CANADA / JUDGMENT

TB2-00366

COURT
Refugee Protection Division

DECIDED
29 November 2013

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RPD File No. / N° de dossier de la SPR : TB2-00366 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Claimant(s) XXXX XXXX XXXX Demandeur(e)(s) d'asile Date(s) of Hearing October 23, 2013 Date(s) de l'audience Place of Hearing Toronto, Ontario Lieu de l'audience Date of Decision November 29, 2013 Date de la décision Panel Anthony P. da Silva Tribunal Counsel for the Claimant(s) Johnson Babalola Conseil(s) du (de la/des) demandeur(e)(s) d'asile Barrister and Solicitor Tribunal Officer N/A Agent(e) du tribunal Designated Representative(s) N/A Représentant(e)(s) désigné(e)(s) Counsel for the Minister N/A Conseil du (de la) ministre

INTRODUCTION

[1] The claimant, XXXX XXXX XXXX, is a citizen of St. Lucia. She seeks refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA)1. ALLEGATIONS

[2] The claimant alleges as follows:

[3] She was raised by her grandmother, during which time she was sexually abused by her uncle who lived with the grandmother. When, at 13, she became pregnant by the uncle, he beat and pushed her down the stairs causing her to have a miscarriage. She became pregnant again by the uncle when she was 16, but, when she went to the doctors, they refused to perform an abortion because it was too late in the pregnancy. Her grandmother, however, was able to abort the fetus using traditional methods. The claimant tried to convince the grandmother that they should report the uncle to police, but she refused. The claimant later went to the police alone, but they did not believe her.

[4] In XXXX 2002, the grandmother arranged to have the claimant come and stay with a friend in Canada. The friend, however, mistreated the claimant and when she met a man, XXXX XXXX (XXXX) in XXXX 2003, she began a relationship with him and moved in with him soon after.

[5] In XXXX 2005, she discovered she was pregnant and XXXX promised to assist her in obtaining permanent status in Canada. A few weeks into the pregnancy XXXX began to mistreat the claimant and, for the next five years, she endured his abuse until she reconnected with a woman, XXXX, she had befriended years earlier and told her of her ordeals. XXXX then informed her of the refugee process in Canada and, in XXXX 2010, the claimant made a claim for refugee protection.

[6] When the claimant's grandmother died in XXXX 2011, the claimant reconnected with her mother who confronted the uncle about the sexual abuse suffered by the claimant. The claimant's mother also went to the police to report the uncle, but they informed her that there was nothing they could do. After being confronted by the claimant's mother, the uncle threatened to kill the claimant when she returned to St. Lucia.

DETERMINATION

[7] The panel finds that the claimant is neither a Convention refugees in accordance with section 96 nor a person in need of protection in accordance with section 97(1) (a) and (b) of the IRPA.

ANALYSIS

Gender-Related Claim

[8] Since this claim involves sexual and domestic abuse, the panel has given careful consideration to the Chairperson's Guidelines on Gender-Related Persecution.2

[9] The Guideline highlights that women refugee claimants may face special problems in demonstrating that their claims are credible and trustworthy. Factors that may affect their ability to provide credible evidence include cultural, religious and social norms that dictate how a woman should behave in public and whether it is acceptable for her to share intimate details regarding abuse suffered during a relationship with a man. Additionally, women who have been subjected to domestic violence may exhibit a pattern of symptoms referred to as "battered woman syndrome" and may be reluctant to testify.

[10] The Guideline was used by the panel members to help understand and apply the added sensitivities necessary to properly assess whether any credibility issues are the result of such difficulties or an attempt to fabricate evidence. Identity

[11] Several documents3 were available in support of the claimant's identity. The panel is persuaded, on a balance of probabilities, that the claimant is who she says is and is a citizen of St. Lucia. Credibility-Well-founded Fear of Persecution

[12] The panel has concerns with the credibility of some of the elements of this claim and is not persuaded the claimant has a well-founded fear of persecution.

[13] The claimant alleges that she has suffered domestic violence and fears that she will be killed by her uncle were she to her return to St. Lucia. In support of her claim, Ms. XXXX has produced a number of affidavits, letters, photographs, and a psychiatric assessment. The panel has considered the claimant's evidence and will comment both generally on the evidence as well as reference individual pieces of evidence during this analysis.

[14] A number of documents, such as the affidavits4 from the claimant's friend and from her mother, the letters5 from Planned Parenthood, and the psychiatric assessment,6 reference the abuse the claimant has suffered and which she describes in her Personal Information Form (PIF) narrative. The panel acknowledges and sympathizes with what appears to have been a traumatic and difficult childhood, adolescence, and even recent adulthood for the claimant. The panel, however, is not persuaded that the claimant would be targetted by her uncle, XXXX XXXX, were she to return to St. Lucia.

[15] The claimant stated, in her Personal Information Form, that when her grandmother refused to report her uncle's sexual abuse to the police, she went to the police behind her grandmother's back, but they did not believe her. When asked if she had ever gone to the police to report her uncle's abuse, she replied: "No." When her PIF statement was put to her during the hearing, she changed her testimony and said that she had, in fact, gone to the police, but that they did not believe her. The panel draws a negative inference from this contradiction and finds that the claimant, more likely than not, did not go to the police. Although the panel can understand why the claimant - a 16 year old girl who had been raped by her uncle and had little or no support from her family - would probably not report the matter to the police, it nonetheless must question the claimant's allegations.

[16] The claimant states in her PIF that when her mother contacted her in XXXX 2011 following the death of her grandmother, she told her mother "everything." Her mother then apparently went to the police to have them arrest the claimant's uncle but they said there was nothing they could do. The panel questions, first of all, that the claimant, who had been abandoned by her mother as a child, when contacted by her on the telephone, would now tell her "everything" - sharing all of the abuse she had suffered over the years. The claimant has provided an undated affidavit from her mother,7 wherein the mother claims to have been prevented from seeing her daughter by an abusive partner. The claimant's PIF narrative (dated February 2, 2012) simply states: "My mother left me when I was two years old with my grandmother (her mother) and I never met my father." The psychiatric assessment (dated April 19, 2012) states: "She reports her mother was often out with different men so she grew up with her grandmother and her maternal uncle."8 No other reference is made to the claimant's mother. The letter from her social worker-therapist (dated August 23, 2012) with whom she has had ongoing counselling makes no mention of the mother and states: "She [the claimant] expressed to me that the only person who supported her was her grandmother..."9 In light of the available evidence, the panel is not persuaded that the claimant shared her experiences of abuse with her estranged mother and gives the affidavit little weight. Further, the panel is not persuaded that the claimant's mother, who, according

to the claimant, now lives in the grandmother's house with the uncle, has confronted the uncle regarding his abuse of the claimant or has gone to the police to have the uncle arrested.

[17] When asked why she believes her uncle continues to have an interest in her, she replied: "Because I told a lie on him". The panel interpreted the claimant's statement as a reiteration of her PIF narrative: "My mother said he has been telling people in the community that I told lies on him and ran away to Canada." The panel finds, however, that there is insufficient, trustworthy evidence to support the claimant's allegations that her uncle has threatened or is prepared to kill her upon her return to St. Lucia, because the claimant "told lies on him".

[18] The claimant came to Canada in XXXX of 2002, but testified that she did not make a claim until 2011 when her friend told her about the refugee process in Canada. The panel notes, however, that, in her letter, XXXX XXXX XXXX XXXX XXXX XXXX from Planned Parenthood, has indicated that the claimant had made an appointment with Planned Parenthood to "request a referral to a settlement agency to assist in finding employment and to receive guidance on how to apply for Refugee status in Canada [emphasis added]." 10 When asked about the discrepancy in dates, the claimant had no explanation. When asked why she did not apply for refugee status in 2009, when apparently she had been made aware of it, she replied that she did know why. According to the claimant's narrative, her common-in-law partner, in 2005, had promised to assist her "to obtain status in Canada." It would appear that the claimant had had some discussion with her partner in 2005, if not earlier, about regularizing her status in Canada, but failed to take any action when her partner did not follow through on his promise to assist her. Although the panel recognizes the psycho-emotional obstacles she has attempted to overcome, it nonetheless must weigh those against a seemingly lack of subjective fear. State Protection

[19] While the panel's main reason for rejecting the claim is credibility and well-foundedness, it also considered the availability of state protection. The claimant has provided an affidavit11 from XXXX XXXX from St. Lucia, XXXX XXXX XXXX the Caribbean Association of Feminist Research and Action (CAFRA). Ms. XXXX concludes that the information she has provided or "statement," as she terms it, is made out of her own "personal knowledge and experience". Ms. XXXX has provided a detailed (10 page) affidavit enumerating the many problems facing "women who are fleeing situations of violence, particularly domestic violence." Ms. XXXX statement, in the form of an affidavit, does not purport to be a detailed study of domestic violence and is based on her observations and "anecdotal evidence". She concludes that she does "not believe there is any reliable, adequate protection anywhere in the country". She recognizes, however, that protection is most problematic when "the perpetrator is connected to the police force or those in power."

[20] The panel notes that the claimant's uncle, according to her narrative, was a drug dealer. There is no evidence that he is well-connected or that the police would not arrest him if he threatened the claimant. There is also no evidence that the police turned the claimant away when she went to them on a previous occasion as she alleges. The panel acknowledges the

problems with domestic abuse in St. Lucia, but given that there has existed legislation since 1995 to support victims of domestic abuse,12 it is difficult to accept the claimant's allegation that, when she went to police to complain about being raped by her uncle, the police would not have, at the very least, created a report. The panel therefore concludes that there is insufficient evidence to conclude that the police are unwilling or unable to provide adequate protection for the claimant were she to return to St. Lucia. Summary

[21] The panel is persuaded that the claimant has suffered abuse - likely at the hands of her uncle - when she was growing up in St. Lucia and later at the hands of her common-in-law partner in Canada. The panel, however, finds that there is insufficient trustworthy evidence to support her allegation that her uncle wants to kill her, and is not persuaded that he continues to be interested in the claimant and that claimant has a well-founded fear of persecution.

CONCLUSION

[22] After careful consideration of all of the evidence, including the claimant's testimony, the panel determines that the claimant has not satisfied the burden of establishing a serious possibility of persecution on Convention grounds, or that, on a balance of probabilities, she would be subject personally to a danger of torture, or face a risk of cruel and unusual treatment or punishment, if she were returned to St. Lucia. The claim is therefore rejected. (signed) 'Anthony P. da Silva' Anthony P. da Silva November 29, 2013 Date 1 As enacted by S.C. 2001, c. 27, sections 96, 97(1)(a) and 97(1)(b). 2 Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act. 3 Exhibits C-5, C-10, R/A-2 4 Exhibit C-12, 5 Exhibits C-10, C-19, 6 Exhibit C-11 7 Exhibit C-23 8 Exhibit C-14 9 Exhibit C-11 10 Exhibit C-6 11 Exhibit C-3 12 Exhibit R/A-1, U.S. Dept. of State Report, Saint Lucia, item 5.2

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