



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA4-19021

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 13, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

June 23, 2005

DATE DE LA DÉCISION

CORAM

David Cooke

CORAM

FOR THE CLAIMANT(S)

Marlene Gallyot

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Nil

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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The claimant is a 24-year-old citizen of St. Vincent and the Grenadines; the mother of children aged three, five, six and nearly ten. The hearing for this claim was held pursuant to section 170(b) of the Immigration and Refugee Protection Act¹ (IRPA).

The claimant's claim is twofold. She tells the panel that she fears a St. Vincent and the Grenadines citizen by the name of ("Mr. "), a man in his early fifties who apparently fathered her oldest child as a result of his sexually abusing the claimant while he was living with her mother. Secondly, she alleges that she is bisexual and was found out in the last few weeks in which she was in St. Vincent and the Grenadines, last summer as having been in a lesbian relationship. She tells the panel she is in a new lesbian relationship now that she is in Canada.

The major thrust of the claim has to do with her problems with Mr. . In fact, the lesbian "problem" would not have been known and had it not been discovered by Mr. and, apparently, reported by him to the police.

The claimant tells the panel that she started to suffer abuse from Mr. when she was seven-years-old. At some point her mother became aware of the abuse but apparently did little about it except to counsel the claimant to obtain an abortion. Money was not available to pay for the abortion and so the child was born.

Mr. worked part-time cleaning roads along with the claimant's mother.

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

The claimant's mother obtained that position for him. It is obvious from the claimant's description of Mr. [REDACTED] that he is not a man who had any special influence on officials in St. Vincent and the Grenadines.

The claimant tells us that she ran "to the countryside" as soon as the baby was born. She says that Mr. [REDACTED] sought after her and indeed warned her when she left that he would kill her if she had a relationship with anyone else.

Nevertheless, despite how small the country is, it took Mr. [REDACTED] many years to find her. Initially, the claimant told the panel that he found her "before the four years" that it took for her to have her second child, a girl. Later, in her testimony she indicated that by the time Mr. [REDACTED] found her she had borne three children by one ("Mr. [REDACTED]"). She was living "in the countryside" with Mr. [REDACTED] at least from 1995, the time of the birth of her first son, until 2002, the time of the birth of her last child, also a boy.

If the panel is to accept this version, it took Mr. [REDACTED] at least seven years to find the claimant while she continued to live with Mr. [REDACTED] in his home, which home is closer to the capital of Kingstown than where Mr. [REDACTED] lived.

The panel cannot accept the suggestion that Mr. [REDACTED] was seriously looking for the claimant during this time.

The claimant tells the panel that when Mr. [REDACTED] found her he waited until Mr. [REDACTED] went to work (Mr. [REDACTED] was a construction worker) and then Mr. [REDACTED]

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entered the home and raped the claimant in front of their oldest child. Later in her testimony, the claimant said that Mr. entered the home between four and five p.m. although Mr. went to work around seven a.m. and returned between six and seven p.m.

When asked to explain the discrepancy, the claimant indicated that she had meant to say that Mr. had told her that he had waited for Mr. to go to work, not that he actually had. Clearly, the claimant had not said that to the panel initially, and she certainly attempted to leave the panel with the impression that Mr. had waited outside the home until he had an opportunity to rape the claimant in the absence of her husband.

The claimant's mother died, apparently, in 2003. The claimant told us that her mother died as a result of the abuse of Mr. who had continued to reside with and be a partner to the claimant's mother during all of these years. The claimant told us that she observed a beating which, coupled with cancer, was a reason for her mother's death. She told us that she reported this beating to the police.

The claimant told us that Mr. was arrested for an offence. She thought the offence was "murder". The claimant stated that Mr. was convicted and sentenced on 2003. She alleged that Mr. served nine months in custody, was released in 2003, and in 2004, while attempting to seek retribution from the claimant, discovered her in a compromising position with her lesbian lover.

The claimant stated that this fact was reported by Mr. [redacted] to the police. As a result, the claimant had to leave the country.

The claimant provided no corroborating evidence for alleged incidents. There is nothing to even substantiate the existence of Mr. [redacted]. The panel wonders why, if he was in fact convicted and sentenced to a homicidal offence, we could not have been provided with documentary evidence substantiating this. When this question was put to the claimant, she argued (and her counsel later argued on her behalf) that once she had been reported to the police as being in a lesbian relationship, even although there is no evidence that this report was ever investigated, she has no right, nor has her counsel any right, to obtain any public documents.

The panel can find no country condition material to substantiate this suggestion.

According to the Federal Court of Appeal, "one cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so."² In this case, a great deal of what the claimant alleges has not been shown to the panel, on a balance of probabilities, to be probably so.

The claimant told the panel that she lied to Mr. [redacted] for the first seven years that he assisted her in raising her oldest son. At the suggestion of her mother, Mr. [redacted]

'lover, she told Mr. [redacted] that her son's father was a sailor. She only confessed the truth to Mr. [redacted] after Mr. [redacted] re-entered the picture and raped her.

² Orelien v. Canada (Minister of Employment and Immigration) [1992] 1 F.C. 592 (C.A.).

The claimant was represented by a well-known counsel, Dr. [redacted] when she prepared her Personal Information Form³ (PIF). Prior to the hearing, the Immigration and Refugee Board ("the Board") became aware that Dr. [redacted] is not an "authorized representative" as defined in the Immigration and Refugee Protection Regulations⁴ of the Act, in his case as a member of the Canadian Society of Immigration Consultants (CSIC). Thus, Dr. [redacted] is not permitted to act for the claimant in the hearing room unless the claimant declared that she did not pay him a fee. Dr. [redacted] presently has 39 matters before the Board in which he tells us all his claimants will be telling us that they did not pay any fees. This claimant so indicated, both in signing form, "Notice of Representation Without a Fee"⁵ and in answer to the panel's question. She indicated this even although she told us she had been referred to him as a "lawyer" and her relationship with him is solely that of a "lawyer" and client. Further, Dr. [redacted] performed all of counsel's functions in the hearing room and the cited counsel, cited as "co-counsel" merely, in her own words, "observed".

The panel finds, in these circumstances, that the suggestion that Dr. [redacted] is not receiving fees is not plausible.

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³ Exhibit C-1.

⁴ As amended, P.C. 2004-326, March 30, 2004 to SOR/2002-227.

⁵ IRB/CISR 690 (1107-04).

These two scenarios, that is to say the claimant's treatment of Mr. [redacted] and her treatment of the panel, serve to tell the panel that the claimant is practiced in not telling the truth and is prepared to tell less than the truth.⁶

The panel finds on a balance of probabilities that the claimant is a citizen of St. Vincent and the Grenadines, that Mr. [redacted] is the father of her first child, and, indeed, may have inappropriately abused her prior to that birth. The panel finds on a balance of probabilities that Mr. [redacted] is the father of the other three children. The panel is not prepared to accept much else of the claimant's testimony. In particular, the panel finds on a balance of probabilities that Mr. [redacted] had no further relationship with the claimant after she became involved with Mr. [redacted] in the mid-nineties. She was not raped by Mr. [redacted].

Further, especially in view of the fact that the claimant stated that she has a lesbian lover in Canada and that lover was not brought forward to give evidence, the panel rejects all of the evidence which suggests that the claimant has had any lesbian relationships. The panel finds that none of this evidence has been shown, on a balance of probabilities, to be fact.

The claimant is not a Convention refugee.

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⁶ The panel acknowledges that the second example of a fabrication occurred before the claimant had entered into an affirmation. The panel is of the opinion that the affirmation sworn by the claimant had no real effect on her utterances.

Having so found, it is still necessary to determine whether or not the claimant is a person in need of protection pursuant to section 97 of the IRPA. The panel finds on a balance of probabilities that Mr. [redacted] has no particular interest in the claimant. The panel notes that Mr. [redacted] is now raising his 10-year-old son and there has been no communication between the boy's two parents since last summer.

There is not a risk to the claimant's life at the hands of Mr. [redacted] should she return to St. Vincent and the Grenadines. Further, as the panel has found on a balance of probabilities that there is no evidence available to anybody in St. Vincent and the Grenadines of any lesbian relationship which the claimant might be involved in,⁷ the panel finds that there is no risk to her life in this regard, either.

The claimant is not a person in need of protection.

Further, given that no credible or trustworthy evidence was presented on which the panel could have made a favourable decision, it concludes that there is "no credible basis for the claim" pursuant to section 107(2)⁸ of the IRPA.

"David Cooke"
David Cooke

DATED at Toronto this twenty-third day of June, 2005.

⁷ In this regard, the panel also rejects the suggestion that the claimant's sister is spreading rumours about her.

⁸ The IRPA reads in part as follows:

"...
(2) No credible basis – If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim."