



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA5-11822

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

July 18, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

July 19, 2006

DATE DE LA DÉCISION

CORAM

Suparna Ghosh

CORAM

FOR THE CLAIMANT(S)

**H.G. Hutchinson
Immigration consultation**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

H. Adamidis

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

N/A

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

N/A

CONSEIL DE LA MINISTRE

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The claimant, _____, is a 42-year-old female from Jamaica, who claims Convention refugee status based on her memberships in particular social groups, namely, victims of abuse from a spouse, and persons who care for a parent. In addition, she claims to be a person in need of protection from a danger of torture or risk to life, or cruel and unusual treatment or punishment.

PRELIMINARY MATTERS

The claimant was allegedly told by her former counsel, Mr. _____ that she should base her story on sexual identity, namely, lesbian, and have pictures taken with women for her claim.¹ Since she was very uncomfortable with the first narrative which was based on sexual orientation and experiences as a lesbian, she changed her counsel and retained another, who prepared a new narrative, which the claimant relied upon as the basis for her claim.²

DETERMINATION

The Refugee Protection Division (RPD) has determined that the claimant is not a Convention refugee or a person in need of protection. For reasons which follow, the panel finds there are no subjective or objective bases to the claim.

ANALYSIS

Amended Personal Information Form (PIF) narrative

The claimant became involved with _____ and gave birth to a child in 1983, whereafter he left her. He returned again in 1985, and began abusing her after a brief

¹ Exhibit C-1.

² Exhibits C-1(a), C-3.

period of treating her well, a pattern which continued for several years; in 1992, she gave birth to another daughter. She eventually made a claim when she came to Canada in 2005.

The panel understands that the circumstances which give rise to women's fear of persecution or need for protection are often unique to women, and has considered all the evidence in the context of the Chairperson's Guidelines.³ However, for the following reasons, the panel finds that the claimant is not a Convention refugee, as the evidence does not establish that she has a well-founded fear of persecution in Jamaica. The panel also finds that there are no substantial grounds to believe she would personally be subjected to a danger of torture, or risk to life, or cruel and unusual treatment or punishment if she were to return to Jamaica.

Trip to Canada, reavailment, delay - In her amended narrative, the claimant stated that she is afraid of return to Jamaica, because she would always be "reminded" about the traumatic experiences that she had been through at the hands of her stepfather and common-law spouse; she clarified at the hearing that she did not live with [redacted] that he used to visit her. She acknowledged that he is now married, but maintained that he could still turn up at her place and abuse her, if she returned to Jamaica.

There is a significant difference between being reminded of an abusive relationship, and the possibility of the abuse occurring again. The panel finds that the inconsistency in the claimant's written and oral evidence regarding the present situation with respect to her

³ Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: November 1996, as continued in effect on June 28, 2002, pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

relationship indicates to the panel that, on a balance of probabilities, what the claimant experienced is in the past, and [redacted] has now moved on.

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The claimant stated that she came to Canada in [redacted] 2004 because her mother was sick, and returned to Jamaica with her mother, a Canadian citizen; she explained that she did not make a claim during her first visit because she only had a Canadian visitor's visa (CVV). She accompanied her mother back to Canada in 2005, so that she could take care of her, and also because she wanted to get away from [redacted]'s alleged abuse, which last occurred in [redacted] 2004. She made a claim in [redacted] at 2005 during her second trip to Canada,

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The panel's earlier findings regarding the claimant's fear of abuse are reinforced by the claimant's actions above. The panel finds her failure to claim at the first opportunity when she came to Canada in 2004, the reavilment of her country's protection, and the delay her actions created in finally leaving and making a claim, indicate a lack of subjective fear and belie a well-founded fear of persecution or need for protection.

State protection

The claimant stated that she never complained to the police because they do not interfere in such matters. She also stated that if she were to return to Jamaica, she would not approach any organization for help out of embarrassment.

Jamaica is a functioning democracy,⁴ and thus the presumption of state protection applies. The claimant can rebut this presumption by providing "clear and convincing"

⁴ Exhibit R-1, 2.1, RPD Information Package, March 2006, United States Department of State, Country Reports on Human Rights Practices for 2005, March 8, 2006.

evidence that the state of Jamaica is unable or unwilling to protect her.⁵ For the following reasons, the panel finds the claimant has failed to rebut this presumption. According to documentary evidence⁶, it is stated that domestic violence is a serious problem in Jamaica, perpetuated by social and cultural traditions.

Documents also state:⁷

6.130 The Domestic Violence Act provides remedies including restraining orders and other noncustodial sentencing. Breaching a restraining order is punishable by a fine of up to \$160 (J\$10,000) and 6 months imprisonment. The government's Bureau of Women's Affairs operated crisis hotlines and shelters and managed a public education campaign to raise the profile of domestic violence. [Emphasis added]

6.135 According to Independent Jamaica Council for Human Rights (IJCHR) the following are criminal offences:

To assault, injure or wound a spouse or partner.

To threaten and put a person in fear.

To rape and force a woman to have sexual relations against her will.

To destroy property.

There also exists a number of institutions in Jamaica with responsibility for ensuring the equal rights of men and women.

Another document speaks to the situation described by the claimant, where she was not living with the abuser.⁸ The document states that the provision for protection orders provided for in the Domestic Violence Act be expanded to the category of applicants who are not living together.

It is further stated that, in the past, lack of knowledge about domestic violence has resulted in police officers disregarding complaints from victims. The objective of WOMAN Incorporated (Woman Inc.) for a training session for law enforcement officers

⁵ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85

⁶ Exhibit R-1, 2.1, United States Department of State, Country Reports on Human Rights Practices for 2005, March 8, 2006.

⁷ Exhibit R-1, 1.4, United Kingdom Home Office, April 2005.

⁸ Exhibit R-1, 5a.4.1. Senate Passes Amendments to the Domestic Violence Act, October 2004.

is to sensitize the police officers to the key issues in domestic violence, for example, how to empathize with victims, the right type of conversation with and responses to victims, keeping women safe, and working with men. Woman Inc. has trained 800 police officers across the island so far, and says that more officers need to be trained.⁹

By definition, the Convention and protection grounds are forward-looking. The above document highlights that while flawed, there is concerted effort being made by the authorities to deal with the issue of gender violence, and the situation of violence against women is being addressed and improved in Jamaica, which the claimant can avail of upon return. The protection provided need not be perfect, but adequate.¹⁰ As endorsed in Ward,¹¹ nations should be presumed capable of protecting their citizens and a claimant must approach his or her state for protection when such protection is forthcoming.

Under the circumstances, the panel finds there is no serious possibility of the claimant being persecuted on any of the enumerated Convention grounds if she returns to her country. The panel also finds the claimant is not a person in need of protection pursuant to sections 97(1)(a) or 97(1)(b) of the *Immigration and Refugee Protection Act*.

Humanitarian and compassionate grounds

The claimant may qualify to stay under humanitarian and compassionate grounds so that she can take care of her mother. However, this is not a part of the RPD's mandate.

⁹ Exhibit R-1, Police being trained to handle household violence, July 13, 2005.

¹⁰ Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.)

¹¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85

CONCLUSION

For all of the reasons stated above, the Refugee Protection Division has determined that the claimant is not a Convention refugee or a person in need of protection.

"Suparna Ghosh"
Suparna Ghosh

DATED at Toronto this 19th day of July, 2006.