

Federal Court



Cour fédérale

Date: 20110802

Docket: IMM-6150-10

Citation: 2011 FC 970

Ottawa, Ontario, August 2, 2011

PRESENT: The Honourable Justice de Montigny

BETWEEN:

ALERO TRACY IMAFIDON

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision made by the Member of the Immigration and Refugee Board (“the Board”), dated September 23, 2010, in which the Member determined that the applicant is not a Convention refugee or person in need of protection.

I. Facts

[2] The applicant is a 28-year-old woman and a citizen of the Federal Republic of Nigeria. She left school in 1999 because her parents were unable to finance her education. Soon after, she was introduced to a man named Mr. Osaro Efe, who promised to offer her a better life and allegedly led her into prostitution, forcing her to work as a prostitute until she came to Canada in 2008. In November 2007, while she was allegedly working for Mr. Efe, she became pregnant by her boyfriend. She says that upon learning this, Mr. Efe became very angry, assaulted her, followed her, and threatened her on several occasions to have the child aborted. Her boyfriend also became upset with her when he learned of her situation, and may have threatened her.

[3] The applicant claimed refugee protection in Canada in June 2008. She alleges a well-founded fear of persecution for reason of her membership in a particular social group, namely that of women forced into prostitution.

II. The Impugned Decision

[4] The Board's decision to refuse her claim was based on a negative credibility finding. On the basis of a number of implausibilities and inconsistencies between the applicant's oral and written evidence, the Board determined that she was not a credible or trustworthy witness. As such, the Board found that on the balance of probabilities, the applicant had not established that there was a serious possibility that she faces persecution as a woman forced into prostitution.

[5] Below, the Court outlines the observations that provided the grounds from the Board's adverse credibility finding:

- a. The applicant testified that Mr. Efe threatened to have her child aborted, but that he never carried out that threat. The Board found that if the applicant had really been working as a prostitute against her will, Mr. Efe would have taken swift action on this front to ensure his business would continue to run smoothly, but did not. The Board found this element of her story implausible.
- b. The Board noted that “Although [the applicant] testified that she moved out of the apartment that Mr. Efe provided in November, she remained within the general area of Benin City” and drew a negative credibility inference from her failure to flee the area. The Board also stated that “If Mr. Efe was as powerful and connected as she alleges, the panel finds it reasonable for Mr. Efe to have found her within his immediate sphere of influence in Benin City [when she went into hiding before coming to Canada], but he did not do so.”
- c. The Board found the entire situation to be implausible: she claims to have worked only once or twice per month as a prostitute and was otherwise free to consort with her friends. She also said that she entered into a relationship with the father of her child early in 1999 and stopped working as prostitute at that point: the Board found that her scenario was inconsistent with that of a woman forced into prostitution, and that if she had been forced into it, she would have been able to leave, given her apparent freedom of movement and association.
- d. The Board observed that, after the applicant stopped working as a prostitute because of her pregnancy, “It was not until some months later that Mr. Efe confronted the claimant about her lack of service. The panel does not find it reasonable that Mr. Efe

took so long to investigate or that he continued to pay the claimant's rent and living expenses when she was not performing as a prostitute."

- e. At the hearing, the applicant testified that her boyfriend abandoned her after learning of her work as a prostitute. She did not mention, as she had alleged in the PIF, that the boyfriend had threatened to harm her if she ever got close to him in the future. The Board found that this significant divergence between her oral and written testimony impugned the credibility of her story.
- f. At the hearing, the applicant testified that she left her parents' home on Joy Street in February 2000, whereas her PIF indicated that she only did so in February 2004. Confronted with this inconsistency, she began to change her testimony and equivocate, suggesting to the Board that she was not being truthful.

[6] Based on these considerations, the Board concluded that the applicant had not credibly established that she was in danger.

III. Issues

[7] Was the Board's negative credibility finding reasonable?

IV. Analysis

[8] Findings relating to credibility are questions of fact, and should therefore be treated with significant deference upon judicial review. Thus, the question that this Court must ask itself is not whether it would have reached the same conclusion as did the tribunal, but rather whether the RPD's finding was reasonable. Despite this deference owed, there are instances where the Board's findings

are so questionable that the credibility finding may be characterized as unreasonable and the case may be set aside on that basis.

[9] The present case is one of these instances. As described above in my summary of the impugned decision, in making his credibility findings, the Board relied on a number of perceived implausibilities and inconsistencies. Considered one by one, it is revealed that these “implausibilities” do not hold up under examination, and that the “inconsistencies” are too minor to justify rejecting the claim for asylum. This means that the Board’s ultimate adverse credibility finding cannot be considered to fall within the range of reasonable, acceptable outcomes that were open to him.

[10] The Court shall now describe its concerns with the bases of the Board’s finding.

[11] First, the Board disbelieved the applicant in part because she alleged that Mr. Efe, upon learning of her pregnancy, had threatened to force her to have an abortion but did not ultimately follow through on this threat. The Board stated “If the claimant was truly forced into service as a prostitute, the panel finds it reasonable to believe that Mr. Efe would have taken swift action to protect his investment, but he did not.” This is speculative. The Board does not have enough knowledge of the circumstances to be able to assume that just because Mr. Efe did not ultimately force the applicant to have an abortion, her entire story is necessarily a fabrication. To make such an assumption is a leap of logic. In any event, according to the applicant’s testimony, Mr. Efe did indeed threaten her, harass her, follow her, and assault her while attempting to coerce her to have an

abortion so clearly, he took her pregnancy seriously and threatened and attempted to do her harm because of it. Her testimony is consistent in this respect.

[12] Second, the Board found it implausible that, in light of the applicant's claims that Mr. Efe was a powerful, well-connected man in Benin City, she would have been able to successfully escape him by going into hiding. With respect to the Board, this is not reasonable. First of all, when the applicant first fled to a neighbouring community, Mr. Efe's henchmen soon located her which suggests that he was as powerful as she claims. Her allegation that she eventually later managed to escape him by hiding in the home of a friend before fleeing to Canada does not indicate, as the Board asserts, a lack of credibility. It is commonplace that refugees go into hiding before fleeing – if the simple fact that a claimant was capable of hiding successfully meant that his aggressor was insufficiently powerful to justify asylum, few claimants would ever be granted status.

[13] Third, the applicant says she worked only several times a month for a small number of wealthy clients and had substantial freedom of movement and association; because of this, the Board did not believe that she was forced into prostitution. This is unreasonable. The applicant's story indicates that regardless of the hours she had to work or the lifestyle she lived, she was coerced to submit to Mr. Efe's authority: this is indicated by his violence against her when she became pregnant against his wishes.

[14] Indeed, for each of these three "implausibilities", the Board's reasoning seems to be as follows: because the applicant's situation was not as dire as it possibly could have been, her allegations are not believable. The Board is essentially saying that her allegations needed to be more

extreme in order to be credible – by basing the credibility finding on this kind of reasoning, the Board is essentially saying that her story would have been realistic only if she *had* been forced to abort (instead of merely threatened), if she *had* been unable to escape Mr. Efe (instead of only able to do so with difficulty), and if she *had* been forced into sex work daily (instead of only monthly). Such reasoning appears unfair and, if anything, likely to encourage exaggeration.

[15] The fourth implausibility, for its part, appears to be based on a factual error. As noted above, the Board found it unlikely that Mr. Efe would have waited until “some months later” to confront the applicant about her lack of service after she stopped working because of her pregnancy. However, this finding appears to be based on a misapprehension of her testimony: a reading of the refugee determination hearing transcript shows that she clearly indicated, in her oral testimony, that she stopped working in November when she learnt she was pregnant, and was confronted by Mr. Efe that same week.

[16] Once these four “implausibilities” are removed from the Board’s reasoning, the remaining “inconsistencies”, regarding her place of residence and her boyfriend’s remarks, appear to be too minor in nature to form the basis of a negative credibility hearing.

[17] With respect to the applicant’s residences, the Board found that her PIF was inconsistent with her oral testimony as to whether she had left her parents’ home in Joy Street in 2000 or 2004. She explains this, as she did during the hearing, by the fact that she began staying periodically with Mr. Efe in 2000 but did not leave her parents’ home completely until 2004, and that she did not make this clear because she was confused by the questioning. It is true that the transcript suggests

that the dialogue about her residences appeared confusing for both parties. Therefore, it seems very possible to the Court that her explanation is valid. But even if this “inconsistency” is upheld out of deference to the Board, without the “implausibilities” described above, it does not appear to be a sufficient basis for a negative credibility hearing, not even when coupled with the Board’s observations about the boyfriend’s threats.

[18] With respect to these threats, the Board found the applicant not credible because she had stated in her PIF that her boyfriend, angered by her sex work, had threatened to harm her if she got close to him again, whereas in her testimony she did not mention these threats specifically, stating only that her boyfriend was very angry when he heard about her prostitution. It is true that this may be an inconsistency in her testimony, but other than her omission of the word “threaten” in her testimony, her accounts of this event are largely consistent. Thus, even if the Board’s observation on this point is correct, this inconsistency, as the only potentially valid basis for the negative credibility finding (along with the possible residence discrepancy), appears insufficient to ground the decision rejecting her claim for asylum. It is not clear that, were the three problematic implausibilities removed from the Board’s reasoning, he would have come to the same conclusion.

[19] For these reasons, it appears to this Court that the Board’s negative credibility finding was not within the range of reasonable outcomes, lacking as it does a solid basis. Therefore, this decision should be set aside and remitted for redetermination.

V. Conclusion

[20] For all of the foregoing reasons, this Court finds that the application for judicial review ought to be allowed. No question has been proposed for certification and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. No question of general importance is certified.

“Yves de Montigny”

Judge

:

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6150-10

STYLE OF CAUSE: ALERO TRACY IMAFIDON v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 9, 2011

REASONS FOR JUDGMENT: de MONTIGNY J.

DATED: August 2, 2011

APPEARANCES:

Solomon Orjiwuru FOR THE APPLICANT

Veronica Cham FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor FOR THE APPLICANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada