

Federal Court



Cour fédérale

Date: 20130528

Docket: IMM-8499-12

Citation: 2013 FC 537

Ottawa, Ontario, May 28, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

GENERVINE MELIUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD], dated August 16, 2012 denying the Applicant refugee protection.

I. Facts

[2] The Applicant is from Saint Lucia. She fears Celsus Pierre Anthony [Anthony], her former common-law partner, by reason of membership in a particular social group, namely, women subjected to domestic violence and sexual abuse.

[3] She met him in 2009 and moved in with him shortly thereafter. He became abusive a month later. He pushed her, refused to give her money for food. Anthony became very jealous because the Applicant was able to draw attraction from other men. He threatened to kill her if she were to leave him and sexually abused her. Anthony bought a knife and wrote the Applicant's name on it and threatened to use it should she give him any problem. He also gave her a miniature coffin with her picture in it.

[4] She reported the threats to the police but they did nothing to help her. The Applicant learned that some of Anthony's family members are in the police force and that some of the men he forced her to have sexual intercourses with were police officers.

[5] With the help of a friend, she fled Saint Lucia and came to Canada in January 2012. She claimed refugee protection in February 2012.

II. Decision under review

[6] The RPD took into consideration the *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [the Guidelines]. It rejected the Applicant's claim on the basis that state protection was available to her.

[7] The RPD first determined that Saint Lucia benefits from the presumption that it is capable of protecting its citizens. It also considered that the Applicant complained to the police, that the police took her statement and that they never investigated the complaint. The RPD noted that the Applicant called the same day to follow up on her complaint but that she did not make any additional attempt to contact the police.

[8] The RPD also noted that the Applicant asked Anthony's brother, Denlee, for help and advice, who is a member of the Royal Saint Lucia Police Force [RSLPF], marine detachment, and that he advised her not to complain to the police and informed her that he would speak to his brother. The RPD also considered the fact that the Applicant did not go to the police after she spoke to Dunlee because she thought that as Dunlee and some of Anthony's friends were members of the police force, she would not get the protection she sought.

[9] The RPD determined that based on the evidence, it cannot be assumed that the whole RSLPF is complicit and that although there may be some rogue elements at play, state protection would have been available to her had she taken reasonable steps to access it. The RPD further noted that the Applicant did not ask for help to a higher ranking police officer or other people such as a social worker, a priest, a lawyer or a women's group.

[10] The RPD considered the documentary evidence on the issue of domestic abuse and violence in Saint Lucia and noted that violence against women remains a problem but that a specific legislative scheme was adopted to address this problem in addition to the non-governmental organizations put in place to help victims of domestic abuse.

[11] The RPD therefore concluded that the Applicant has not taken sufficient steps to test the protection available in Saint Lucia.

III. Applicant's submissions

[12] The Applicant submits that it is important to highlight that the RPD did not make any negative credibility finding regarding the Applicant.

[13] The Applicant argues that her experience is shameful, as she was forced to have sexual intercourses with police officers, and that it seems that the RPD did not give full consideration to the Guidelines.

[14] The RPD contradicted itself by stating that the Applicant was under an obligation to approach the police for help while at the same time explicitly recognizing that she did so on two occasions. Therefore, the RPD made an error in stating that the Applicant did not rebut the presumption of state protection as it failed to consider that she met her obligation to seek help from the police on two occasions.

[15] The RPD failed to consider that the Applicant did give the authorities a chance to deal with her complaint and it has been treated as a case where no protection was sought.

[16] The Applicant submits that it was unreasonable in the circumstances to determine that she did not rebut the presumption of state protection considering that she was forced to have sexual intercourses with various police officers and that she was warned by a police officer not to go back

to the police. The RPD cannot simply state that the presumption of state protection is not rebutted because the Applicant doubted its adequacy or that she was reluctant to test the protection available. Indeed, the RPD's decision expected the Applicant to seek help from the same people complicit in her persecution and harm, which is unreasonable. The Applicant submits that the RPD committed an error as it failed to assess whether there is adequate protection in practice.

[17] Finally, the Applicant submits that the RPD's decision ignores the fact that the police are not effective in combating domestic violence with many people not receiving an appropriate response and states that there are some key impediments to protection in Saint Lucia. The RPD has not provided sufficient justification for why it preferred some reports over the others. This is more so where the agents of persecution include police officers.

IV. Respondent's submissions

[18] The Respondent submits that the RDP reasonably determined that adequate state protection is available to the Applicant in Saint Lucia and relied on the entirety of the evidence. It considered and weighted the contradictory evidence and came to the conclusion that state protection is not inadequate.

[19] The Respondent argues that the Applicant failed to rebut the presumption of state protection with clear and convincing evidence. It is not enough for the Applicant to show that the police in Saint Lucia have not always been effective at protecting victims of domestic abuse. Moreover, it is insufficient for an Applicant to give up trying merely because of what is perceived as a bad experience with local police.

[20] The Applicant failed to take reasonable steps to seek state protection in Saint Lucia, which is a democratic state. Moreover, the RPD took the Applicant's circumstances into consideration and it is well-established that state protection can be available from state-run or state-funded agencies that can assist the Applicant in obtaining protection and not only from the police, even where members of the police are alleged to be the agents of persecution. Finally, the RPD considered the Applicant's testimony but however determined that it was insufficient to establish that the police force was complicit.

[21] Finally, the Respondent submits that the RPD properly considered the Guidelines.

V. Issue

[22] Did the RPD err in its assessment of state protection?

VI. Standard of review

[23] The RPD's state protection determination is a question of fact and is therefore reviewable under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190).

VII. Analysis

[24] The RPD made no negative credibility finding with respect to the Applicant as it considered her to be a credible claimant and its decision is based on the availability of adequate state protection.

[25] The Applicant has demonstrated to the RPD that she has been in an abusive relationship with her former partner in Saint-Lucia. He namely forced her to have sexual intercourses with police officers. However, the Applicant decided to complain to the police about a knife bought by him and showed up at the station where she was told that her complaint would be dealt with later on during the day. After waiting for a few hours, no police officer came to her house and she called and was told that she should not worry. Moreover, after talking to her ex-boyfriend's brother, who is in the police force, he told her not to make a complaint to the police.

[26] Considering the above-mentioned facts, the RPD determined that the Applicant did not rebut the presumption of state protection as it considered that she should have taken additional steps to seek such protection, namely by trying to talk to a higher ranking officer or going to other state agencies.

[27] It has been recognized by this Court that the fact that the state is the agent of persecution doesn't exempt the Applicant from seeking protection. However, there can be clear and convincing evidence that such protection is unavailable depending on the circumstances (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 54, 282 DLR (4th) 413). Such is the case of the Applicant.

[28] The Applicant reported the threats by her former partner to the police and made one follow up but no police officer took her complaint seriously and she did not seek help from higher authorities. Case law has established that such an attempt to seek protection may be justified and may indeed rebut the presumption of adequate state protection depending on the circumstances.

Indeed, in *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1491, 143 ACWS

(3d) 1094, this Court noted at para 32:

Finally, I think it was perfectly legitimate for the Applicant not to complain to the police in the circumstances, given that the police itself were the aggressors and the perpetrators of the acts of violence. As my colleague Tremblay-Lamer stated in *Chaves v. Canada (M.C.I.)*, 2005 FC 193, [2005] F.C.J. 232 (QL), 2005 FC 193 at para. 15, "the very fact that the agents of the state are the alleged perpetrators of persecution undercuts the apparent democratic nature of the state's institutions, and correspondingly, the burden of proof."

[29] The Officer faulted the Applicant for not approaching higher police authorities, but failed to consider whether that would have been reasonable given that the police were the agents of persecution. The Applicant, given her experiences, may not have had the confidence that this would result in any protection. Moreover, the Applicant clearly explained that her complaint to the police resulted in no action. The RPD considered the standard steps to be followed in cases where state protection does not materialize after a first attempt to access it, which can consist in speaking to higher ranking police officers or resorting to other authorities. However, it failed to address the particular circumstances of the Applicant's case, including her psychological state as well as her level of confidence in the authorities, considering that she has been sexually abused by police officers.

[30] The Applicant's situation is the following. Her former partner forced her to have sexual intercourse with members of the police force and he has a brother who is a police officer and who advised her not to make a complaint. In such circumstances, it was unreasonable for the RPD to consider that the Applicant should have taken additional steps to seek protection without

conducting a proper analysis in light of the Applicant's situation. Indeed, it was unreasonable to suggest resorting to higher police authorities without dealing with her particular unstable life. The obligation imposed upon the Applicant to seek help from higher police authorities placed a heavy burden on her of demonstrating that state protection is not forthcoming. Such determination ignores the fact that the Applicant had already gone twice to the police, called them without success and relied on the advice not to make a complaint, given by her former partner's brother's who is a police officer. She had also been forced to have sexual intercourses with her former partner's friends who were also police officers. This should have been addressed during the hearing by the RPD and later discussed in more detail by the Board Member in its decision.

[31] With regard to the RPD's consideration of the documentary evidence, its analysis is comprehensive as it recognized that although the police in Saint Lucia may be slow in responding to complaints, that the court system is overburdened and that domestic violence remains a problem, the government has taken a number of legislative steps to address this problem. Although the RPD's determination regarding objective evidence is reasonable, there remains an issue with its decision as its determination that the Applicant, who finds herself in a situation where the police force is her agent of persecution, should have made additional efforts to seek protection from the police or other agencies, is unreasonable. In different circumstances, this may have been a proper way of showing that state protection was available. However, the RPD clearly made it an obligation in the Applicant's case (see paragraph 18 of the decision) to resort to higher authorities in the RSLPF without considering her own state of mind and factual situation. As seen above, this was unreasonable.

[32] As for the Guidelines, they were properly considered and applied by the RPD at the beginning of the decision. There is no indication that the RPD did not give weight to the Guidelines.

[33] The parties were invited to submit a question for certification but none were proposed.

JUDGMENT

THIS COURT’S JUDGMENT is that the judicial review of the RPD’s decision dated August 16, 2012 is granted and the matter shall be returned to a different panel for consideration. No question for certification will be certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: GENERVINE MELIUS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 22, 2013

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

DATED: May 28, 2013

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