

Date: 20090102

Docket: IMM-1541-08

Citation: 2009 FC 4

Ottawa, Ontario, January 2, 2009

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**MYRA LAWAS MAURICIO CHICO and
JOHN MISHAEL LAWAS MAURICIO (minor)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, Myra Lawas Mauricio Chico and her fourteen-year-old son, John Mishael Lawas Mauricio, challenge a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board) refusing to re-open their refugee claims as permitted by s. 55 of the *Refugee Protection Division Rules*, SOR/2002-228 (RPD Rules).

I. Background

[2] The Applicants came to Canada from the Philippines via the Netherlands in late 2001.

Ms. Chico sought refugee protection on the strength of allegations that she faced political persecution in the Philippines because of her advocacy on behalf of women's equality in the armed forces. This activism, she said, had caused the authorities to bring baseless criminal charges against her culminating in the issuance of a warrant for her arrest.

[3] In an August 2, 2007 decision the Board rejected Ms. Chico's claim to refugee protection. The Board found that Ms. Chico's concern about the risk of brutal treatment in the Philippines was a "gross embellishment". The Board also rejected Ms. Chico's allegation that she faced a politically motivated prosecution in the Philippines. The Record indicates that the Board had before it conflicting evidence concerning the existence of an outstanding warrant for Ms. Chico's arrest. She tendered evidence that she was facing charges and arrest in the Philippines, but this was contradicted by a report from Interpol. The Board resolved this issue as follows:

The principal claimant submitted documents regarding various charges against her. It appears that the charges of grave misconduct and/or dishonesty were dismissed. There are other apparent charges outstanding, none of them indicating that an arrest warrant was issued. A report by Interpol, dated October 17, 2006, seems to confirm that. Her allegations that she would be in danger if she returned to the Philippines are not born out by the facts.

[...]

However, the claimant has no criminal record, and is not indicted for anything. There is no evidence that the claimant faces arrest if she returns to the Philippines unless the allegations against her are true rather than fabricated as she alleges.

[Emphasis added.]

[4] The Board concluded by finding that adequate state protection existed in the Philippines to address any of Ms. Chico's concerns about political persecution.

[5] Ms. Chico applied for leave to judicially review the Board's decision but leave was refused by Order of this Court on January 15, 2008.

[6] On October 3, 2007, Ms. Chico brought a motion before the Board seeking to re-open her refugee claim based on her subsequent receipt of a certified copy of a warrant for her arrest. Her Notice of Motion stated the basis for relief as follows:

i. Ms. Chico's refugee hearing took place on March 3, 2006, February 7, 2007, and finally on April 26, 2007. Her refugee claim was denied by a decision dated Augusts [sic] 16, 2007.

5. In its decision, the Board found that the applicant had not provided evidence of the allegation that criminal charges are outstanding against her. The Board found that the applicant has no criminal record, and there is no evidence of the arrest warrants. The Board further found that there is no evidence that the claimant faces arrest if she returns to the Philippines unless the allegations against her are true rather than fabricated as she alleges.

[...]

7. On September 29, 2007, the applicant's received the certified copies of her arrest warrant. The applicant's brother was just recently able to get the copies of the arrest warrant, even though he had unsuccessfully attempted on various other occasions to obtain the same. The applicant's brother was able to use one of his contacts to get the Trial Court Registry in Quizan district to issue the copy of those arrest warrants. The applicant brought the copies of the arrest warrant to my

office on Monday, and we are filing this motion as soon as could prepare it.

8. The copies of the arrest warrants have not been submitted prior to this motion being filed. The central issue for refusing the refugee claim of the applicant is because the applicant could not provide the copies of the arrest warrant issued against her. The applicant's brother and other family members had attempted to get the copies of arrest warrants, however, they were told that the warrants would be only issued if the applicant applies in person. Finally the applicant's brother was able to use a contact to obtain these warrants.

[...]

19. The scheme of the Act and the Refugee Protection Division Rules are such that the Refugee Board has the power and jurisdiction to reconsider its decisions when there has been a failure of natural justice: Gill, Plawinder Kaur and MEI, F.C.A., No. A-476-86, January 22, 1987. It would be a failure of natural justice if Ms. Chico is not allowed to submit the new evidence and be allowed to testify on this issue.
20. It is submitted in this case, that though Ms. Chico was aware that arrest warrants had been issued against her, she was not able to obtain them. These warrants prove beyond reasonable doubt that Ms. Chico has subjective, as well as objective fear of returning to Philippines. These warrants also prove that the State cannot protect her as she fears the State itself.

[7] The Board declined to re-open the Applicant's refugee hearing on the strength of the following brief endorsement:

"The Federal Court dismissed the application by the claimant. No breach of natural justice on part of the member has been found following a review of claimant application to re-open. Application to re-open is dismissed." – March 4, 2008, R. Dawson.

II. Issues

- [8] (a) Is the Board required to give reasons where it refuses to re-open a refugee hearing and, if so, were the Board's reasons in this case adequate?
- (b) Did the Board err in its decision not to re-open the Applicant's refugee hearing?

III. Analysis

[9] There is no need to consider the standard of review concerning the Board's reasons because I can identify no such error. My review of the adequacy of the Board's substantive decision involves a question of mixed fact and law which will be assessed on the standard of reasonableness.

[10] It is unnecessary for me to decide whether there is a legal duty for the Board to give reasons when it refuses to re-open a refugee claim because here the Board did provide reasons albeit in the form of a rather cryptic endorsement. Rule 55 of the RPD Rules permits the Board to re-open a refugee claim only where a breach of natural justice has occurred: see *Ali v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1394, 2004 FC 1153 at paras. 24-25; *Nazifpour v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 35, [2007] F.C.J. No. 179 at para. 82; *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No. 1632 at para. 7. In the case of Ms. Chico the Board clearly concluded that no breach of natural justice had been shown. I am satisfied that the reasons given are sufficient to support the Board's decision although their brevity does expose the decision to a somewhat more probing assessment on judicial review.

[11] After her refugee claim was rejected, Ms. Chico obtained a copy of an allegedly outstanding warrant for her arrest. She wanted the Board to consider this evidence, and, on that basis, made a motion to re-open the refugee protection claim. There is nothing in the record before me to indicate that Ms. Chico was concerned at the time about the fairness of the Board's treatment of her refugee claim or, in particular, that she required more time to obtain additional corroborating evidence. Nevertheless, she now claims that the Board was unfair to her by failing to advise her of its concern about the existence of an outstanding arrest warrant and the need for related corroborative evidence.

[12] During the initial refugee hearing, the Board made it very clear to Ms. Chico that her credibility was in issue with respect to her allegation of persecution. The Board had before it conflicting evidence concerning the status of an alleged prosecution against Ms. Chico, and she knew that issue could be important to the outcome of her claim. I do not agree that there was any duty on the Board to inform her that the failure to produce a copy of the outstanding arrest warrant might be of significance to its resolution of the evidentiary conflict. Ms. Chico was represented by counsel and she would be taken to appreciate the importance of producing all available corroborating evidence without the need to be told.

[13] Ms. Chico's claim to protection was only finally determined more than two years after it was perfected and after a number of adjournments. There is nothing to suggest that she asked for more time to obtain corroborating evidence and, indeed, it appears that she was satisfied with the case presented on her behalf. When leave to apply for judicial review from the Board's decision was brought in this Court, Ms. Chico made no allegation of a breach of any duty of fairness in the

process below. And when Ms. Chico brought the motion to the Board to re-open her refugee hearing, her only assertion was that the new evidence had been difficult to obtain and that it would be a failure of natural justice not to receive it. Having never alleged that the Board breached a duty of fairness either on the motion to re-open or on the application for leave for judicial review, there is no basis for asserting now, for the first time, that the Board somehow acted unfairly when it dismissed Ms. Chico's claim on the merits.

[14] A motion to re-open a claim for refugee protection under Rule 55 of the RPD Rules will only succeed if it is established that there was a failure by the Board to observe a principle of natural justice: see *Ali*, above. Relief is not available for the purpose of supplementing or bolstering the initial evidentiary record. Were it otherwise, there would be no finality to a refugee claim because it could always be re-opened for the receipt of additional evidence. On this point, I subscribe to the views expressed by Justice Michael Kelen in *Chen v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1731, 2002 FCT 1267 at paras. 4 and 6:

4 The sole issue in this application is whether the Board erred by concluding it did not have jurisdiction to reopen the hearing because there was no breach of the rules of natural justice.

[...]

6 The applicant's remaining arguments are directed towards the merits of her claim. The Board, in its initial decision, rejected the credibility of the applicant notwithstanding the letter from the Bishop confirming that the applicant is a member of the underground Roman Catholic Church. While I may or may not agree with this credibility finding, it does not raise a breach of natural justice. A breach of natural justice relates to the failure to have a fair hearing. There is no allegation that the Board which heard this refugee claim was biased, or that the applicant did not have a fair hearing in some other respect. The Board does not have the jurisdiction to order a hearing reopened

simply to review the merits of a claim. Accordingly, the Board did not err in refusing to reopen the hearing.

IV. Conclusion

[15] There is no merit to this application and the Board's refusal to re-open is unimpeachable.

The application is accordingly dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1541-08

STYLE OF CAUSE: Chico et al.
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 18, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Mr. Justice Barnes

DATED: January 2, 2009

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