Federal Court  Cour fédérale

Date: 20140918

Docket: IMM-7691-13

Citation: 2014 FC 899

Ottawa, Ontario, September 18, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

AB, CD, EF

Applicants

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

INTRODUCTION

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board], which refused the Applicants' application to be deemed Convention refugees or persons in need of protection under s. 96 and 97 of the Act [Decision].

BACKGROUND

[2] The Applicants are a husband [AB], wife [CD] and their child. They say they came to Canada after suffering abuses at the hands of the authorities in their home country, and out of fear that they would suffer further harm.

[3] AB claims he was detained and tortured by government authorities. Upon his release, he was forced to sign an undertaking promising not to participate in protests or political activity, or else he would be brought before the court.

[4] CD claims she was also detained and suffered abuses at the hands of the government authorities. She was also forced to sign an undertaking.

[5] When AB went to pick up CD after her detention, he shouted at the officers. They physically assaulted him, and then accused him of assaulting officers of the government. Both Applicants were released, but were informed that they would be summoned to court to answer charges.

[6] The Applicants say they feared extreme sanction given the earlier incident. AB was particularly afraid he would be imprisoned and tortured again. The Applicants left within days, travelling through a number of other countries with the aid of a smuggler before reaching Canada.

DECISION UNDER REVIEW

[7] The RPD found that the Applicants were neither refugees nor persons in need of protection within the meaning of s. 97, because it found them not credible.

[8] The Board began by declaring CD a vulnerable person pursuant to *Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB*, and noting that *Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* was employed during the hearing and in rendering the Decision.

[9] The RPD noted that there were several medical reports stating that the Applicants are suffering from Post-Traumatic Stress Disorder [PTSD], and accepted that this was the case. However, the Board found that this condition could result from a variety of sources, and was not necessarily due to the events alleged by the Applicants. The RPD member found that she could not base her credibility findings on the conclusions of the medical professionals as to the etiology of the PTSD since the Applicants provided this information to those practitioners. The Board observed that the PTSD could have resulted from the trying experiences during the Applicants' journey to Canada, including the trauma of having to flee their country, feeling betrayed and abandoned by their smuggler, running out of money and food with their infant child, "starving" during the trip, separating from CD's family members (several of whom fled around the same time), and being received harshly in the home where they first stayed upon arriving in Canada.

[10] The Board then observed, with respect to the Applicants' credibility (Decision, at paras 23-25):

> The literature on trauma provided in this case does not support the proposition that traumatized individuals tell untruths or cannot recall events that are unrelated to the trauma. It is for this reason among others that adjudicators can determine whether a claimant has provided credible, reliable, and trustworthy evidence. And when I tested the claimants' credibility in this case, being mindful of the trauma they have endured, I found that they did not provide credible and reliable evidence. There were material omissions and contradictions that were not adequately explained and a corroborating document I found not to be a genuine.
>
> Because I chose not to examine the alleged traumatic events themselves as to safeguard the claimants from further trauma, I had to also include in my credibility assessment non-material aspects of their claims as part of the credibility assessment. There were multiple non-material omissions and contradictions contained in the claimants' evidence that demonstrated collectively that they have been untruthful with Canadian immigration officials and with the IRB.
>
> All told, I find on a balance of probabilities that the claimants have not provided reliable and trustworthy evidence in this case.
>
> [footnotes omitted]

[11] The Board characterized two inconsistencies or contradictions in the Applicants' evidence to be material to their claim. The first was the Applicants' failure to disclose in their Personal Information Forms [PIF] that several members of CD's family fled the country around the same time as the Applicants, and made successful refugee claims elsewhere. The Board found this information was material to the Applicants' claim because the fact that these family members had allegedly suffered persecution in their home country would have impacted the Applicants' own situation there. The Board found that the Applicants (Decision, at para 26):

> […] attempted to hide this information from the Tribunal and only disclosed limited information about these family members after the Minister disclosed information [regarding the family members].

The Board found that CD's father and sister had been living elsewhere for two and a half months when the Applicants filed their PIFs, and that the Applicants had not amended their PIFs until confronted with the Minister's evidence at the hearing.

[12] The Board rejected as not being credible CD's explanation that despite communicating regularly during and after the journey with her mother, who was still in their home country at the time, she was not told that her other family members had fled and sought asylum elsewhere. Moreover, the Board found that the adult Applicants contradicted each other on this point as AB stated that they had no contact with CD's family during the journey. AB also gave inconsistent answers regarding when he first learned CD's family members had left their home country, stating variously that he learned only recently, over a year ago, fourteen or fifteen months ago, and twelve to thirteen months ago. The Board found that CD was untruthful when interviewed by an immigration officer after filing her PIF: she said her father and sister were still living in their home country, but asked the officer not to contact her father or mother, when in fact she would have known by then that her family was not there. The Board found that (Decision, at para 41):

> [CD] did not want her mother or her father to be contacted by the officer because this would expose to the officer that she had just lied to the officer. These phone calls would have exposed the associate claimant in her intentional material omissions that were in her PIF.

[13] The Board found that when specifically requested to provide certain documents regarding the family members' asylum claims, the Applicants failed to comply (Decision at paras 31-33):

> And even when I explicitly told the claimants and their counsel on the first day of our hearing, that I want them to get from their family…all of the family's refugee applications and decisions, the claimants did not obtain the documents. It must be noted that the associate claimant's mother has now joined the associate claimant's father and sister...
>
> The claimants had no explanation for why the family…could not send them any of their asylum information in the almost one month time period that I had provided to them. They did manage to file other documents but not the documents that I had specifically requested.
>
> The associate claimant's father, sister, and brother-in-law were each given a copy of the interview they each had had with a[n]… immigration officer. This copy contained all of their allegations of why they were requesting protection. The copy they were provided contained their very own signatures affirming their congruence with the material garnered in the interview. And still the associate claimant's did not send this information to the IRB or the claimants did not choose to put it in evidence.
>
> [footnotes omitted]

[14] The Board also found that the Applicants introduced a document that was not genuine. They entered a photocopy of a summons for AB to appear, which was allegedly issued after the Applicants had fled. However, this document was not sent to the Applicants' last address but to CD's parents' home. The Board found that AB had no real explanation for this. At her hearing, one month later, CD testified that this was because the Applicants had no post box at their home, and they would therefore have provided her parents' address to institutions needing to contact them. The Board rejected this explanation as follows (Decision, at para 48):

> I find all of the claimants' explanation spurious. First the principal claimant himself could not remember that for years his phone bills, credit card statements, bank statements, and so forth did go [sic] directly to his own home but to his in-law's home. The claimants did not produce any other documentation in the month they had between the hearings to corroborate that this was their *modus operandus*. I could not examine their passport pages to see if that

> corroborated their new allegation, as their addresses were not translated on the passports.
>
> [footnote omitted]

The Board also noted that the documentary evidence indicated that warrants for arrest in their home country were to be served on the accused at their last known address, and that "the same kind of logic would apply to summons" (Decision, at para 49).

[15] Moreover, the Board noted that the Applicants had not mentioned this summons in their PIFs, and that this was a material omission. AB testified that he did not speak with CD's mother, but only his own parents after his arrival in Canada, and CD testified that her mother did not tell her about the summons because she was already so traumatized. The Board rejected these explanations as being not credible. The Board found that the summons was sufficiently serious that CD's mother would have told AB's parents about it even if they were not close friends, and that AB's parents would have told him. Moreover, the Board found that CD's mother would have told her about the summons. CD's mother was entrusted with obtaining documents and whatever else was needed for the Applicants' and the other family members' refugee claims, and under these circumstances she would not have acceded to her daughter's alleged insistence not to tell her anything of substance in their communications.

[16] The Board found that the summons was a fraudulent document and that, without it, there were no corroborating documents that could independently support the Applicants' allegations given the Board's finding that they lacked credibility.

[17] The Board found that besides the material contradictions outlined above, there were a series of non-material contradictions that cumulatively indicated that "these claimants have no qualms about stating mistruths" (Decision, at para 57). CD told the immigration officer who interviewed her that she did not know the smuggler's real name, but testified at the hearing that she did. When asked how they knew the man who housed them in Canada when they first arrived, CD told the immigration officer that he was a friend, when in fact he was a relative. The Board observed (Decision, at para 62):

> This is just another instance of the associate claimant trying to hide the truth. And in so doing, I cannot tell which are the truths and untruths in this case.

[18] The RPD noted that the Applicants advanced a *sur place* claim on the basis that asylum seekers are interrogated if returned. The Board found that the documentary evidence did not state that "all asylum seekers are interrogated on return but only those who are political activists or who have tried to conduct propaganda abroad" (Decision at para 70). It found that there was no credible evidence that the Applicants had ever participated in any political activity, and that therefore they would not be interrogated if they returned.

ISSUES

[19] The Applicants have raised the following issues in this application:

a. Did the RPD err by finding that the Applicants were not credible on the basis of immaterial or peripheral matters, while failing to give clear reasons for rejecting the core allegations of their claims?

b. Did the RPD member breach a duty of procedural fairness by indicating that she did not need to hear information on the traumatic events, and then concluding that the traumatic events had not occurred?

c. Did the RPD err by assessing the Applicants' credibility without regard to the medical and psychological reports concerning the Applicants' diminished capacity to testify?

d. Did the RPD err by failing to consider whether the Applicants were in need of protection even if they lacked credibility on specific matters?

STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[21] Issues a., c. and d. above relate to the Board's assessment of the Applicants' credibility and its conclusions based on the evidence. These matters are reviewable on a standard of reasonableness: see *Cruz Herrera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 979 at para 14; *He v Canada (Minister of Citizenship and Immigration)*, 2010 FC 525 at paras 6-9; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ no 732 at para 4 (CA)(QL) [*Aguebor*]. Issue b. raises a question of procedural fairness which is reviewable on a standard of correctness: see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *C.U.P.E. v*

Ontario (Minister of Labour), 2003 SCC 29 at para 100; *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 53.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[23] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de

themself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and	infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ARGUMENT

Applicants

Basing credibility findings on peripheral matters while failing to deal with the core allegations

[24] The Applicants argue that the RPD based its assessment of their credibility on immaterial or peripheral matters while failing to address the core elements of their claim, which were both internally consistent and consistent with the medical and country evidence before the RPD. The RPD made a negative decision based on credibility, which was silent on the core allegations, despite having admitted the Applicants' PIFs as sworn testimony, and deciding not to question them on the core allegations stated in the PIFs.

[25] The Applicants note that the Board based its credibility findings on the omission from their PIFs of information about CD's family's claims, and the failure to mention the summons or to explain why it was delivered to CD's family's home. They say the decision to base the credibility assessment on these elements of their testimony was unreasonable for several reasons:

a. The family's asylum claims and the summons are non-material or peripheral elements in their claim;

b. The fact that CD's father and sister claimed asylum in another country and were recognized as Convention refugees should, if anything, enhance and not detract from the Applicants' credibility;

c. The Applicants cannot be faulted for failing to produce all the documents relating to these claims since those documents were outside of their control;

d. The RPD erred by impugning AB's credibility on the basis of omissions from his wife's PIF since the RPD knew that he had never seen his wife's PIF; and

e. The RPD failed to explain why it disregarded the remaining evidence, including the core allegations, in clear and unmistakable terms.

[26] The Applicants acknowledge that the Board is entitled to make adverse findings of credibility based on inconsistencies, but they argue that not all inconsistencies can support such findings, which should not be based on a "'microscopic' examination of issues irrelevant or peripheral to the…claim": *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11; *Cooper v Canada (Minister of Citizenship and Immigration)*, 2012 FC 118 at paras 3-4 [*Cooper*].

[27] A material fact, the Applicants say, is one that goes to the foundation of the case (*Pfizer Canada v Canada (Minister of Health)*, 2011 FCA 215 at paras 21-22), and neither of the primary issues identified by the RPD goes to the foundation of the Applicants' claim for protection in Canada. It is both irrelevant and immaterial whether there were relatives who went to other countries to seek asylum, what the Applicants knew about those claims, and whether they were able to produce all of the documents relating to the relatives' claims that the RPD requested. Similarly, it is both irrelevant and immaterial where the summons for AB was delivered and whether he knew the reasons for this. If there never was a summons it would not matter to the substance and genuineness of AB's claim for protection as documents such as

summonses are not required to be produced to corroborate refugee claims. Thus, the two matters on which the Decision rests are not material.

[28] While non-material matters can legitimately go to credibility, and the cumulative effect of a number of non-material matters may be determinative, the Applicants argue that it is an error to skip any analysis of the core allegations and proceed directly to a consideration of non-material elements. To do so, they say, is to fail to substantively and materially evaluate the basis of the claim. They cite Justice Rennie's analysis in *Cooper*, above, at para 3:

> I find that the Board's decision falls outside the scope or range of legally permissible outcomes given the facts and law and is unreasonable. Notwithstanding the concerns about the applicant's credibility, the decision fails to substantively analyze the claim. Instead of focusing on the factual issues that are material to a claim for protection, the Board focused its attention on matters that were immaterial and irrelevant to the claim for protection. In consequence, the Board undertook no analysis of the principle basis of the claim of risk.
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> [Applicants' emphasis]

Similar to the Court's finding in *Tsyhanko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 819 at para 16, the Applicants argue, the Board implicitly accepted, or did not question, the central elements of their claim, but then denied the claim based on inconsistencies on peripheral matters.

[29] The Applicants note that, at the RPD's request, they filed documents confirming that CD's relatives were granted asylum elsewhere. In keeping with the Board's reasoning that persecution of CD's relatives would impact on their own situation, the Applicants argue the fact that those relatives received asylum elsewhere can be viewed as a matter that supports, rather

than undermines, their own claims in Canada. The RPD's conclusion that the omission of this information from the Applicants' PIFs supports a finding that the Applicants were not in need of protection is unreasonable. Common sense would lead one to ask why a claimant would suppress information that bolsters his/her claim, but the RPD never asked or considered this question.

[30] Furthermore, the documents requested by the RPD were not in the Applicants' control. They asked CD's relatives to forward evidence of their applications for asylum and filed the documents they received from the relatives. The RPD cannot fault them for failing to file documents which are outside their control. If the Board felt it needed the entire asylum file, it could have requested copies of documents from the authorities in that country.

[31] The Applicants argue that there was no reason for AB to include information about CD's relatives in his PIF, and no basis for the Board to fault him for failing to include such information. The form asks for information about immediate family members (parents, siblings, spouse and children). It was neither required nor appropriate for AB to list information about CD's family. The only area where he might have alluded to his wife's family's problems was in the narrative portion of the PIF, but he did not flee because of his in-laws' problems with authorities. He fled because of his personal experiences. Impugning his credibility on the basis that he should have included information about his in-laws is unreasonable. Furthermore, AB would not at any point have been aware of the contents of his wife's PIF, and the RPD was aware of the fact that he has never seen it.

[32] Finally, the Applicants argue that the Decision is unreasonable due to the Board's failure to explain in clear and unmistakeable terms why it rejected the traumatic and core incidents on which the claims were founded: *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236, [1991] FCJ no 228 (CA)(QL); *Martinez Caicedo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 749. The reasons do not consider, much less analyze, the core elements of the claim. One must assume that they were rejected on the basis that they were not credible, but that is only an assumption.

Failure to inform the Applicants of intention to focus on non-material matters rather than core allegations

[33] The Applicants note that the RPD breached a duty of fairness by allowing them to believe that it accepted the basic elements of their claims and then rejecting those allegations based on a general finding of non-credibility. As such, they were unable to know the case that was being built against them, to dispute, correct or contradict anything prejudicial to their position, or to present arguments and evidence addressing the concerns of the Board contrary to this Court and the Court of Appeal's direction regarding the content of the duty of fairness in this context: *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2006 FC 16 at paras 62-64 [*Thamotharem (FC)*]; *Canada (Minister of Citizenship and Immigration) v Thamotharem*, 2007 FCA 198 at para 37. Sworn testimony is presumed to be true in the absence of some reason to find otherwise (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldanado*]), and if the RPD has no questions on an element of the claim, there is no need for the claimant to review what has been accepted in writing as the basis of the claim. The Applicants quote Justice Blanchard's analysis in *Thamotharem (FC)*, above, at para 50,

quoting in turn Justice Pelletier's analysis in *Veres v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 124 (TD), relating to a decision of the Convention Refugee Determination Division (CRDD), the predecessor of the RPD:

> Rather, Mr. Justice Pelletier stated that the unfairness arises where the Board in its reasons reproaches claimants for failing to provide some piece of evidence without putting the claimants on notice that they are at risk on that issue. At paragraph 28 of his decision, Mr. Justice Pelletier wrote:
>
> > It is clear that the CRDD is the master of its procedures. It is entitled to take economy of time into account in devising its procedures. It can equally direct which evidence it wishes to hear from the mouth of the witness and which it waives hearing. But when it says it does not need to hear from the witness, it cannot subsequently complain that it has not heard from the witness.
>
> [Applicants' emphasis]

[34] The Applicants say that they had no reason to suspect that the RPD doubted the core incidents of their claims as the Board accepted their PIFs as sworn testimony: *Maldonado*, above. Through preliminary discussion with counsel and through the approach she took to questioning the Applicants, the RPD member indicated that the core allegations forming the basis of the claims were not in issue. Counsel for CD raised the issue of areas of questioning the RPD would want to pursue, and the RPD member identified the areas in which she was interested. She never expressed any concern about the core incidents to counsel, nor did she question on those elements herself. Instead, the Applicants were questioned about events that were tangentially or peripherally related to the key events. This tangential information did not reveal any inconsistencies with the core claims.

[35] The Applicants say they were entitled, as a matter of procedural fairness, to respond to the RPD's concerns before their case was decided. At the point at which the RPD member believed the Applicants not to be credible on peripheral matters, she should have advised them of her doubts about the core allegations. The failure to do so meant that the Applicants did not appreciate the need to establish their credibility on those events because, to their mind, the Board had no doubts. In other words, they were denied the opportunity to know the case they had to meet, and therefore the right to a fair hearing.

Assessing credibility without regard to the medical and psychological evidence and the literature on trauma

[36] The Applicants note that they filed a medical report and a psychological report concerning CD, which indicate that she is severely traumatized and has a full range of PTSD symptoms, including poor concentration and memory, and that progress in Stage I PTSD treatment has been slow. A medical report diagnosed AB as suffering from PTSD, in partial remission, and as having symptoms of Severe Depression. The report cautioned that AB's poor mental health, combined with the sedative effect of medication, would likely affect his memory and the proper sequencing of events.

[37] The Applicants acknowledge that medical practitioners cannot attest to the etiology of an illness developed in a faraway land, but they argue that the RPD missed the purpose of these reports, which was twofold: first, the medical and psychological conditions documented are consistent with the Applicants' account of trauma and abuse; and second, they offer a possible explanation for inconsistencies and gaps in testimony.

[38] The Applicants say that the Board's suggestion that CD's PTSD could be due to the difficulties encountered on the journey to Canada is both speculative and shows a failure to understand the severity of the diagnoses, which went far beyond what might be occasioned by those difficulties.

[39] Moreover, the RPD made findings based on inconsistencies in the Applicants' testimony without acknowledging the caution stated in each of the reports that the Applicants would likely have difficulty testifying at the hearing, would have difficulties with memory, and were likely to become confused about the sequence of events, times and dates. They point to AB's inability to explain why the judicial summons was delivered to the home of his parents-in-law rather than his former address as an example of the type of difficulty testifying that can be explained by the medical evidence. AB's bewilderment is clear in the testimony, they say, whereas it would be very simple to concoct a coherent explanation if he were trying to hide the truth. The RPD member failed to explain why the findings of the physician and psychologist had no bearing on the case, and her failure to consider their reports when assessing the Applicants' credibility renders the Decision unreasonable: *Mico v Canada (Minister of Citizenship and Immigration)*, 2011 FC 964 [*Mico*]; *Sokhi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 140; *Atay v Canada (Minister of Citizenship and Immigration)*, 2008 FC 201; *Owusu-Ansah v Canada (Minister of Citizenship and Immigration)*(1989), 98 NR 312, [1989] FCJ no 442 (CA)(QL); *Arslan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 252 at para 36.

Failure to consider the need for protection even if the Applicants were lacking in credibility on some matters

[40] Finally, the Applicants note that a refugee claimant may be in need of protection even if found to be lacking in credibility, and the RPD has a duty to examine all of the evidence to determine if protection is warranted: *Kulasekaram v Canada (Minister of Citizenship and Immigration)*, 2013 FC 388. They argue that the RPD failed to state in clear and unequivocal terms the reasons for rejecting all of their evidence, if in fact such a rejection has taken place, and failed to consider whether they are in need of protection even if some of their testimony has been found to be lacking in credibility.

Respondent

[41] The Respondent argues that the claim process unfolded appropriately, with the RPD member taking into account the Applicants' vulnerabilities and their particular allegations of trauma, and that the Board came to a reasonable conclusion based on the inconsistencies, contradictions and implausibilities in the Applicants' evidence.

Credibility findings

[42] The Applicants' arguments that the Board erred by making negative credibility findings based on peripheral matters and improper consideration of the medical evidence misapprehends the Board's reasons, the significance of the multiple credibility issues identified, and the effect of the accommodation requests put forward by the Applicants themselves. On the evidence

presented, the Board could reasonably find that the claims lacked credibility and should be rejected.

[43] The Respondent says that there is a well-established duty on all claimants to provide truthful information, and that the integrity of the refugee system requires that this duty be taken seriously: *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450 at para 28; *Garcia Porfirio v Canada (Minister of Citizenship and Immigration)*, 2011 FC 794 at para 46. Where a refugee claimant fails to mention important facts in their PIF, this may legitimately be considered an omission that goes to a lack of credibility: *Lopez Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 889 at paras 14-15; *Sahi v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 527 at para 18 [*Sahi*].

[44] In this case, the Respondent says that it was reasonable for the Board to find that the family's claims were relevant to the Applicants' claims in Canada given the relationship the Applicants had with CD's parents, the role they played in the Applicants' travel to Canada, and the fact that CD's family left so soon after the Applicants' departure. CD repeatedly stated that her family was in their home country when they were not, and the Board found her explanation that she was unaware of her family's claim not to be credible. AB stated twice that he knew the family was in another country at least a year before the hearing. The Board appears to have been concerned about why the Applicants would hide the fact of the family's asylum claims from Canadian immigration officials. They refused to provide any details to the Board as to the nature of the family's claims or the reasons they were granted protection, despite a request for this information. The Respondent argues that it was reasonable for the RPD to request evidence

about the claims, and reasonable to expect CD's family to have access to such documents. In addition to not amending their PIFs until the hearing, the Applicants provided false evidence. This alone significantly undermined their credibility, and the Board was entitled to draw a negative inference: *Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 998 at para 17; *Ren v Canada (Minister of Citizenship and Immigration)*, 2009 FC 973 at paras 15-18.

[45] The summons submitted by the Applicants was found not to be genuine, the Respondent notes, and when combined with other testimony, provided a strong indication that the Applicants were not credible. AB's PIF referred to the fact that they were told they would receive a summons, and it was the fear that AB would be incarcerated again that precipitated their flight. Yet, the summons was not mentioned in the Applicants' PIFs, and this gave rise to serious concerns about its alleged service on CD's family. The RPD found the Applicants' story to be inconsistent, implausible, and not in accordance with the documentary evidence. Thus, it was reasonably open to the RPD to find that the summons was not genuine.

[46] As to the medical evidence, the Respondent says that both the reasons and the transcripts show that the Board explicitly considered the effect of the Applicants' alleged trauma on their ability to testify. As observed by the Board, the evidence did not show that traumatized individuals tell untruths or would be unable to recall events unrelated to the trauma. The fact that the Applicants were afforded procedural accommodation in recognition of their vulnerability does not indicate that the Board accepted the credibility of their claim. The RPD respectfully and carefully proceeded with the hearing in light of CD's Vulnerable Person designation and both Applicants' alleged traumas. CD's counsel explicitly stated that she did not wish to question her

client as to the details of her alleged detention. The Applicants were questioned on key aspects of their claim, including events leading up to and emanating from their alleged detention, and key omissions and untruths that undermined their credibility.

[47] The Respondent argues that the Applicants did not simply misstate a sequence of events; they concealed material circumstances. There was no evidence that the Applicants suffered from symptoms that would cause them to tell material untruths such as the location of CD's family and their claim for asylum. Moreover, they did not state that they "forgot" that the family was not at home, but that they were not initially told. Similarly, there is no evidence that would explain the production of a false document.

[48] The Board considered whether the medical reports were determinative of the Applicants' credibility and found that they were not. The Board was entitled to find that any PTSD was not necessarily caused by the events alleged. The medical findings were based on the Applicants' own statements to medical professionals, and since these allegations were determined by the Board to be unfounded, it was not required to accept findings that were based primarily on the Applicants' self-reporting as to the cause of their difficulties: *Benipal v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ no 1491 at para 5 (TD)(QL); *Sahi*, above, at para 19.

[49] The Board also found a number of "immaterial" contradictions, and was entitled to conclude that, cumulatively, these contradictions and implausibilities contributed to the Applicants' lack of credibility: *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 25.

[50] In sum, the Respondent argues that the Board was entitled to analyze the Applicants' claims based on rationality, common sense and its own understanding of human behaviour, to reject evidence if it was not consistent with the case as a whole, and to find that the inconsistencies and contradictions indicated a lack of credibility: *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 415 (CA)(QL); *Aguebor*, above; *Li v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 358 at para 9 [*Li (2002)*].

Applicants not at risk

[51] While the Applicants submit that the Board failed to address whether they were at risk notwithstanding the negative credibility findings, the Respondent argues that they presented no alternative basis for risk. The Board considered their *sur place* argument, and found that there was no reliable evidence that they were politically involved. They were therefore not at risk. The argument that their claim was not fully analyzed is without merit, and it is well-established that documentary evidence about general country conditions cannot form the basis for a refugee claim without some credible evidence related to the claimant: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 at 244.

No breach of procedural fairness

[52] The Respondent argues that the Board had no obligation to put its concerns about the weakness of the Applicants' testimony to them for a response, including its concerns about implausibilities. As such, no duty of fairness arises in these circumstances: *Li (2002)*, above, at para 10; *Markauskas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 902 at para

24. Nevertheless, such concerns were put to the Applicants and their counsel at multiple points in the proceedings. The conduct of the hearing and the Board's requests for explanations and documentation further illustrates that the RPD's concerns were communicated. Moreover, counsel for the Applicants made oral submissions on credibility, the Applicants were questioned extensively on credibility, and they filed written submissions after the hearings concluded. The fact that the Board was not satisfied with their explanations does not make its findings unreasonable, nor have the Applicants pointed to any explanation of merit that the Board failed to address.

Applicants' Reply Submissions

Applicants did not foreclose questioning on traumatic incidents

[53] The Applicants say that in arguing that their counsel requested that there be no questioning on the details of what happened during CD's incarceration, the Respondent has mischaracterized counsel's words. Counsel expressly invited the RPD member to inform herself of areas of questioning that were of interest to the RPD, and neither the Applicants nor their counsel ever stated that the Applicants did not want to answer questions about what happened to them. Indeed, the reason for asking AB to be absent during CD's testimony was to ensure that CD could describe what happened in the police cells without her husband listening. If the RPD member doubted what had occurred, she could and should have questioned CD to test her credibility on this point. Instead, the RPD chose to skirt the issue, substituting peripheral matters for the core elements of the claim, contrary to the Court's direction in *Cooper*, above, at paras 3 and 6. Since the RPD did not question the basis of the claims, or request that counsel do so, that

evidence stands as presumed to be true: *Maldonado*, above at 305-06. The RPD's failure to deal with that evidence or explain why she accepted or rejected it constitutes a reviewable error.

RPD's decision not to question on traumatic events

[54] While the RPD stated that it chose not to examine the Applicants on the alleged traumatic events so as to safeguard them from further trauma, the Applicants argue that there is no evidence that such questioning by the RPD would constitute further trauma. It could in fact be a liberating experience. The RPD's decision to avoid questioning on traumatic events to "safeguard" the Applicants has resulted in a devastating decision that they are not in need of protection, and any pain or distress that might have been caused by such questioning is trivial in comparison with the distress caused by this negative decision. While the RPD was attentive to the Applicants' need for procedural accommodation, going so far as to excuse AB so CD could testify freely, it is impossible to tell from the reasons whether the member ultimately concluded that the allegations never took place.

Vulnerable designation and presumption of truthfulness

[55] The Applicants say the Respondent has mischaracterized their argument with respect to the presumption of truthfulness. They do not argue that they believed the RPD had accepted their claims simply because it recognized their vulnerability and accorded procedural protection. Rather, when the RPD accepted the PIFs as sworn testimony, a rebuttable presumption arose that the PIF allegations were true. If the RPD found that they were not, it had a duty to explain why and to turn its mind to the core allegations rather than focusing solely on ancillary details.

Applicants provided asylum documents

[56] The Applicants say they did not refuse to provide the RPD with details about the family's claim as stated in the Decision. They point to the Board's direction to "please obtain copies of their applications for refugee protection…and decisions," and say they understood that the RPD sought corroboration that CD's family had been accepted as refugees. In addition to filing documents confirming this, they filed documents describing the asylum process in that country. In that process, there is no equivalent to a PIF or a Basis of Claim form [BOC]. Rather, asylum-seekers are interviewed about their need for protection, and the officer who conducts that introductory interview can render a positive decision, apparently without a requirement for reasons. CD's relatives were accepted after the initial interviews and provided the decisions, which were filed by the Applicants. They could not provide the written "applications" requested by the Member since there is no equivalent to the PIF or BOC in that system. They attempted to fulfill the RPD's request by filing the decisions, and in the absence of written applications, they filed a description of the asylum process. Yet, somehow, their failure to provide a transcript of the relatives' interviews has been characterized as deliberate obstruction, which is neither accurate nor fair. The RPD erred by drawing an adverse credibility inference based on the Applicants' failure to provide documents that were not in their possession or control.

Materiality of asylum claims

[57] The Applicants argue that the family's asylum claims were not material to the Applicants' need for protection, and the fact that they loomed large in the RPD's mind does not make them material. The Applicants sought protection because of their own experiences, not

those of CD's relatives. The only reason for not revealing the successful claims was the mistaken belief that those claims were not relevant.

[58] Moreover, the Respondent's submission that the Applicants did not amend their PIFs "until confronted with evidence from the Minister" suggests deviousness and is incorrect. The Minister did not disclose the fact that CD's family had made claims for protection. Rather, the Minister filed an 11-page disclosure three business days before the Applicants' hearing, which fleetingly referred to the fact that the Applicants' relatives were in another country and not their home country. At the outset of the hearing, the Applicants submitted a number of corrections to their PIFs, including correcting the location of CD's relatives, which was to their mind no more significant to their need for protection than the other biographical corrections that were made at the start of the hearing (such as AB's name and CD's education and addresses). The Applicants note that they were without counsel between the filing of their PIFs and the scheduling of the hearing, and it is common for claimants not to update their PIFs until the hearing is at hand – particularly where, as here, they cannot read or write English.

Erroneous findings regarding the Canadian Border Services Agency interview of August 2012

[59] The Applicants dispute the accuracy of the findings that CD gave contradictory evidence regarding whether she knew the real name of the smuggler, and that she told an immigration officer that her father was in their home country and that she did not want him to be contacted. The Canadian Border Services Agency [CBSA] officer's notes state that CD said she did not know the smuggler's real name while in transit but learned it when she arrived in Canada. This is consistent with her hearing testimony. Furthermore, she did not tell the CBSA officer that her

father was in their home country or ask that he not be contacted. She stated that while they were in transit she would contact her mother in their home country, where in fact she remained after the family departed. The officer's notes say that when he asked for CD's father's telephone number, CD's then-counsel interjected, saying they did not want to involve another person. Thus, the RPD further justified its negative credibility findings by pointing to inconsistencies and contradictions that do not exist.

Failure to give effect to medical evidence

[60] The Applicants reiterate that they are not suggesting that the medical reports should have been determinative, but that they contain important information that should have been considered. In particular, they argue, the RPD failed to consider the effect of PTSD on their ability to testify: see *Mico*, above, at para 49. The doctors do not offer themselves as witnesses to the actual events alleged, but this appears to have been the only potential relevance perceived by the RPD: the Board found that PTSD can be occasioned by many things, and therefore saw no relevance in this evidence. However, as in *Mico*, above, this evidence was put forward here in order to alert the Board to the Applicants' medical condition and the impact it might have on their testimony. This evidence should have been considered for its ability to explain confusion and perceived credibility concerns, and the RPD's failure to do so renders the Decision unreasonable.

ANALYSIS

[61] At paragraph 71 of the Decision, the Board found that:

> In this case there is no credible evidence that the claimants have ever participated in any political activity against…For this reason I find that they will not be interrogated if returned.

[62] In deciding that there was "no credible evidence" to support the Applicants' refugee claim, the Board chose not to question them on the central aspects of their claim involving their treatment at the hands of government authorities which, the Applicants say, precipitated their flight to Canada (Decision, at paras 23-24):

> The literature on trauma provided in this case does not support the proposition that traumatized individuals tell untruths or cannot recall events that are unrelated to the trauma. It is for this reason among others that adjudicators can determine whether a claimant has provided credible, reliable, and trustworthy evidence. And when I tested the claimants' credibility in this case, being mindful of the trauma they have endured, I found that they did not provide credible and reliable evidence. There were material omissions and contradictions that were not adequately explained and a corroborating document I found not to be a genuine.
>
> Because I chose not to examine the alleged traumatic events themselves as to safeguard the claimants from further trauma, I had to also include in my credibility assessment non-material aspects of their claims as part of the credibility assessment. There were multiple non-material omissions and contradictions contained in the claimants' evidence that demonstrated collectively that they have been untruthful with Canadian immigration officials and with the IRB.
>
> [footnotes omitted]

[63] In my view, then, the Board found that the Applicants were not credible witnesses based upon:

(a) Material omissions and contradictions about the fate of other family members who had made claims and had been granted asylum elsewhere;

(b) A finding that a summons issued against AB that was put into evidence was not a genuine document; and

> (c) Several non-material contradictions by the female claimant as to what she knew about the smuggler who got the Applicants to Canada, and contradictions between the Applicants as to their relationship with GH.

[64] The significant matters here are the family issues and the summons and, in my view, the question for the Court is whether the Board's negative findings on these matters were reasonable and whether those findings were sufficient to support a general negative credibility finding, bearing in mind that other core allegations concerning the Applicants' treatment at the hands of government authorities were never tested by the Board.

[65] As regards the family issues and refugee claims in another country, the Board clearly suspected that the Applicants were suppressing information that would undermine their own claims here in Canada.

[66] There certainly were material inconsistencies about the whereabouts of other family members and when the Applicants had learned that those members had fled. But there was really no evidence before the Board that the family's claims contradicted the Applicants' narrative as to what had happened to them that caused them to flee. We just do not know what the claims would have told the Board about the Applicants that would be material to their claims for protection in Canada. This is why the Board specifically requested that the Applicant provides all of the applications and decisions involving the claims, and when the documentation that was provided did not yield the information that the Board needed, the Board found as follows (Decision, at paras 31-33):

> And even when I explicitly told the claimants and their counsel on the first day of our hearing, that I want them to get from their family…all of the family's refugee applications and decisions, the

> claimants did not obtain the documents. It must be noted that the associate claimant's mother has now joined the associate claimant's father and sister...
>
> The claimants had no explanation for why the family…could not send them any of their asylum information in the almost one month time period that I had provided to them. They did manage to file other documents but not the documents that I had specifically requested.
>
> The associate claimant's father, sister, and brother-in-law were each given a copy of the interview they each had had with a[n]… immigration officer. This copy contained all of their allegations of why they were requesting protection. The copy they were provided contained their very own signatures affirming their congruence with the material garnered in the interview. And still the associate claimant's [sic] did not send this information to the IRB or the claimants did not choose to put it in evidence.
>
> [footnotes omitted]

[67] The Applicants say they should not have been faulted for any omissions in another country's documents because those matters were not within their control. However, quite apart from this issue, it is unclear to me what significance the RPD thought its findings on the family's situation had for the Applicants' claims. The failure to provide documentation from another country to satisfy the Board's explorations in this matter does not establish that those claims had any relevance for the Applicants' claims in Canada, or would have undermined their credibility. The Board simply had suspicions that this might be the case, and these suspicions can have little weight when the Board itself deliberately chose not to question the Applicants about their own direct experiences at the hands of government authorities.

[68] In my view, the failure of the Applicants to establish the basis for successful refugee claims by close family members is not a reasonable basis for a finding that the mistreatment by

government officials did not occur, particularly when there are problems with the Board's treatment of the summons issue.

[69] This issue is addressed in the following way (Decision, at paras 44-56):

> The claimants put into evidence a photocopy of a summons that was allegedly issued…for the principal claimant to appear...This summons itself indicates that it was delivered...
>
> I have several reasons for finding that this document is not a genuine document. With this finding, there are no corroborating documents that could independently support the claimant's allegations despite my finding as to their credibility.
>
> According to the principal claimant, the summons was sent not to his residence, the marital home he had with the associate claimant, but to the home of the associate claimant's parents. I asked the principal claimant why the summons was not delivered to his own home. The principal claimant had no real explanation for this. He said that perhaps he wrote this down because his mother-in-law was with him when he went to pick up the associate claimant from her detention. Or perhaps he used this address because the claimants would often stay with the associate claimant's family at their home.
>
> When the associate claimant later testified in this case, almost a month after the principal claimant had testified, the definitive answer to this perplexing issue was provided. The claimants' home had no post box at their own home. Mail used to be slipped under the door. The claimants therefore would provide her parents' address and even their phone number to all people and institutions that would need to be in contact with them.
>
> I find all of the claimants' explanation spurious. First the principal claimant himself could not remember that for years his phone bills, credit card statements, bank statements, and so forth did [sic] go directly to his own home but to his in-law's home. The claimants did not produce any other documentation in the month they had between the hearings to corroborate that this was their *modus operandus*. I could not examine their passport pages to see if that corroborated their new allegation, as their addresses were not translated on the passports.

Finally I take note of Responses to Information Requests (RIR)... This RIR indicates that warrants for arrest are to be served on the accused at the accused's last known address. I find that although the RIR only talks about warrants, I find that the same kind of logic would apply to summons. A summons would not be delivered to a person's secure post box (the associate claimant's parents' address), but to the last known address of the wanted person. I find that the summons should have listed the principal claimant's address not his in-law's home address. That should have been where the principal claimant should have been living had he not fled...

Second, although this alleged summons was issued…[before the Applicants completed their PIFS,]the claimants fail to state that the summons was issued in their PIFs…This is a material omission.

The claimants should have been aware of the summons had it actually been issued. According to the claimants' testimony the associate claimant's mother was living at the location of where the summons was issued. The mother was in telephone and Skype contact with the associate claimant, while they were travelling and also since she arrived here in Canada...

The associate claimant's mother was certainly aware of the summons, as the claimants testified that the associate claimant's mother allegedly had entrusted the summons to another family member after she moved...The relative who was allegedly entrusted with the summons eventually scanned it and sent it to Canada in time for this refugee protection hearing.

I asked the claimants many questions to understand how they could not have known about the issuance of the summons at the time of the filing of their PIFs if one had been issued. The principal claimant stated that after he arrived in Canada he did not speak to the associate claimant's mother; he only spoke to his own parents. Even if this were true, I find that the principal claimant's own parents would have told him about the summons. The principal claimant testified that his parents and the associate claimant's parents are not close friends but are cordial with each other. Both families lived in the same city...I find it incredulous…that the associate claimant's family would have not contacted the principal claimant's parents to tell them about the serious situation that their son faced…This is not only critical information for the claimants' refugee protection hearing but also for the claimants very lives if they were to be returned...

> I took a negative inference that this a genuine summons. It is not credible that if this summons existed that the principal claimant's own parents would not have told him about its existence.
>
> The associate claimant insists that her mother did not tell her since she, the associate claimant, was so traumatized. She told her mother not to tell her anything; her mother should just listen to her crying. I find this explanation vacuous. The associate claimant's mother was [at home] while her husband, the associate claimant's sister and husband, the associate claimant, and the principal claimant were in [other countries] trying to get out of detention and trying to be accepted in both of these countries as Convention refugees. I find under these circumstances that it is simply not credible that this mother and wife with such an incredible responsibility in terms of obtaining documents and whatever else was needed for her family in such dire circumstances would have succumbed to her daughter's alleged insistence that she not be told anything of substance in all their communications.
>
> There is a time for a lot of crying and calls for comfort. And there are times that critically important information must be relayed to one's adult children if they are going to have a chance at potentially saving their own lives. That this allegedly critically important information was not relayed to the claimants until some time after the filing of their PIFs…months after the summons was allegedly issued reinforces my finding that the summons is a fraudulent document that was never issued by the Government.
>
> [footnotes omitted]

[70] The Board finds the female Applicant's evidence that her mother did not tell her husband about the summons because she was so traumatized "vacuous," but once again fails to address the material medical evidence about the female Applicant's condition that explains why this explanation might not be vacuous.

[71] The conclusion that the female Applicant's mother would have told the AB's mother about the summons is speculation.

[72] In my view, the Board appears to have an inaccurate view of what the medical evidence tells us about the Applicants' ability to recall past events when facing the stress of testifying at a refugee hearing. At paragraph 23 of the Decision, the Board asserts that the "literature on trauma provided in this case does not support the proposition that traumatized individuals tell untruths or cannot recall events that are unrelated to the trauma" [footnotes omitted]. The evidence cited for this assertion is "Exhibit 5.1 at pp. 206-207" of the Certified Tribunal Record [CTR] but, as Respondent's counsel pointed out at the hearing, this reference is not relevant to the medical issue. I can find nothing in the record to support the Board's conclusion, and much to suggest it is incorrect. For example, evidence on PTSD and Traumatic Recall at 390 of the CTR provides as follows:

> PTSD traumatic memory recall has been accompanied by memory loss for peripheral details, which are necessary for the formation of an accurate detailed reconstruction of a traumatic event (Herlihy, Scragg, & Turner, 2002).* According to one interesting prospective study conducted by Yovel and researchers (2003), memory gaps that are persistent, "?consistent, circumscribed, and stable" (p. 684) and limited to brief moments on the most horrifying moments of the insult or assault are common among many trauma victims. Accordingly brief and delineated memory gaps do not impair the development of a relatively complete coherent, personally meaningful trauma report. However trauma survivors, who go onto develop PTSD symptoms from 30 days onward, present memory losses that enlarge well beyond the most horrifying traumatic perceptions. They found that PTSD associated memory loss to be progressive and persistent. PTSD trauma narratives often lacked temporal sequencing, were vague and diffuse in the amount of trauma detail provided, as well as embedded with a good deal of survivor guilt. For instance on day 120, one participant, who went on to develop later PTSD symptoms, had difficulty recognizing and recalling peripheral traumatic details recalled earlier despite rigorous cuing. Although certain loss of peripheral details of a traumatic event's more horrifying extent is normal, progressive and expanded loss of memory details seem to be associated with PTSD symptom expression.

[73] The Board completely accepts the medical evidence on trauma ("I have no doubt that the claimants are suffering from PTSD": Decision, at para 18) and that the female Applicant was a "vulnerable person." In fact, the Board relied upon this evidence when it decided not to question the Applicants upon their direct experiences with the government authorities that triggered their flight to Canada. Yet, when considering CD's family's asylum claims and the summons, the medical evidence is not given the same weight, if it is given any weight at all. For example, at para 40 of the Decision, the Board relies upon the fact that AB "reported to [his doctor] that his own sense of his memory is that it is good" [footnote omitted], but neglects to mention and weigh the doctor's advice that AB appears to minimize his difficulties.

[74] My general conclusion is that the grounds and reasons provided by the Board do not, on the evidence before it, reasonably support a general negative credibility finding in a situation where the Applicants were never questioned on the direct experiences that caused them to leave their home country and to seek refugee protection in Canada.

[75] The Applicants have proposed questions for certification in the event of a negative finding, which I do not need to address. The Respondent takes the position that the Decision is basically fact driven and gives rise to no question of general importance. I agree.

[76] The Respondent has also pointed out that the Applicants have incorrectly identified the Respondent at various places in their materials. The Applicants acknowledge their mistake and agree that the Respondent is the Minister of Citizenship and Immigration Canada and that their materials should be amended to reflect this fact.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different Board Member;
2. There is no question for certification;
3. The Applicants' materials are hereby amended throughout to show the Respondent as the "Minister of Citizenship and Immigration."

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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