Federal Court  Cour fédérale

Date: 20101108

Docket: IMM-646-10

Citation: 2010 FC 1103

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

ASHA RANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated January 13, 2010, wherein the Applicant was determined to be neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27 (IRPA).

[2] Based on the reasons below, this application is dismissed.

I. Background

A. *Factual Background*

[3] Mrs. Rani, the Applicant, is a citizen of India who claims Convention refugee status based on her membership in a particular social group, namely that of women. The Applicant allegedly fears persecution at the hands of her brother, the police and society at large for bringing dishonour onto her family by living unmarried with a man, Pawan Kumar, for eight years. In a further affidavit the Applicant also claims to fear persecution from this ex-boyfriend, Mr. Kumar, for leaving with another man without his consent.

[4] After the Applicant divorced her first husband she met and fell in love with Mr. Kumar. The Applicant claims that he promised to marry her, so against the wishes of her family and without their permission, she moved with him from Ludhiana, Punjab, India to Patiala, Punjab where they lived together for eight years, from 1999 until 2007. The promise to marry was never realized and Mr. Kumar began to drink heavily and abuse the Applicant, cumulating in efforts to have her sleep with his friends for money.

[5] The Applicant testified that during this time her family did not want to have any contact with her, and her brothers refused to let her see her sick mother prior to her death. Her brother threatened to kill her.

[6] In 2007 the Applicant met Mr. Amarjit Singh, one of Mr. Kumar's friends. At this time the Applicant decided to leave Mr. Kumar. Since she could not return to her family, the Applicant decided to flee to Canada with the help of Mr. Singh.

[7] The Applicant arrived in Canada on April 13, 2007 and filed her refugee protection claim on May 1, 2007. She did not inform her family that she was in Canada.

[8] In preparation for her first hearing, the Applicant contacted Mr. Gurdeep Singh, a family friend. At this time the Applicant learned that after her departure Mr. Kumar contacted her brother to inform him that the Applicant was a "bad character lady" as she had lived with Mr. Kumar for eight years without being married, and had left him for another man. In June 2007 her brother went to the police and gave them a notice to publish in the local newspaper. The notice stated that the police were looking for the Applicant and offered a 50,000 rupee prize for information.

B. *Impugned Decision*

[9] The Board found that the Applicant had a viable internal flight alternative (IFA) and failed to provide sufficient credible and trustworthy evidence in support of her claim. Consequently the Board found that the Applicant is not a Convention refugee or a person in need of protection.

II. Issues

[10] The issues raised in this application are best summarized as follows:

a) Was the Board's IFA finding reasonable?

b) Were the Board's negative credibility findings reasonable?

c) Did the Board consider all of the evidence?

III. Standard of Review

[11] The issues brought before the Court by the Applicant require a deferential standard of review.

[12] Recent case law has reaffirmed that the standard of review for determining whether the applicant has a valid IFA is reasonableness: *Arechiga Pierres v. Canada (Minister of Citizenship & Immigration)*; 2010 FC 539, (F.C.) at para. 5. Similarly, decisions of the Board as to credibility, the weight assigned to evidence and the interpretation and assessment of evidence are also all reviewable on a standard of reasonableness: *Aguebor v. (Canada) Minister of Employment and Immigration* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.) at para. 4; *N.O.O. v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] F.C.J. No. 1286 at para. 38.

[13] As set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; and *Khosa v. Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12; [2009] 1 S.C.R. 339

reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *The Board's IFA Finding was Reasonable*

[14] The Applicant submits that the Board's finding that she has a viable IFA in Mumbai or Delhi is not reasonable. As a woman who has been exposed as having "bad character", the Applicant claims that she would not be able to live anywhere in India free of the threat of persecution from either the police, or society at large. Furthermore, she claims that her brother sometimes visits Mumbai for meetings, and that she has relatives in Delhi, later identified as her brother's in-laws, making both of them unreasonable IFAs.

[15] The Respondent submits that the Board made no reviewable error in this determination as the Board completed a proper IFA analysis and made a factual determination based on the evidence before it.

[16] The test laid out in *Rasaratnam v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 706, 140 N.R. 138 (C.A.) essentially requires the Board to do three things in order to find a valid IFA:

(1) the Board must identify the location of the IFA;

(2) the Board must be satisfied on a balance of probabilities that there is no serious possibility of the applicant being persecuted in the part of the country to which it finds an IFA exists; and

(3) conditions in the part of the country where the IFA is found to exist must be such that it would not be unreasonable, in all the circumstances, for the applicant to seek refuge there.

[17] The onus is on the Applicant to show that there is more than a mere possibility of persecution in the area proposed to be an IFA. Failing that, the Board must go on to assess the reasonableness of the IFA. This test is an objective one, and again the onus is on the Applicant to show that relocation within the home country would be unduly harsh (*Thirunavukkarasu v. Canada (Minister of Employment & Immigration)*, [1994] 1 F.C. 589, 109 D.L.R. (4th) 682 (C.A.)). There is a very high threshold to surpass in order to meet the unreasonableness test. In *Ranganathan v. Canada (Minister of Citizenship & Immigration)*, [2001] 2 F.C. 164, 266 N.R. 380 (C.A.) the Court determined that in order to find undue hardship it "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant… In addition it requires actual and concrete evidence of such conditions." (at para. 15)

[18] In this matter, the Board identified Mumbai and Delhi as two possible IFA alternatives. The Board satisfied itself that on a balance of probabilities the likelihood of the Applicant either running into her brother or in-laws by chance, or being tracked down by police due to a notice placed in local newspaper in the Punjab was so remote as to be implausible and certainly did not signify a serious risk of persecution. The Board also considered and referred to the documentary evidence before it in determining that it would not be unduly harsh to expect the Applicant to relocate. Though the Board admitted to being aware of the difficulties that the Applicant might face, the Applicant's assertion that people in India "will not let me live my life" falls far short of showing the required jeopardy to the Applicant's life and safety with concrete evidence.

[19] That the Applicant disagrees with the conclusion of the analysis and endeavours to have this Court re-weigh evidence properly before the Board is of no effect on judicial review and provides no basis with which to disturb the Board's determination. The Board's decision that the Applicant had a viable IFA is reasonable.

[20] Where an IFA is found, the Applicant is not a refugee or a person in need of protection. The Board's IFA finding is dispositive of this application for judicial review and it is not necessary to consider the Applicant's other arguments. However, if my conclusion with respect to the existence of an IFA is incorrect, I would still dismiss this application as the Board made reasonable credibility findings that would have disposed to the Applicant's claim, as discusses below.

B. *The Board's Credibility Findings were Reasonable*

[21] The Board did not find that the Applicant's fear of her brother was well-founded, and on a balance of probabilities real. Nor was the Board persuaded that the Applicant's fear of the police was well-founded as the Applicant failed to adduce any evidence that she would be charged with a crime for living with a man unmarried for eight years.

[22] It is well established that "credibility is the heartland of the Board's jurisdiction" (*Lubana v. Canada (Minister of Citizenship & Immigration)*, 2003 FCT 116, 228 F.T.R. 43 (Fed. T.D.), at paras 7-8). The Board has judicially affirmed expertise in determining questions of fact, and specifically in evaluating the credibility of the Applicant. Unless the Applicant can show that the Board made an erroneous finding of fact in a perverse or capricious manner without regard for the material before it, this Court cannot intervene and substitute its own decision for that of the Board's.

[23] In the present matter the Applicant has again failed to provide any persuasive argument that would allow this Court to disturb the Board's finding. The Applicant failed to show that the Indian Penal Code provided that living unmarried is a crime for which a woman can be charged. Furthermore, there was confusion as to the source and purpose of the published notice which the Applicant was not able to clarify during the hearing. It was open to the Board to assign little weight to this piece of evidence based on the Applicant's inconsistent testimony concerning it.

[24] Again, the Applicant's written submissions amount to a disagreement with the conclusion of the Board's reasoning. The Applicant did not establish that she faces more than a mere possibility of persecution. The Board made a decision open to it on the basis of the evidence.

C. *No Evidence was Ignored*

[25] The Applicant spends much time in her written submissions outlining case-law and documentary evidence concerning state-protection and domestic abuse in India. Her consternation with the Board's decision seems to be that they did not consider these elements of her gender-based persecution and her ability to seek state protection.

[26] With respect, the Applicant seems to have forgotten that she told the Board that her fear was not related to her ex-boyfriend, Mr. Kumar. The Board Member questioned and re-questioned her explicitly on this point. There was no ambiguity in the Applicant's answer, that no, she was not afraid of Mr. Kumar. The Applicant's fear was limited to that of her brother, the police and society at large.

[27] The Applicant has not lived with her brother in over a decade. It is impossible to classify this fear as related to the unfortunate prevalence of domestic abuse in India. Therefore the documentary evidence concerning domestic abuse is irrelevant to the Applicant's claim that she would be persecuted for dishonouring her family. I also note that the Board considered the

Chairperson's Guidelines Concerning Women Refugee Claimants Fearing Gender-Related Persecution in reaching its decision.

[28] Furthermore, there is a presumption that the Board considered all of the evidence before it, and need not mention evidence of a general nature (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425). In the matter at hand the Board did not fail to mention any evidence central to the issue that contradicted its own finding.

[29] No question to be certified was proposed and none arises.

[30] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	**ASHA RANI v. MCI**
PLACE OF HEARING:	**TORONTO**
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