Federal Court

Cour fédérale

Date: 20110620

Docket: IMM-6120-10

Citation: 2011 FC 722

Toronto, Ontario, June 20, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MARIE MADELEINE CORNEAU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board determined that the applicant was neither a Convention refugee nor a person in need of protection because adequate state protection was available to her in Saint Lucia.

[2] Ms. Corneau sought protection from abuse she suffered at the hand of Denys Knox, her former common-law partner. She says that during their 15-year relationship he was physically

abusive and frequently beat her. She approached the police for assistance five times but they did not help her, saying that the domestic situation was a family matter between the applicant and her common-law spouse. In 2004, after the last time she was beaten and almost strangled to death, she left Saint Lucia to be with her children living in Canada. She has learned that her common-law spouse was very angry that she had left and that he has vowed to force her to live with him if she ever returned.

[3] The applicant delayed making a claim for protection for more than four years. Although the Board dealt with the delay issue and it was raised as an issue in this proceeding, it was not the determinative issue that led to the rejection of her claim and, accordingly, it is not required to deal with it further.

[4] The Board stated that the determinative issue in the claim was state protection.

[5] On the facts of this case, the Board's finding that Saint Lucia was capable of providing the applicant with adequate protection was unreasonable. The applicant approached the police five times. No steps were taken to protect her from her abuser. She finally fled after nearly being strangled to death. The Board made no negative credibility finding with respect to the applicant's version of events, and it must thus be assumed her allegations were true.

[6] The good intentions of a state to protect its citizens do not constitute state protection where in practice protection does not exist; this is reinforced, in the context of Caribbean domestic abuse, by the cases cited by the applicant: *Mitchell v Canada (Minister of Citizenship and Immigration),*

2006 FC 133; *Clyne v Canada (Minister of Citizenship and Immigration),* 2004 FC 1670; *Hooper v Canada (Minister of Citizenship and Immigration),* 2007 FC 1359; and *Lewis v Canada (Minister of Citizenship and Immigration),* 2009 FC 282. Here, the evidence of the applicant establishes that the state, in the form of the police, was either unable or unwilling to provide her with protection.

[7] The core of the Board's decision were its intertwined findings that (1) the government of Saint Lucia had undertaken initiatives to combat domestic violence and (2) the applicant had not availed herself of the services of various agencies which support battered women or lodged a complaint with the police force's internal complaints unit.

[8] The first finding is unreasonable because, as noted above, initiatives count for nothing if they do not translate into adequate protection. I find particularly disturbing that the Board accepted, without question, the unsupported July 2009 statement of the Director of the Ministry of Home Affairs and Gender Relations that "police response to domestic violence 'improved significantly' in the last eight to nine years because of sensitization training provided by the Division of Gender Relations" and that "the improvement has become 'even more noticeable' with the establishment of the VPT." The veracity of this claim for this applicant must be examined in light of the fact that during that same period the applicant was receiving no police support despite her reports of abuse. Further, the document containing the Director's statement also contains a contrary view from the Executive Director of the Saint Lucia Crisis Centre who reports that he or she "did not think that the police were effective in combating domestic violence or that the formation of the VPT had improved the situation." The Board also fails to acknowledge the example given in that report of the death of a victim of domestic abuse who had filed "several" reports with the police against her

abuser "which were never pursued." Further, the Board does not mention the statement of her Attorney in that report that "police do not always take domestic violence cases seriously." In short, the Board fails to cite any of the evidence that does not support the picture painted by the government of Saint Lucia.

[9] I agree with the respondent that it is not necessary that the Board refer to every piece of evidence before it. However, it is unreasonable for the Board to rely on one unsupported opinion and to discount or fail to mention statements and evidence to the contrary without offering any explanation as to why it preferred the positive outlook given by a government official over the negative views and examples provided by others.

[10] The second ground relied upon by the Board is unreasonable because a claimant is not required to seek protection or assistance from non-governmental organizations or administrative agencies in order to rebut the presumption of state protection. An attempt to obtain protection from the police or the body responsible for the security of citizens is sufficient. While shelters, counseling services, and hotlines may be helpful to women escaping abuse, these institutions are not tasked with ensuring physical safety – this is the job of the police. In most cases, if a claimant establishes that the police force or analogous authority is unable to protect him or her from threats identified in ss. 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, he or she will have rebutted the presumption of state protection. In this respect, I concur with the comments of Justice Tremblay-Lamer in *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, at para. 25:

> I am of the view that these alternate institutions do not constitute avenues of protection *per se*; unless there is evidence to the contrary,

> the police force is the only institution mandated with the protection of a nation's citizens and in possession of enforcement powers commensurate with this mandate.

[11] The Board's suggestion that the applicant could have consulted the police force's internal complaints unit is also unreasonable. There is no evidence the applicant knew about this unit of the police or that she should have. I note that she has but five years of primary school education. The onus on claimants to provide "clear and convincing" evidence to rebut the presumption of state protection does not extend so far as to require claimants to seek protection from the various subdivisions of the police force. In any case, the Board itself suggests that the internal complaints unit is intended to deal with police corruption, and here the applicant alleged a failure to provide protection, not corruption. Finally, it is not reasonable to expect the applicant, who is uneducated and unsophisticated, to navigate the judicial system – which the documentary evidence describes as problematic – to obtain a protection order – the value of which the documentary evidence questions - after her repeated unsuccessful attempts to obtain protection from the police and her near-death final assault.

[12] The Board's suggestion that the "local failures" to provide effective policing did not amount to a lack of state protection and the Board's determination that the failure in the applicant's case did not suggest a broader pattern of state inability or refusal to provide protection are also unreasonable. Saint Lucia is a small island nation with a population of approximately 174,000 and a police force (including coast guard) of 826 members. With such a small size it is difficult to accept that a failure in policing could truly be "local," especially given that the applicant lived in the capital, Castries.

[13] For these reasons the application is allowed. Neither party proposed any question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application is allowed, the application is referred back to the Board for determination by a different Member, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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