-Vincent. They did not adduce sufficient evidence in that regard.

VII. Conclusion

[46] Given that several years have passed since Ms. Matthews' last encounter with Mr. Durrant and the adequacy of state protection in St-Vincent, the Board reasonably concluded that the Applicants were neither Convention refugees nor persons in need of protection. This application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed; and
2. There is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5528-11

STYLE OF CAUSE: AGNES PAULINA MATTHEWS
NICOLI EZEKIEL MATTHEWS
JANNETT MATTHEWS
NICOLEEN EUGENA MATTHEWS
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: March 27, 2012

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

DATED: May 4, 2012

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