Federal Court Cour fédérale

**Date: 20090731**

**Docket: IMM-18-09**

**Citation: 2009 FC 793**

**Montréal, Quebec, July 31, 2009**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**JACITHA JASETTE WILLIAMS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# REASONS FOR JUDGMENT AND JUDGMENT

## I. Introduction

[1] The applicant, a citizen of Saint Vincent and the Grenadines, seeks judicial review of a decision rendered pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) and asks that the matter be referred back to a differently constituted panel for redetermination. In the impugned decision rendered on November 28, 2008, by the Immigration and Refugee Board, Refugee Protection Division (the Board), the applicant was found not to be a *Convention refugee* nor *a person in need of protection* under ss. 96 and 97(1)(*a*) and (*b*) of the Act.

## II. Facts

[2] The applicant arrived in Canada on September 12, 2005, but only claimed refugee status on July 8, 2007, stating she suffered sexual and physical abuse from her stepfather, from the age of eight to seventeen, and half-brother, while she lived with him from September 2004 to September 2005.

[3] The applicant claims that in July 2002, when she was seventeen years old, she became pregnant by her stepfather who, in August of that year, forced her to take some medicine which resulted in her having a miscarriage.

[4] Immediately following this incident, Ms. Williams allegedly left her stepfather's house and moved to Shaps to live with her half-sister. She claims that, two years later, her stepfather located her and started making threats against her.

[5] In light of these threats, the applicant allegedly sought help from her half-brother, and in September 2004, moved to Canouan Island to live with him. She claims that, for the next year, she was abused and threatened by her half-brother.

[6] In September 2005, the applicant left her country and came to Canada, without first attempting to claim protection in her own country. On August 8, 2007, nearly two years after her arrival, she claimed, for the first time, refugee status, asserting in her claim that she had been unaware, until the month of August 2007, of the possibility of claiming refugee status in Canada.

[7] The Board dismissed the applicant's claim on the basis of a number of negative credibility findings and declared the applicant not credible because she had contradicted herself on several key elements.

## III. The impugned decision

[8] Considering the applicant's overall lack of credibility, the Board ruled that she was neither a Convention refugee nor a person in need of protection under ss. 96 and 97(1)(*a*) and (*b*) of the Act.

## IV. Issue

[9] Was the Board's decision unreasonable?

## V. Analysis

*Standard of review*

[10] The standard of review applicable to a finding of credibility or of fact on the part of a board is that of reasonableness. This is a standard whereby administrative tribunals are entitled to deference with respect to their decisions pertaining to certain questions that do not dictate one specific, particular result, a number of reasonable conclusions being possible (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL), at paragraph 47). Where the reviewing Court is to make pronouncement on a decision of this kind, it should not interfere.

[11] As stated in *Dunsmuir*, at paragraph 161: “decisions on questions of fact always attract deference”, especially when the credibility of the applicant is affected, and “when the issue is limited to questions of fact, there is no need to enquire into any other factor in order to determine that deference is owed to an administrative decision maker”.

[12] In reviewing the Board's decision, the Court is mostly concerned with “the existence [or lack] of justification, transparency and intelligibility within the decision-making process” and also “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47).

[13] Unless the credibility findings were made capriciously or without supporting evidence, and if the Board did not provide sufficient reasons in clear and unmistakable terms to find as it did, this Court normally treats these findings with the highest degree of deference. The burden is on the applicant to show that the negative credibility inferences drawn by the Board were not reasonable (*Aguebor v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 732 (QL), at paragraph 4).

*Reasonableness of the decision*

[14] The applicant submits that the Board erred in law for not having taken into account the particular characteristics of the individual and relied on innocent errors to impugn her credibility.

[15] The applicant submitted before the Board, as evidence, a psychological report which stated that the applicant showed many signs of post-traumatic stress disorder, intense anxiety, and feelings of helplessness, shame and underlying depression.

[16] The Board claimed that it took into consideration the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* in reaching its decision in this case. It also took into consideration "the claimant's alleged difficulty with concentration identified in the psychological assessment report [...] and the fact that she quit school in the eighth grade".

[17] However, the Board found that the applicant had contradicted herself in her testimony, that her behaviour revealed an absence of subjective fear, and that her testimony was, at times, implausible. Furthermore, it could not accept that she had suffered abuse for years and had been forcibly induced to have a miscarriage.

[18] The Board indicated in its reasons that it "rejects the claimant's explanations [regarding the delay in filing her refugee claim] as insufficient and is of the opinion that her behaviour is inconsistent with that of someone who fears for her life".

*Absence of a transcript*

[19] The applicant has not demonstrated in her affidavit any serious possibility of an error on the record or that the absence of a recording deprived her of grounds for review. In fact, in her affidavit,

she did not make any additional statements contradicting the Board’s findings; she was simply reiterating allegations already made in her *Personal Information Form* (PIF).

*Credibility*

[20] As the Federal Court of Appeal wrote in *Siad v. Canada (Secretary of State)*(C.A.), 1996 CanLII 4099 (F.C.A.):

> The Tribunal is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact”, are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence […] [Footnotes omitted.]

[21] Although the applicant strongly disagrees with the Board’s assessment of her credibility, she has not shown that the decision was arbitrary and taken without regard to the evidence offered. The Board found that she had contradicted herself in her testimony, that her behaviour showed an absence of subjective fear and that her testimony was, at times, implausible. Her affidavit does not add anything to contradict these findings.

*Delay*

[22] The applicant arrived in Canada on September 12, 2005, and waited until July 8, 2007 to claim refugee protection, almost two years later. She explained that she had not sought Canada’s protection earlier as she did not know that “she had to obtain documentation establishing her identity or a passport in Canada, because that was not how things were done at home.” However, the evidence shows rather that the applicant had a valid passport delivered to her on October 6,

2003, which was valid until October 5, 2013. Moreover, she explained that she did not obtain her passport to travel, but rather for "identification" purposes and to "obtain a cell phone".

[23] She also explained that, right after her arrival in Canada, she lived eight months with a woman who was a compatriot, and yet she would have had the Board believe that they had never discussed their personal problems and that she had not asked any question as to the refugee status procedure in Canada. In May of 2006, she is supposed to have worked for a woman who offered to sponsor her. Yet, it was allegedly only after meeting a stranger in a supermarket in August 2007, and discussing the subject with him, that she realized that she could claim refugee protection in Canada.

[24] How could the Board believe that the applicant would never have heard of the possibility of claiming refugee protection in Canada when she lived eight months with a woman from her home country, and how could she not have been aware of the need to obtain legal status when the sponsorship offer was made? Moreover, how could the Board believe that the applicant became aware of the refugee determination process only almost two years after her arrival in Canada, after meeting a total stranger in a supermarket?

[25] With these explanations, the Board had valid grounds not to believe the applicant and to find that her explanations were neither logical nor plausible. It was entirely open to the Board to find this sequence of events implausible. Rationality and common sense may be considered when assessing the truthfulness of an asylum claimant's scenario. The Board was entitled to find that the applicant's

behaviour was not that of a person who had a subjective fear of persecution, and that it affected negatively her credibility.

[26] The Court recognizes that, according to the case law, while delay in making a claim is an important factor to consider, it is not decisive; nonetheless, delay may, in circumstances such as in this case, suffice to warrant the dismissal of a claim, even though this is unfortunate for the applicant. The explanations of the applicant, viewed in the context of her uncorroborated evidence in its entirety, warranted the dismissal of her claim by the Board.

*The psychological report*

[27] The Board specified that it considered the applicant's psychological report and that although she might suffer from depression and anxiety, she had not shown on a balance of probabilities that the symptoms were related to a reasonable fear of being killed by her stepfather or half-brother if she were to return to her country.

[28] It is trite law that expert opinion cannot serve as a substitute for the decision-making role of the Board. The "opinion evidence is only as valid as the truth of the facts on which it is based […]. If the [Board] does not believe the underlying facts it is entirely open to it to assess the opinion evidence as it did" (*Xi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 174). In this instance, the Board did not believe the underlying facts on which the medical expert based her report, and therefore it was open to the Board to find that this report "did not show on a balance of

probabilities that [the applicant's] symptoms [of depression and anxiety] were related to a reasonable fear of being killed […] were she to return to her country".

## VI. Conclusion

[29] The Board clearly had the advantage of seeing the applicant testify, thereby being in a better position than this Court to make a fair assessment of her narrative and of the explanations she gave when confronted with discrepancies and the implausibility of her story.

[30] The Board's decision may not be what the applicant expected; it is obviously for this reason that the applicant drew the attention of the Court to evidence supporting a different result. However, it is not the role of this Court to re-examine the evidence. The Court is only called to determine whether the impugned decision, viewed as a whole, appears reasonable or not with respect to the facts of record and the law.

[31] The applicant has not succeeded in showing that the impugned decision was based on findings of fact made in a perverse or capricious manner, or that the Board made its decision without regard to the evidence. The impugned decision was warranted in fact and in law; it was therefore reasonable. The application for judicial review must be dismissed.

[32] Neither counsel suggested a question for certification. The Court is of the opinion that this application does not raise a serious question which warrants certification.

**JUDGMENT**

**FOR THESE REASONS, THIS COURT** dismisses the application for judicial review.

"Maurice E. Lagacé"

Deputy Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-18-09 |
| **STYLE OF CAUSE:** | JACITHA JASETTE WILLIAMS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | July 7, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT OF:** | LAGACÉ D.J. |
| **DATED:** | July 31, 2009 |

**APPEARANCES:**

| | |
|---|---|
| Styliani Markaki | FOR THE APPLICANT |
| Zoé Richard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Styliani Markaki<br>Montréal, Quebec | FOR THE APPLICANT |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |