

Federal Court



Cour fédérale

Date: 20130419

Docket: IMM-9381-12

Citation: 2013 FC 401

Ottawa, Ontario, April 19, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**BHATA, Sajid Gulam Vali
BHATA, Samimbanu Gulam**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Refugee Protection Division Member [Member] refused the Applicants' applications for refugee status and protection. This is the judicial review of that application.

II. BACKGROUND

[2] The Applicants are a brother and sister from a small village in India. The sister had a job with the village chief acting as a cook and child care provider. The brother worked in the fields.

[3] The female Applicant's story is that prior to the incident in May 2011, she had been raped by the village chief three or four times.

[4] The male Applicant's story is that in May 2011, the village chief's daughter approached him and made sexual advances. He refused her advances by trying to leave but the daughter tore her clothes and accused him of attempted rape.

[5] As retribution for his daughter's alleged rape by the brother, the village chief, two neighbours and a police officer gang-raped the sister. One of the men involved in the rape was named Jamal.

[6] The two siblings left India and arrived in Canada in June 2011. However, before leaving India, the sister contacted Zakir in Vancouver with whom she eventually became romantically involved. Zakir is the brother of Jamal – one of the alleged rapists. She claims she met Zakir while walking in the village and he told her he lived in Canada and gave her his phone number if she ever needed it.

[7] Finally, the sister contends that having become romantically involved with Zakir in Vancouver, she was physically attacked by Zakir's ex-wife, his daughter and Jamal's two sons (Zakir's nephews).

[8] The Member concluded that it was his duty to determine whether there was sufficient credible or trustworthy evidence to determine whether there is a “serious possibility” that the claimants would be persecuted or that there were substantial grounds to believe that they would be tortured, or be at risk of losing their lives or being subjected to cruel and unusual punishment or treatment if they returned to India.

[9] The Member found that the determinative issue was credibility. On a number of points the Member found both Applicants not to be credible. The Member also found that the brother had a viable IFA.

[10] The issues in this judicial review were whether the Member’s decision was reasonable, both with respect to credibility and with respect to a viable IFA.

III. ANALYSIS

[11] There is no doubt that in accordance with the principles laid out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the standard of review is reasonableness.

Further, on true findings of credibility, the Court owes considerable deference to the trier of fact who is in the unique position to assess each witness and their testimony in the context of the whole case.

[12] In oral argument the Applicants stressed that the Member erred by focusing on irrelevant matters; particularly matters of religious belief and the relationship of the sister with her boyfriend.

[13] That submission is without merit. A fair reading of the evidence and reasons discloses no such error. The Applicants had put religious beliefs in issue. The attention paid to the boyfriend was proper given the female Applicant's story of rape and assaults.

[14] It was more than open to the Member to be sceptical about the female Applicant's romantic relationship with the brother of one of her rapists. Similarly, it was open to the Member to find the female Applicant's story about the assault in Vancouver unreasonable given the thesis that the sons of the rapist (nephews to the boyfriend) were said to be involved and yet this information was not conveyed to the police in making a report.

[15] The Member reasonably concluded that a four-month delay in filing for refugee protection was inconsistent with her story and subjective fear.

[16] The Member also commented on the female Applicant's demeanour during questioning. The Immigration and Refugee Board's IRB Guideline 4, *Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, effective date: November 13, 1996 [*Gender Guidelines*] do not preclude credibility findings based on demeanour nor are the *Gender Guidelines* more than guidelines and do not carry the same weight or effect as legislation. It was apparent from the record that the Member was aware of and sensitive to the *Gender Guidelines*. Further, demeanour was not the pivotal point on which lack of credibility turned.

This Court must respect the Member's observation of the witness so long as the Member was alert and alive to the issues raised in the *Gender Guidelines*.

[17] There is no basis for overturning the Member's finding of lack of credibility in respect of both Applicants.

[18] The Member's conclusion that the male Applicant had a viable IFA was based on his earlier success in hiding, the absence of risk of arrest, the size of India limiting the village chief's ability to find him and the male Applicant's own education, work experience and facility in English. These are all reasonable factors to consider.

IV. CONCLUSION

[19] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9381-12

STYLE OF CAUSE: BHATA, Sajid Gulam Vali
BHATA, Samimbanu Gulam

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 9, 2013

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

DATED: April 19, 2013

APPEARANCES:

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