

Federal Court



Cour fédérale

Date: 20100419

Docket: IMM-5375-08

Citation: 2010 FC 425

Ottawa, Ontario, April 19, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SHAHENAZ ASHRAF

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Shahenaz Ashraf sought refugee status in Canada on the grounds that she feared her husband's family in Pakistan. His family had arranged a bride for him and disapproved of his marriage to Ms. Ashraf. She and her husband married secretly in 2001 and fled to Canada so that his family would not harm them. While in Canada, Ms. Ashraf claimed that her husband became increasingly abusive. They both made refugee claims in 2006, but he returned to Pakistan before the hearing. A panel of the Immigration and Refugee Board rejected Ms. Ashraf's claim on the ground

that she had not attempted to avail herself of state protection in Pakistan. In addition, the Board felt Ms. Ashraf's claim was not based on genuine fear of persecution or mistreatment in Pakistan. Rather, she came to Canada to seek a better life.

[2] Ms. Ashraf argues that the Board erred when it found that her fear of an honour killing by her ex-husband's family was merely anecdotal and not supported by documentary evidence. Further, she submits that the Board erred when it relied on her five-year delay in filing a refugee claim to conclude that her fear was not genuine. I agree that the Board erred in these two respects and, therefore, will grant this application for judicial review.

[3] The only issue is whether the Board's decision was reasonable.

II. Analysis

(a) The Board's decision

[4] The Board set out the facts underlying Ms. Ashraf's claim and noted that she had not sought state protection in Pakistan before she came to Canada. It concluded that the only evidence supporting Ms. Ashraf's claim to fear retribution from her husband's family was anecdotal and not supported by documentary evidence. In fact, the documentary evidence before the Board referred to occurrences of honour killings. Her evidence supported her claim, and contradicted the Board's conclusion. The Board did not cite it.

[5] In addition, in respect of the five-year delay in claiming refugee protection, the Board concluded that it was consistent with a desire to seek a better life in Canada, not fear of persecution or mistreatment in Pakistan. Ms. Ashraf had explained at the hearing that, while in Canada, she was entirely under the influence of her husband. She had been assaulted and abused, and never left the house alone. Perhaps the Board did not believe her evidence. Even so, it had a duty to consider it and explain why it was not credible.

III. Conclusion and Disposition

[6] In my view, the Board's decision was unreasonable because it failed to address the evidence before it regarding the occurrence of honour killings in Pakistan and Ms. Ashraf's explanation for her delay in making a refugee claim. Accordingly, I must allow this application for judicial review and order a new hearing before a different panel. No question of general importance arises for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5375-08

STYLE OF CAUSE: ASHRAF v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: February 1, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 19, 2010

APPEARANCES:

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