CANADA / JUDGMENT

MB1-06736

COURT
Refugee Protection Division

DECIDED
12 November 2013

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Immigration and

Refugee Board

Refugee Protection Division

Commission de l'immigration

et du statut de réfugié

Section de la protection des réfugiés

RPD File No. / No dossier SPR : MB1-06736

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXX XXXX XXXX

Date(s) of Hearing

Date(s) de l'audience

October 16, 2013

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of decision

Date de la décision

November 12, 2013

Panel

Tribunal

Anna Brychcy

Claimant's Counsel

Conseil du demandeur d'asile

Me Joseph W. Allen

Tribunal Officer

Agent du tribunal

N/A

Designated representative

Représentant désigné

N/A

Minister's Counsel

Conseil du ministre

N/A

[1]

[1] The claimant is XXXX XXXX XXXX. She is a 43-year old citizen of Saint Vincent and the Grenadines. She is claiming refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).

ALLEGATIONS

[2] The claimant fears her ex-boyfriend, XXXX XXXX XXXX She moved in with him in XXXX 2008. Shortly after moving in with him he punched her and beat her. In XXXX 2009, when he lost money gambling he sent two men to the home and the claimant had to have sex with them as a payment for his gambling debt. When the claimant confronted him about what she had been required to do, he slapped her and kicked her.

[3] The claimant left XXXX house on XXXX XXXX XXXX 2009, and went to stay with her brother in XXXX XXXX. XXXX located her there and came to the house and threatened to burn it down. The claimant agreed to go back to his house.

[4] One day when her daughter came over, XXXX became angry and beat her and chased the daughter out of the house. After this incident the claimant decided to leave XXXX for good. She went to live with her sister in XXXX 2009. XXXX would continue to call her and she was forced to change her number.

[5] On XXXX XXXX, 2011 the claimant's brother ran into XXXX in XXXX XXXX and they had an argument which led to a fight and XXXX had to be hospitalized. He blamed the claimant as a result.

[6] On XXXX XXXX XXXX 2011 the claimant met up with XXXX on the street and he began to run after her. She managed to run away by hiding in a shop.

[7] The claimant came to Canada on XXXX XXXX, 2011, and claimed refugee protection in November 2011.

DETERMINATION

[8] The panel finds that the claimant is not a "Convention refugee" nor is she a "person in need of protection".

IDENTITY

[9] The identity of the claimant was established to the satisfaction of the panel on the basis of her Saint Vincent and the Grenadines passport on record.

ANALYIS

[10] Before rendering a decision in this claim, the panel carefully reviewed the IRB Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.1 The claimant was recognized as a vulnerable person on the basis of a psychological evaluation entered as Exhibit C-12. The panel found the claimant testified in an honest fashion and did not attempt to exaggerate her claim. The panel accepts that she was mistreated in her relationship with XXXX XXXX.

[11] The determinative issues in this case however were whether XXXX XXXX would continue to pose a threat to the claimant today and the issue of state protection.

[12] The claimant stated that she left XXXX house for the last time in XXXX 2009. She remained in Saint Vincent until XXXX 2011. During this time she continued to live in XXXX with her sister in the same village where XXXX lived. She described this as being a smalle village where everyone knew everyone else, and XXXX home was not far from where the claimant lived with her three children and her sister. After she left his house, she testified that she did not see XXXX until she ran into him on the street on XXXX XXXX XXXX 2011, more than two years later. The claimant stated she did not encounter him before because she did not go out much, and also XXXX was often in the mountains planting his drugs. The claimant however did work and would travel into XXXX several times a week to work as a XXXX and would visit

her other sister who lived in the XXXX XXXX XXXX XXXX. While XXXX tried to call her shortly after she left his home in XXXX 2009, she changed her phone number and the phone calls stopped. The claimant testified that on the time she saw him on XXXX XXXX XXXX 2011, she began to run from him and when he ran after her she ran into a shop. She was not harmed by XXXX that day. When asked if she went back to talk to the shop owner and to find out if XXXX had said anything to him, the claimant testified that she did not know about what XXXX had said to the shopkeeper. All she could state was that the man had known about her problems with XXXX since it was a small village and he had stopped him from entering the store. She did not mention that XXXX had uttered any threats to the shopkeeper that day that he would harm the claimant. The shopkeeper did not call the police.

[13] The claimant testified that her brother ran into XXXX in XXXX XXXX and that a fight ensued causing XXXX to be hospitalized for two weeks. The claimant stated that this happened in XXXX 2011 although the brother's letter, entered as Exhibit C-7, states it happened in XXXX 2011. The claimant could not explain the discrepancy but testified that she was still in Saint Vincent when the incident happened. The claimant had very little details about this argument and stated only that her brother had said something that had made XXXX angry and a fight had begun between the two men. The brother was not injured but XXXX had to spend two weeks in the hospital. Asked if there was a police report or any charges laid the claimant said she did not know. Exhibit C-7 is the brother's letter but this letter mentions only that he made a complaint to the police about threats from XXXX sister.

[14] The claimant stated in an amendment to her Personal Information Form (PIF) that XXXX has since threatened to kidnap her son, and that he had thrown a rock through the window of her sister's house. The claimant's son, however, continues to live with the claimant's sister in XXXX and no harm has come to him. The claimant did not know if her family had made a police report for the breaking of the window.

[15] The panel finds that the claimant continued to live in Saint Vincent for more than two years after ending her relationship with XXXX XXXX. Although she testified that she had heard from neighbours that he was making threats against her, XXXX XXXX never came to the place where she was living to threaten her in the more than two years that she continued to live in Saint Vincent after separating from him, even though he lived just minutes away and he would have known that she was living at her sister's home. On the time she did run into him, she ran away and while he did run after her, he did not harm her nor did he issue any threats to the shopkeeper. Considering that no physical harm occurred to the claimant in the more than two years that the claimant continued to live in Saint Vincent before coming to Canada, the panel finds that she does not have a well-founded fear of persecution. Had XXXX XXXX wanted to harm the claimant for leaving him, the panel finds he would have had plenty of opportunity to do so.

[16] The panel went on to examine state protection for the claimant in Saint Vincent. The claimant testified that she never went to the police station to tell them about the abuse and to file a complaint. She said she did not go out of fear and also since she believed that the police do not react. The claimant, however, had not had any previous experiences with the police and had never before been in an abusive relationship.

[17] There is a presumption, except in situations where the state is in complete breakdown, that the state is capable of protecting its citizens. A claimant wishing to show that a state is incapable of protecting its citizens must rebut the presumption developed in Ward.2 The onus of proof, therefore, is on the claimant and she must rebut this presumption by providing clear and convincing evidence of the state's inability to protect. While the effectiveness of the protection is a relevant consideration,3 the preponderance of recent Federal Court decisions has held that the test for a finding of state protection is whether the protection is adequate, rather than effective.4 A claimant must show that she has taken all reasonable steps in the circumstances to seek protection, taking into account the context of the country of origin, the steps taken, and the claimant's interactions with the authorities.5 In determining whether protection is adequate, it is important to analyze not merely whether a legislative and procedural framework for protection exists, but also whether the state, through the police or other authorities, is able and willing to effectively implement that framework.6

[18] The claimant in this case took no steps to see state protection other than the time that she called the police when XXXX appeared at her brother's house. However, the police told her that they did not have transport that night. The next day she did not go report the threats to the police but returned to go live with XXXX instead.

[19] The documentary evidence in the National Documentation Package shows that Saint Vincent and the Grenadines makes claim to democratic values and protection of human rights. At this time, there is no state of civil war, invasion, collapse of order and the government is in control of its territory. The judiciary is independent and consists of lower courts and a High Court with appeal to the Eastern Caribbean Court of Appeal and final appeal to the Privy Council in the United Kingdom. There are 850 members in the police force for a country with a population of 118,000. The law requires arrest warrants in most cases which are issued by judicial authority. Police apprehend persons openly, and detainees may seek judicial determination after forty-eight hours if not already provided. The bail system functions and was generally effective. The panel finds that there are adequate laws, initiatives, policies and mechanisms in place in Saint Vincent to provide for the protection of its citizens.

[20] According to the documentary evidence Chapter XI, sections 157-198 of the Criminal Code of Saint Vincent and the Grenadines outline provisions for dealing with offences against the person, bodily harm and assault causing bodily harm.7 For example:

Section 174: any person who, unlawfully and maliciously, wounds or inflicts any grievous bodily harm upon any other person, either with or without a weapon or instrument, is guilty of an offence and liable to imprisonment for fourteen years.

Section 193: any person who commits an assault causing actually bodily harm is guilty of an offence and liable to imprisonment for five years.

[21] The U.S. Country Reports state that rape, including spousal rape, is illegal, and the government generally enforced the law when victims came forward. Police were generally responsive to these complaints, but fear of reprisal may deter some victims from seeking assistance. Although no special unit is devoted to these types of crimes, some officers were specially trained to handle them.8 According to the Saint Vincent and the Grenadines Human Rights Association (SVGHRA) coordinator, there has been a marked improvement in police response. While once police generally ignored domestic violence complaints, today police follow a training program that teaches them to respond to domestic violence complaints by following the procedures set out in the Domestic Violence Act 1995.9

[22] There is credible evidence that an increasing number of abused women are coming forward and that police are being trained to better deal with situations of domestic abuse in Saint Vincent. Case law very clearly states that the expectation one can have from the state is adequate protection, not perfect protection. Perfect protection does not exist in any country. The panel cites Milev,10 where the Federal Court of Appeal states that the fact that a state does not provide perfect protection is not, in itself, a basis for determining that the state is unwilling or unable to offer reasonable protection in the circumstances. State protection does not have to be perfect, with the applicable standard being whether the police make serious efforts to protect the citizens.11 The panel finds that the state of Saint Vincent's efforts to provide protection to victims of domestic violence is producing results.

[23] The claimant has a close family and her two sisters live in XXXX. She testified that she could not support herself by moving out of the area to another part of Saint Vincent and the panel accepts that it would be difficult for her to move considering that her sisters and children are in XXXX. It is now 4 years since the claimant moved out of XXXX home. The panel finds that should she return to Saint Vincent and in the event that she would be threatened by XXXX XXXX she could apply for a protection order. The Assistant Superintendent of the Criminal Investigation Department of the Royal Saint Vincent and the Grenadines Police Force stated that cases in which protection orders are issued to victims who do not live with their abusers, such as a woman asking for a protection order against a former boyfriend, occur frequently.12

[24] The Family Court of Saint Vincent and the Grenadines provides information on the procedure for applying for protection or occupation orders. In the absence of a protection order, a police officer may exercise the power of arrest for an individual who is likely to be further abused. The documentary evidence shows that the legislative framework and the tactical measures that are in place in Saint Vincent and the Grenadines are offering

protection to the women, and the perpetrators are being punished. The President of the Family Court provided the following statistics in relation to cases of domestic violence and protection orders. From January to the end of October 2007, out of a total of 177 protection orders, 75 were granted, 70 were "stuck out", 13 were denied, seven were dismissed and five were withdrawn. For the same period, a total of 33 arrests for domestic violence were registered, leading to 22 convictions, seven dismissals and five cases registered as offering no evidence.13

[25] The panel found it disturbing that XXXX XXXX made the claimant have sex with two men in payment of his gambling debt. The panel examined the Trafficking in Persons Report of 2012 on Saint Vincent.14 In September 2011, the House of Assembly unanimously passed the Prevention of Trafficking in Persons Bill of 2011, which prohibits forced prostitution and forced labor, including bonded labor, and prescribes punishments of up to 20 years' imprisonment with fines. These penalties are sufficiently stringent and commensurate with other serious crimes, such as rape. The law includes strong victim protection measures, provisions for victim restitution, and states that consent or past sexual behavior is irrelevant. The government also established in early 2012 a special unit within the Royal St. Vincent and the Grenadines Police Force to focus specifically on human trafficking, sexual offences, and domestic violence. The Vincentian government made progress in establishing victim protection policies. The Ministry of National Mobilization and Social Development established guidelines during the reporting period on the referral of victims to appropriate shelter. The government did not fund any trafficking-specific assistance programs, but the government provided some funding and building space to local NGOs whose shelter, counselling, and other services for crime victims would also be available to trafficking victims. There were no reports of trafficking victims assisting law enforcement, but under its new anti-trafficking law, the government offered incentives to encourage their assistance in the investigation and prosecution of human trafficking offenders.

[26] On the basis of the documentary evidence, the panel finds that the government has enacted legislation that prohibits all forms of trafficking and provides strong victim protection measures. In addition, the government established a ministerial-level anti-trafficking task force and created an anti-trafficking police unit. This positive momentum and new structures should allow the government to make continued progress, and identify and assist potential victims of trafficking.

[27] While the panel understands that the claimant felt ashamed after the rape by the two men, the panel finds that if this incident had been reported to the police, action would have been taken against not only XXXX XXXX but also the two men involved.

[28] For the above-mentioned reasons, the panel finds that state protection would be available to the claimant in Saint Vincent. The panel finds that the claimant is not a "Convention refugee" under section 96 of the Act. Having found that there is adequate state protection, the panel also does not find that her return to Saint Vincent would place her in a situation where, on a balance of probabilities, she would be at a risk to her life or at a risk of cruel and unusual

treatment or punishment or that she would face a danger of torture. The panel finds that she is not a "person in need of protection" under section 97(1) of the Act.

CONCLUSION

[29] The panel finds that the claimant, XXXX XXXX XXXX, is neither a "Convention refugee" nor is she a "person in need of protection" pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act. Her claim is rejected.

Anna Brychcy

Anna Brychcy

November 12, 2013

Date

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1 Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)h) of the Immigration and Refugee Protection Act.

2 Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85; reversing [1990], 2 F.C. 667, 67 D.L.R. (4th) 1, 10 Imm. L.R. (2d) 189 (C.A.).

3 Quinatzin, Aguilar Gutierrez v. M.C.I. (F.C. no. IMM-1907-07), O'Keefe, August 12, 2008; 2008 FC 937

4 Flores, Nubia Victoria Suarez v. M.C.I. (F.C., no. IMM-4613-07), Mosley, June 9, 2008; 2008;

Sandoval, Dora Luz Cuevas v. M.C.I. (F.C., no. IMM-5394-07), Zinn, July 14, 2008, 2008 FC 868;

Sanchez, Patricia Torres v. M.C.I. (F.C. no IMM-5283-07), Russell, December 1, 2008; 2008 FC 1336; Velasquez, Ventura Sarai Batres v. M.C.I., (F.C. no. IMM-2299-08), de Montigny, February 2, 2009 FC 109; Valerio Cueto, Artemio (F.C. no IMM-232-09), Frenette, August 10, 2009; 2009 FC 805;

Mendez, Luis Arceo v. M.C.I. (F.C. no. IMM-4439-07), Mosley, May 7, 2008; 2008 FC 723;

Samuel, Julia Vanessa v. M.C.I. (F.C., no. IMM-5175-07), Lagacé, June 18, 2008; 2008 FC 762;

Hernandez Gonzalez, Karla Del Carmen v. M.C.I. (F.C., no. IMM-2265-08), Hughes, November 13, 2008; 2008 FC 1259.

5 Peralta, Gloria Del Carmen v. M.C.I. (F.C.T.D., no. IMM-5451-01), Heneghan, September 20, 2002, 2002 FCT 989.

6 Elcock Milkson, Joan Theresa v. M.C.I. (F.C.T.D., no. IMM-2985-98), Gibson, September 20, 1999;

Torres, Betsabe Del Carmen Balmaceda v. M.C.I. (F.C.no. IMM-2009-04 Pinard, May 10, 2005; 2005 FC 660; Wisdom-Hall, Tanesha v. M.C.I. (F.C. no. IMM-4581-07), Hughes, May 28, 2008; 2008FC 685.

7 Exhibit A-1: National Documentation Package on Saint Vincent and the Grenadines. Tab 9.1, Immigration and Refugee Board of Canada. Sections of the criminal code that outline provisions for bodily harm and assault causing bodily harm, September 11, 2007.

8 Ibid. Tab 2.1, United States. Department of State. Country Reports on Human Rights Practices for 2012, April 19, 2013.

9 Ibid. Tab 5.4, Immigration and Refugee Board of Canada. Domestic violence, including legislation and availability of state protection and services (2008-2009), November 4, 2009.

10 Milev, Dane v. M.C.I., (F.C.T.D.,no. IMM-1125-95), MacKay, June 28, 1996.

11 Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 at 134 (F.C.A.).

12 Exhibit A-1: NDP on Saint Vincent and the Grenadines, Tab. 5.5, Immigration Refugee Board of Canada. Whether protection orders are available for victims of violence who are not living with the perpetrator, March 8, 2010.

13 Ibid. Tab 5.1, Immigratio and Refugee Board of Canada. Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; services for abused women (2006-November 2007), November 13, 2007.

14 Ibid. Tab. 7.4, United States. Department of State. St. Vincent and the Grenadines (Tier 2). Trafficking in Persons Report 2012, June 2012.

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