

Federal Court



Cour fédérale

Date: 20120626

Docket: IMM-7472-11

Citation: 2012 FC 816

Ottawa, Ontario, June 26, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SHAMIKA SHONETTE RYAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGEMENT AND JUDGMENT

[1] Ms. Ryan seeks to set aside a decision of a Pre-Removal Risk Assessment (PRRA) officer who denied her PRRA application. The officer determined that Ms. Ryan was not a Convention Refugee and would not face unusual and undeserved or disproportionate hardship if returned to St. Vincent and the Grenadines. Despite the able submissions of her counsel, I am unable to find that the officer erred in law or rendered an unreasonable decision as has been submitted.

Background

[2] Ms. Ryan is a 19 year-old citizen of St. Vincent and the Grenadines. She came to Canada on July 8, 2008, at the age of 15 in an attempt to escape her sexually abusive father and former boyfriend.

[3] In July 2009, she filed a refugee claim and alleged only the abuse at the hands of her former boyfriend. She says that at the age of 16 she did not have the courage to disclose her father's sexual abuse to the Refugee Protection Division.

[4] On May 5, 2009, her refugee claim was denied. Leave was granted to review that decision but on March 8, 2011, the judicial review dismissed: See *Ryan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 269.

[5] On May 20, 2011, Ms. Ryan submitted a PRRA application in which she disclosed her father's abuse. She explained that she told her mother and several others of her father's sexual abuse and that they in turn contacted her father and publicly condemned his actions. Upon receiving this news, her father denied the allegations and threatened to kill Ms. Ryan or cause her harm if he encountered her again.

[6] Her PRRA application was unsuccessful. The officer assessed the new evidence which was comprised of a psychological assessment, a letter from Ms. Ryan's sister, and objective documentation regarding the human rights situation in St. Vincent, the prevalence of incest, gender violence, and corruption and impunity of the police force.

[7] The officer accepted that Ms. Ryan was sexually abused by her father in the past, but did not believe that he threatened to hurt or kill her today. If her father does seek revenge, the officer said it was due to a personal vendetta rather than her gender. As such, the officer found no nexus with a Convention ground and denied her claim under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The officer continued the risk assessment in the context of subsection 97(1) of the Act.

[8] The officer noted that the psychological report indicated that Ms. Ryan “appear[s] highly credible in her distress, and in her account of her experiences” and that she suffers from chronic Post-Traumatic Stress Disorder. The officer accepted that the applicant experienced physical and sexual abuse in St. Vincent but found insufficient evidence to corroborate that she was at risk from her father. With respect to the psychological assessment the officer found as follows:

I find that the information contained in the assessment regarding the events which took place between the applicant, her mother and her father, following the applicant’s disclosure of the sexual abuse, to be based on statements made to the psychologist by the applicant herself; it does not constitute corroborative evidence of those events. I do not find that the psychological assessment can be accorded any weight as corroborative evidence that the applicant faces a risk of harm or death at the hands of her father upon her return to St. Vincent today.

[9] The officer found that the only corroborative evidence of any threat was the letter from Ms. Ryan’s sister. She wrote that she too had been sexually abused as a child by their father and told the applicant not to worry because she was far away. The officer found that this letter provided little in the way of detail which could establish the risk alleged by the applicant. The

letter was not accompanied by any form of identification and the envelope did not show a return address or the applicant's sister's name as the sender. No weight was therefore accorded to the letter by the officer.

[10] The officer went on to note that no corroborative evidence was provided by the applicant's mother or other relevant persons in Canada. The officer wrote: "As these individuals previously demonstrated their support of the applicant by contacting the applicant's father from Canada to chastise him for the abuse of his daughter, it is unclear why they could not have been approached by the applicant to provide corroborative evidence of their first-hand conversation with the applicant's father." The officer held that the evidence was insufficient to establish that Ms. Ryan was threatened with serious harm or death by her father as a result of her denunciation of his abuse or any other reason.

[11] The officer accepted that the country conditions speak of domestic and sexual violence committed against women and that it is a serious problem in St. Vincent and the Grenadines. However, this did not establish a personalized risk at the hands of Ms. Ryan's father today. The officer noted that Ms. Ryan is now older, no longer has to cohabit with her father and can enjoy the support of her sister who writes that she is able to avoid contact with her father.

[12] The officer concluded that there was no reliable evidence on which to base a finding that Ms. Ryan's father was denounced publicly for having abused the applicant, had threatened her, and represents a risk to her today. For these reasons the application was rejected.

Issues

[13] The applicant raised a number of issues, which are phrased by the Court as follows:

1. Did the officer err in law by making a negative credibility finding based on a lack of corroborating evidence?
2. Did the officer breach the duty of procedural fairness owed to the applicant by failing to hold an oral hearing?
3. Did the PRRA officer err in finding that the applicant did not have a nexus with a Convention ground?

Analysis

[14] The submissions made by the applicant on the first two issues are premised on her assertion that the officer made a negative credibility finding.

[15] It is submitted by Ms. Ryan that her sworn evidence should be presumed true in the context of a PRRA: *Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 3, *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 8 and *Maldonado v Canada (Minister of Citizenship and Immigration)*, [1979] FCJ No 248. She also relies on the decision in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 974 where Justice Dawson wrote at paragraph 9:

There remains the absence of documents corroborating the forced abortion. Leaving aside whether there was any basis in the evidence upon which to assume that such a document would exist, in the absence of contradictory evidence it is an error for the RPD to require an applicant to produce corroborative evidence. See: *Ahortor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 705 at para. 45 (T.D.). The absence of corroborative evidence was therefore an insufficient basis upon

which the RPD could impugn Ms. Zheng's testimony [emphasis added by the applicant].

[16] The applicant notes that the officer accepted that she was sexually abused by her father and that this finding was supported by the corroborative evidence. She emphasizes that despite those two findings, “and despite not having noted any contradictions or implausibilities [sic] in the applicant’s sworn evidence [emphasis by applicant],” the officer dismissed the only portion of the evidence which states that her father wants to kill her. This, it is submitted, is an error of law because no corroborative evidence was required.

[17] The evidence before the officer and this Court is that Ms. Ryan’s mother told her that her father wanted to hurt her. The mother’s statement – presented to the officer through the voice of the applicant – is hearsay. It was reasonable for the officer to weigh this hearsay against the lack of corroborative evidence that might reasonably be expected to be available and provided. The officer did so and concluded that there was insufficient evidence to establish that Ms. Ryan would be persecuted in St. Vincent and the Grenadines. This was not a credibility finding.

[18] I have previously commented on the distinction between credibility and weight and the need for corroborative evidence in situations like that at hand in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 27:

If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other

tendered evidence, to establish on the balance of probability, the fact for which it has been tendered.

[19] Further, although there is a presumption that sworn evidence is true and cannot be undermined by a lack of corroborative evidence, there is an exception. The exception is triggered when a tribunal does not accept the applicant's explanation for failing to produce evidence when it would reasonably be expected to be available: *Rojas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 849 at para 6. The officer in the present matter made such a finding. The decision states:

The applicant has not provided any supporting documentation from her mother, who could have provided first-hand evidence of her exchanges with the applicant and the applicant's father, regarding the sexual abuse, and any ensuing threats made by the applicant's father. No explanation has been provided to explain why no evidence from the applicant's mother has been submitted.

[20] This was a valid concern. It is appropriate for an officer to weigh the lack of corroborative evidence if an applicant's explanation for failing to produce evidence that would reasonably be expected to be available is not accepted. Here there was no evidence.

[21] There was no rejection of the applicant's evidence, there was no credibility determination, and there was no requirement to hold a hearing.

[22] I agree with the respondent's submission that that the validity officer's nexus analysis is inconsequential given that Ms. Ryan failed to sufficiently establish the essential facts of her allegations and given that St. Vincent and the Grenadines was found to offer her adequate state protection. These are two determinative findings.

[23] As for the submission that the officer had a duty to assess the further risk to Ms. Ryan of continued sexual abuse at the hands of her father, I find that the officer did just that in the last two paragraphs of the decision when the officer wrote:

I recognize that domestic and sexual violence committed against women [is] a serious problem in Saint Vincent and the Grenadines. I have also accepted that the applicant has suffered physical and sexual abuse in the past.

However, this does not establish a personalized risk at the hands of her father today. I note that the applicant is now older and no longer has to cohabit with her father. She enjoys the support of her sister, who writes that she is able to avoid contact with their father.

[24] Considering how the applicant's sister was also sexually abused as a child, that she is no longer abused by him today, and that she is able to avoid contact with him, it was reasonable for the officer to conclude that the applicant would not face the same type of sexual persecution she faced in the past. The officer's finding was reasonable.

[25] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed,
and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7472-11

STYLE OF CAUSE: SHAMIKA SHONETTE RYAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 14, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: June 26, 2012

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