Federal Court  Cour fédérale

Date: 20120626

Docket: IMM-5053-11

Citation: 2012 FC 815

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 26, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SYLVIE PAUL-LAFOREST,
ALEXA PAUL
TAINA PAUL
KEVIN PAUL

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the panel) refusing to grant refugee status to the applicant and her children.

[2] For the reasons that follow, the application for judicial review is dismissed.

BACKGROUND

[3] The applicant, Sylvie Paul-Laforest, is a 37-year old citizen of Haiti. She has three children living with her. Her daughter, Alexa Paul, is an American citizen. Her husband is still living in Haiti. The applicant worked for the Haitian tax branch from 1995 until June 12, 2009. She became an inspector at that organization on April 8, 1997.

[4] On May 5, 2009, a taxpayer arrived at the applicant's office to meet with her colleague, one Solon. Since Solon was not there, the applicant assisted the taxpayer. In doing so, she realized something fraudulent was going on (some [TRANSLATION] "thing" that looked like fraud to use the applicant's words). She advised her supervisor of the situation.

[5] The next day, Solon expressed his unhappiness with what the applicant had done and told her that she would regret her actions if they resulted in him losing his job. A few days later, the applicant learned that Solon had been dismissed.

[6] The applicant received an anonymous threatening telephone call on her birthday, May 26, 2009. On June 12, 2009, Solon threatened the applicant in person using the Haitian expression [TRANSLATION] "beat the dog while waiting for its master". During the night of June 14 to 15, 2009, bandits whom the applicant was unable to identify broke the windows of her house and killed her

dog. The applicant contacted the police but they could not help her because all the patrols were busy. When this event occurred, the applicant's husband was away on business.

[7] The applicants left Haiti on July 3, 2009, for New York. They arrived at the Canadian border on July 4, 2009, and claimed refugee protection.

DECISION UNDER JUDICIAL REVIEW

[8] The panel found that some elements of the applicant's story were implausible. The panel stated that it believed that the applicant's story was fabricated in order to obtain refugee status. The panel found it implausible that Solon threatened the applicant in person and anonymously, that Solon told her about his intentions more than a month before he took action, and that Solon allegedly wanted to kill the applicant but did not take the opportunity to do so for over a month.

[9] The panel also stated that the documentary evidence showed that the Haitian police were still experiencing numerous problems but were improving. The panel found that the applicant's failure to contact the police with the exception of the last incident undermined the credibility of the story. The applicant said that the police had been unable to help her before, but the panel rejected her explanation because, in the past, she had been unable to identify the criminals whereas this time she knew his identity. The panel also noted the lack of evidence regarding her employment and Solon's dismissal.

[10] The panel found that the documentary evidence indicated that the risk of being a victim of criminal acts was a generalized, not a personalized, risk. The panel noted that criminal or vengeful acts are not equivalent to persecution under section 96 of the Act. Victims of such acts are not members of a particular social group under section 96 of the Act. The panel accepted that the applicant was suffering from depression and post-traumatic stress syndrome but did not accept that her psychological problems were connected to her alleged persecution.

[11] The panel also determined, after consulting the documentary evidence and Guideline No. 4—"Women Refugee Claimants Fearing Gender-Related Persecution"—that the applicant was not a member of the group of women who are at risk of being attacked in Haiti because she was not a young woman, had never lived in the slums and had the protection of her husband and father-in-law.

[12] Finally, the panel stated that there was an internal flight alternative (IFA) for the applicant in the cities of Jérémie or Cayes because these cities are far from Port-au-Prince. The panel found that the IFA was not unreasonable because the applicant is educated and has a number of years of work experience. In addition, her husband often travels for his work, and, therefore, this move would not affect his job. Also, the applicants are well-off financially, as shown by their numerous trips to the United States, including one trip for the birth of their daughter. The panel noted that, according to the documentary evidence, IFAs are rare in Haiti but not impossible to find.

ISSUES

[13] This application for judicial review raises the following issues:

a. Is the supplementary evidence submitted by the applicant admissible?

b. Is the panel's decision reasonable?

[14] The respondent made submissions about the appearance of bias on the part of the panel in his memorandum of fact and law but abandoned this point at the hearing.

STANDARD OF REVIEW

[15] The appropriate standard of review for questions of credibility is reasonableness: *Ramirez Bernal v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1007 at paragraph 24. This standard also applies to questions of fact and mixed questions such as the existence of an IFA: *Vasquez Cardona v Canada (Minister of Citizenship and Immigration)*, 2010 FC 57 at paragraph 4; *Kumar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 30 at paragraph 16; and *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 53. A reasonable decision is one that is justified, transparent and intelligible and that falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir*, at paragraph 47.

ANALYSIS

Is the supplementary evidence submitted by the applicant admissible?

[16] The respondent is asking this Court to dismiss some evidence that was introduced in the affidavit of Sylvie Paul-Laforest, specifically Exhibit B at tab 4 of the application record. As Justice Noël stated in *Ngankoy Isomi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1394 at paragraph 6, a court sitting on judicial review may not consider evidence that was not before the initial decision-maker. Certain circumstances may cause a party to adduce fresh evidence, such as where an applicant is trying to prove that his or her counsel was incompetent or that the tribunal was biased. However, in reviewing the record, I do not see the purpose of the evidence filed by the applicant (documents proving her employment at the taxation branch) other than to prove facts relating to her refugee claim.

[17] At the hearing, the respondent stated that Ms. Paul-Laforest had the exhibit in question with her during her hearing before the panel. She simply did not believe it was appropriate to show the exhibit to the panel because the panel did not have any questions on this point. This explanation seems implausible to me particularly because the applicant was represented by counsel before the panel. In addition, despite the applicant's allegations about the incompetence of her former counsel, the applicant did not provide any evidence to support her statements. Therefore it seems inappropriate to me to consider this evidence because it was not before the panel and there are no special circumstances in this case. The exhibit in question is therefore removed from the record.

Is the panel's decision reasonable?

[18] The applicant did not provide any grounds upon which this Court could determine that the decision was unreasonable. The applicant did not advance any argument criticizing the panel's

decision on her credibility. A negative credibility finding is fatal to a refugee claim. The panel's credibility findings are based on the facts and the documentary evidence. The findings are justified, and the panel noted a number of implausibilities: see *Cooper v Canada (Minister of Citizenship and Immigration)*, 2012 FC 118 at paragraph 4; and *Ramirez Bernal*, above, at paragraph 19. It is not the function of the Court to reassess an applicant's credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) at paragraph 4.

[19] The applicant alleges that the panel did not use the correct burden of proof with respect to persecution. However, the applicant does not indicate how the panel erred or where it erred in its reasoning with the exception of broad statements during the hearing about the fact that the panel demanded proof beyond a reasonable doubt. However, the tribunal record does not support the applicant's arguments on this point. The panel clearly stated that the documentary evidence showed that the risks associated with crimes are generalized in Haiti and that these risks are not the equivalent of persecution under section 96 of the Act if there is no nexus with a Convention ground. Persons who are victims of criminal or vengeful acts are not members of a particular social group under section 96 of the Act. See *Asghar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 768 at paragraph 25.

[20] Moreover, even if the applicant had not relied on this ground in her application, the panel followed Guideline No. 4—"Women Refugee Claimants Fearing Gender-Related Persecution"—and assessed whether the applicant was at risk of gender-related persecution in Haiti. Again relying on the documentary evidence and the facts, the panel determined that, given her social status, the applicant was not at risk. The applicant said that neither her husband nor her father-in-law could

protect her given the employment of the former and the age of the latter. However, the panel's findings are based in large part on the fact that the victims identified in the documentary evidence come from slums, are poor and are very young. These descriptors do not apply to the applicant. Accordingly, the panel's findings are not unreasonable.

[21] In addition, it should be noted that membership in a particular social group is not sufficient; the applicant must also demonstrate that there was more than a mere possibility that she risked suffering the alleged harm because of her gender: *Ocean v Canada (Minister of Citizenship and Immigration)*, 2011 FC 796 at paragraphs 15-16.

[22] Last, the applicant does not indicate how the panel erred in its analysis of the IFAs, the existence of which is sufficient to dispose of the entire claim: *Ortegon Palacios v Canada (Minister of Citizenship and Immigration)*, 2008 FC 816 at paragraph 11. The panel followed the steps in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA). It suggested two possible cities as IFAs and was not satisfied that it would be unreasonable for the applicants to move there. The panel stated why it believed that the move would not be unreasonable: the applicant's education, experience and financial situation. It is a finding of fact and therefore the Court cannot intervene in the absence of an error showing that the panel's decision was not based on the facts or that the panel disregarded an important part of the evidence. The applicant did not argue such errors. The panel's decision is tenable with respect to the facts and the law and, consequently, is reasonable.

[23] Taken as a whole, the panel's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. None of the arguments advanced support a finding that the decision was unreasonable. The application is therefore dismissed.

[24] The parties did not submit any questions for certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Richard G. Mosley"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5053-11
STYLE OF CAUSE:	SYLVIE PAUL-LAFOREST ALEXA PAUL TAINA PAUL KEVIN PAUL AND MINISTER OF CITIZENSHIP AND IMMIGRATION
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