Date: 20061220

Docket: IMM-996-06

Citation: 2006 FC 1538

OTTAWA, ONTARIO, December 20, 2006
PRESENT: The Honourable Mr. Justice von Finckenstein

BETWEEN:

NESTA ELAINE LEWIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

Background

[1] Nesta Elaine Lewis (the "Applicant") is a citizen of Grenada. She appeared before a three-member panel on November 16, 2005. She alleges a well-found fear of persecution based on her membership in a particular social group, namely, female victims of abuse. The source of her fear is her former boyfriend, whom she met in 2000. At the time, the Applicant was only 15 years old. They never cohabited; however, the Applicant became pregnant within six months of the relationship commencing. Soon after, the Applicant alleges that her boyfriend became physically abusive in or about February 2001. The abuse continued for the next four years encompassing several hundred assaults, including incidents of sexual assaults and marijuana. On November 30, 2004, he allegedly attended at her place of employment with a machete and threatened and beat her in front of customers and staff. This incident and the other incidences of abuse were not reported to the police.

[2] On May 24, 2005, the Applicant departed for Canada. Her daughter remains in Grenada with the ex-boyfriend's mother.

Decision

[3] The Board on January 9, 2006, came to a split decision. The majority found the Applicant not to be credible and found that she had not overcome the presumption of state protection. The dissenting member came to the opposite conclusion on both points.

Issues

1. Was the Board's decision unreasonable in face of the totality of the evidence?
2. Did the Board ignore material evidence, to wit, the unavailability of shelter?

Standard of Review

[4] Both sides agree that the applicable standard of review is reasonableness *simpliciter*relying on *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193.

Analysis

[5] Before considering the Applicant's submission it is useful to lay out in more detail the Board's decision. The majority of the Board did not dispute that the Applicant suffered abuse, but found the following responses by the Applicant to be lacking in credibility and unsatisfactory:

1. The Applicant estimated that she suffered hundreds of assaults and sexual assaults over a four-year period.
2. The Applicant admitted she did not seek police protection or reported any incidents of abuse to the authorities because she didn't think they would help her and also because she feared her boyfriend would kill her if she did.
3. The Applicant said that she did not come under the provisions of the *Domestic Violence Act* and as a result, was not afforded the protection of a restraining order.

4. The Applicant stated that she did not seek the services of a women's shelter.
5. The Board was particularly influenced by the fact that the Applicant still did not involve the authorities when the boyfriend attacked her at work, a clear criminal act that would have resulted in police assistance.

[6] In addition, the majority of the Board found that the Applicant's statements regarding Grenada to be inconsistent with the objective knowledge of the conditions in Grenada. The majority of the Board found that Grenada is a democracy with a functioning and independent judiciary. With regards to violence against women, the Board stated that although it remains a problem, there are laws against violence against women which are being enforced and gradual progress is being made.

[7] The dissenting member found the Applicant to be credible. He also found that there were no major inconsistencies or contradictions and that the Applicant had rebutted with clear and convincing evidence that similarly situated persons were let down by the state apparatus. He concluded that the two reasons submitted for not approaching the police were reasonable. They were a) the Applicant's sisters, one of whom is now living in Canada and many of her sisters' friends were abused by their boyfriends and police protection was sought in those situations, but was not provided; and b) the Applicant feared that she would be endangering her life if she did so.

[8] The dissenting member stated that in determining whether state protection is available, the Board must consider not only whether there are measures in place that could be used to protect this claimant, but also, whether those measures are likely to be effective. He held that the documentary evidence reveals that Grenada falls short of the necessary standards to protect people in the Applicant's situation, and therefore, the Applicant was justified in not seeking police protection.

Issue 1

[9] The law on state protection is quite well established. In the recent case of *Franklyn v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1249, Justice de Montigny restated that in issues relating to state protection, the Applicant needed to prove the following:

> 19 Returning to the issue of state protection, it is worth remembering what a claimant has to establish to demonstrate a fear of persecution. The test it twofold: 1) the claimant must subjectively fear prosecution; and 2) this fear must be well-founded in an objective sense. When it has been established that the fear is legitimate and that the state is unable to assuage those fears through effective protection, there will be a presumption that the fear is well-founded.

[10] The Applicant's case is of course complicated by the fact that the Applicant never went to the authorities to seek help. Such unsuccessful attempt to obtain protection is a normal step in proving lack of state protection. In the seminal case of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Justice La Forest at paragraph 49 stated the test for fear of persecution and created an 'exception' regarding the need to invoke help from authorities:

> 49 Like Hathaway, I prefer to formulate this aspect of the test for fear of persecution as follows: only in situations in which state protection "might reasonably have been forthcoming", will the claimant's failure to approach the state for protection defeat his claim. Put another way, the claimant will not meet the definition of "Convention refugee" where it is objectively unreasonable for the claimant not to have sought the protection of his home authorities; otherwise, the claimant need not literally approach the state.
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> 50. The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state [page725] protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state

apparatus, such as that recognized in Lebanon in *Zalzali,* it should be assumed that the state is capable of protecting a claimant.

(Underlining added.)

[11] In the present case, on this issue, the majority found:

> In the Board's view, the claimant could have sought redress in both the security and legal systems. Her former boyfriend had been in trouble with the law before and had previously been detained for a violent act against another male. So he is already well known to the police. In fact, he turned himself in to the police on one occasion. This suggests that the police are ready take some action against the claimant's former boyfriend and would have if the claimant had sought help. The Board was particularly influenced by the fact that, even when the boyfriend came to the claimant's place of work and attacked her, no steps were taken to involve the authorities. This latter incident is clearly an act of criminality and a person wronged in such circumstances should, and the Board finds would, have received police assistance, if it had been requested.
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> When asked by the Board why she did not seek the protection of the police, the claimant stated that violence against women is widespread and a way of life in Grenada. Essentially, the claimant cites social and cultural norms as the reason she has repeatedly failed to seek police assistance. In this instance, the Board cannot find fault with the security forces of legal system when the claimant was unwilling to avail herself of these services. Based on the information before the board, then the objective basis of the claims fails.
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> (A.R. at 12-13.)

[12] On the other hand the dissenting member found:

> The claimant admitted that she had not approached the police for protection. She provided two main reasons for this. One of the reasons entailed the experiences of similarly situated persons to herself – her sisters, one now living in Canada and a sister in Grenada, and many of her sisters' friends abused by their boyfriends whom the police did not help when they sought them out for protection.
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> The second reason provided by the claimant for not approaching the police was her fear that she would be endangering her life if she did so. In her narrative, she stated, "I never went to the police to report the abuse because Earl threatened to kill me if I did and I

> know that he would carry out this threat. I fear that he would kill me if the police confronted him."
>
> The panel accepts as reasonable the claimant's explanations for not approaching the police for protection.
>
> (A.R. 19-20.)

[13] The dissenting member and the majority differ in assessing the credibility of the Applicant and the dissenting member accepted without qualification the evidence of the Applicant (based on the experiences of her sisters and other women among her acquaintances) that police in Grenada do not prosecute domestic violence.

[14] The majority examines this similar fact evidence and makes the following observation:

> The historical situation in Grenada for abused females suggests the system failed for two reasons: 1) police and legal disinterest, and 2) a failure on the part of victims to report abuse, due to their dependency on males for economic survival. The first reason for the failure has been gradually addressed over the past several years, both with new legislation and police education. It is likely not perfect, but the Board finds, based on the evidence that it has sufficiently improved to offer protection to victims who seek it. The second reason for the historical failure is that females traditionally have failed to report to the police and demand action. This is a social norm, which has not kept up with the changes in the government and the police force. The system in years past, may have failed the claimant's two sisters and her neighbours. In the case of one of her sister, her abuse ended in 1992, when she left Grenada, prior to the legislation coming into effect and prior to the changes made by the police and government since 2000. The Board is satisfied, on the balance of probabilities, that were the claimant to return to Grenadatoday and seek the assistance from the police for violent acts perpetrated against her, she would receive it. Therefore, the Board rejects the argument of similarly situated individuals, in this case, and finds state protection adequate.
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> (A.R. at 14-15.)

[15] The dissenting member failed to grasp the significance of the public attack with a machete. This machete attack is a clear cut criminal act. The attack was committed in public, in

front of witnesses by a person who had previous trouble with the police. The similar fact experiences of her sisters, besides being outdated, only concern domestic violence not criminal law. While admittedly the boundary is far from clear and domestic violence can easily degenerate into criminal attacks, the alleged attack (which neither the majority nor the dissenter questioned) is so obviously criminal that it was reasonable for the Board to expect it to be reported. No evidence was adduced that Grenadian police do not pursue criminal attacks. The Court sees nothing unreasonable in the majority's conclusion that the failure to report this attack disqualifies the Applicant from the 'exception' in *Ward, supra*. Or to paraphrase La Forest's dictum in *Ward, supra* 'the claimant does not meet the definition of "Convention refugee" as it was objectively unreasonable for the claimant not to have sought the protection of her home authorities' (*Ward* at 724).

[16] As far as the evidence regarding state protection for domestic violence in Grenada is concerned, the Court has carefully read the documentary evidence in this case. The situation in Grenada is obviously far from perfect and the evidence is somewhat ambivalent. The majority in its assessment described it as follows:

> The Board accepts that Grenada has had some difficulties in the past with investigating domestic violence. However, the Board finds, based on the documentary evidence that there is an effective security force in place and that the police deficiencies, although existing, are not generalized. Grenada is making serious efforts to address the problem of domestic abuse, including sensitising the police force to the issue. Progress, albeit gradual, is being made by all levels of government and security forces. The Board finds the efforts of Grenada to be genuine and effective and finds that the police are both willing and able to protect female victims of violence and that protection would be reasonably forthcoming, if victims seek protection.
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> (A.R. at 12.)

[17] It is up to the Board to evaluate the evidence both oral and written in coming to its conclusion. Nothing in the conclusion of the majority cited above, given the documentary record, can be considered unreasonable.

Issue 2

[18] The majority made the following observation regarding the availability of shelters:

> The documentary evidence also notes that there is a shelter in the north, which provides psychological counselling and medical staff to assist victims of abuse.
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> (A.R. at 12.)

[19] The Applicant observes that this was misleading given the following documentary evidence.

[20] The United States Department of State, "*Country Reports on Human Rights Practices - 2004*" for Granada dated February 28, 2005, to which the Board referred in a footnote states:

> The law prohibits rape and stipulates a sentence of 15 years' imprisonment for a conviction of any non-consensual form of sex. Sentences are assault against a spouse varied according to the severity of the incident. A shelter accommodating approximately 20 battered and abused women and their children operated in the northern part of the island, staffed by medical and psychological counselling personnel.

[21] The Immigration and Refugee Board's country of origin research on Grenada dated May 9, 2003 ("IRB Report"), forming part of the tribunal record, observes:

> Both oral sources confirmed that there is one shelter for victims of domestic violence (ibid.; Legal Aid 2 May 2003). The shelter can accommodate 20 people and has medical and psychological counsellors on staff (UN 27 Feb. 2003, 249). The director of the Legal Aid and Counselling Clinic stated that they are "inadequate" because they are "not properly trained" (Legal Aid 2 May 2003). She said "they are not 'professional counsellors'" (ibid). The shelter has no legal advisors, it refers the women to the Legal Aid and Counselling Clinic (ibid.).
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> With only one unarmed security officer and no police presence, there is "no serious guarantee of protection" at the shelter (ibid). Everyone knows its whereabouts so that "a husband could easily find his wife if he wanted to" (ibid). Sometimes the women have to be sent secretly to another island for their protection (ibid).
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> (A.R. at 101.)

[22] Relying on *Owusu v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 33 (F.C.A.) (QL), the Applicant submits that the Board had an obligation to refer to all evidence and not only selected portions of the evidence. The Applicant argues that had the Board looked at the evidence cited above it would have realized that going to the shelter was not a viable option.

[23] The Applicant is correct in her assertion that the Board is obliged to look at all of the evidence and it erred in not referring to the IRB Report.

[24] However, this observation was collateral to the main decision. It was not material and the decision did not turn on this point. Accordingly, this minor error does not render the overall decision unreasonable.

[25] For all of the above reasons, this application cannot succeed.

ORDER

THIS COURT ORDERS that this application be dismissed.

"Konrad W. von Finckenstein"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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