

Federal Court



Cour fédérale

Date: 20151105

Docket: IMM-570-15

Citation: 2015 FC 1249

Toronto, Ontario, November 5, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

EIMAN GLUBAWY MOHAMED SALIH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Eiman Glubawy Mohamed Salih seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dismissing her claim for refugee protection on credibility grounds. Ms. Salih asserts that in finding that her story was not credible, the Board erred by making plausibility findings regarding her conduct without considering her cultural background as a woman in the repressive, male-dominated society in Sudan.

[2] I accept that Sudanese cultural norms may have affected how a woman such as Ms. Salih would have reacted to her husband's detention by government authorities, and that the Board

may not have taken this into account in finding this aspect of Ms. Salih's story not to be credible. That said, the Board had a number of other reasons for disbelieving Ms. Salih's story which did not require consideration of her cultural background, and which were entirely reasonable. Consequently, I have not been persuaded that the Board's overall decision was unreasonable, and Ms. Salih's application for judicial review will accordingly be dismissed.

I. Background

[3] Ms. Salih is a citizen of Sudan who was forcibly married to Abdalaziz Alzbeir Altahir when she was 17 years old. Ms. Salih's description of her upbringing is consistent with the country condition information regarding the subjugation of women in Sudanese society.

[4] Ms. Salih claims that her husband is a member of a group that opposes the government of Sudan and that in late December 2013, Mr. Altahir was arrested by government security forces because of his alleged involvement in anti-government activities. According to Ms. Salih, Mr. Altahir was kept in detention by the security forces for approximately three weeks, during which time he experienced torture and other inhumane treatment. Mr. Altahir was then transferred to a hospital for treatment of the injuries that he had sustained while in custody, where he remained under government guard. Mr. Altahir was, however, able to escape his captors, and his current whereabouts are unknown.

[5] Ms. Salih says that after her husband escaped from the hospital, she was kept under constant surveillance by the security forces who were trying to locate her husband. This continued into April of 2014, when Ms. Salih was herself admitted to hospital for surgery. When Ms. Salih was released from hospital a week later, she says that members of the security forces

told her that if her husband did not turn himself in within four weeks, they would arrest Ms. Salih for concealing her husband's whereabouts.

[6] Ms. Salih states that she was then advised by her husband's associates to either go into hiding or leave Sudan. She testified that she went into hiding until she was able to leave the country on August 31, 2014, escaping with the assistance of an opposition member who was employed at the airport. Ms. Salih travelled to New York, where one of her brothers resides. After spending a couple of months in the United States, she continued on to Canada, where she has another brother, making her refugee claim at the border.

II. The Detention of Ms. Salih's Husband

[7] The Board found that Ms. Salih's claim that her husband had been arrested by Sudanese security forces lacked credibility and to be implausible for two reasons.

[8] First, the Board found that it was not credible that Ms. Salih would not know where her husband was being detained, nor was it credible that her husband's associates would not know where Mr. Altahir was being held, given that these individuals had been detained at the same facility as her husband. This finding was reasonably open to the Board to make based on the evidence before it.

[9] What is problematic, however, is the Board's finding that it was not plausible that Ms. Salih would not have taken additional steps to find out where her husband was being held, or attempt to get permission to visit him in prison. Given the repressive and violent nature of the Sudanese regime, it was unreasonable to expect a woman in Ms. Salih's position to confront the Sudanese authorities in an effort to track down her husband's whereabouts. Given that the

security forces were also allegedly threatening to arrest Ms. Salih herself, it was also unreasonable for the Board to expect her to ask those same security forces for permission to visit her husband.

[10] I am aware that the Board stated that it had had regard to the Board's *Gender Guidelines* in assessing Ms. Salih's evidence. I am nevertheless satisfied that the finding relating to the detention of Ms. Salih's husband did not take into account the cultural environment in which she lived.

[11] That said, as will be explained below, the Board had a number of other reasons for disbelieving Ms. Salih's story which did not require consideration of her cultural background, which were entirely reasonable.

III. Ms. Salih's Evidence about Going into Hiding

[12] The Board did not believe Ms. Salih's claim that she had gone into hiding after she was released from the hospital in April of 2014 because she had had made no mention of this in her Basis of Claim form, and her testimony on this point was inconsistent.

[13] Ms. Salih initially testified that she left Sudan within four weeks of her release from the hospital in April of 2014, which would have been before the expiration of the deadline that had allegedly been imposed on her by the Sudanese security forces for the surrender of her husband. It was only when it was pointed out to her that she had not left Sudan until August of 2014 - several months after her release from hospital - that Ms. Salih claimed for the first time that she had gone into hiding in the intervening period.

[14] After claiming that she had gone into hiding, Ms. Salih initially insisted that she had never left her hiding place prior to her departure from Sudan. However, when she was confronted with the fact that she had obtained a visa allowing her to enter the United States during this period, she amended her answer to acknowledge that she had left her hiding place on this one occasion, to attend an interview at the U.S. Embassy.

[15] It was then pointed out to Ms. Salih that she had also obtained a passport during the period that she was allegedly in hiding, and she once again modified her evidence, acknowledging that she had left her hiding place on a second occasion, in order to get her passport.

[16] The Board's finding that Ms. Salih's claim to have gone into hiding was not credible was not dependent upon an understanding of the cultural environment for women in Sudan. In light of her failure to mention going into hiding in her Basis of Claim form and the shifting nature of her evidence on this point, the Board's finding on this point was entirely reasonable.

IV. Ms. Salih's Documents

[17] The Board also attached little weight to the documents that Ms. Salih had produced in support of her claim, providing detailed reasons for its findings in this regard. Ms. Salih has not challenged the Board's findings with respect to her documents, and I am satisfied that the Board's reasons for discounting the documents were reasonable.

V. Ms. Salih's Failure to Seek Other Documents

[18] The Board also took issue with the fact that Ms. Salih had not made any efforts to obtain documentary evidence of either her husband's detention or his subsequent hospitalization.

Ms. Salih says that it was unreasonable to expect her to personally approach either the hospital or the security forces to try to get documentary proof of her allegations, given the nature of the regime.

[19] Even if it was not reasonable to expect Ms. Salih to approach the Sudanese security forces to get proof of her husband's detention, the Board's finding with respect to the lack of documents concerning her husband's hospitalization was entirely reasonable when regard is had to Ms. Salih's own evidence on this point.

[20] However, Ms. Salih did not testify that she did not try to obtain additional documentation because she was fearful of the Sudanese authorities. What she said was that she had been unable to obtain hospital records because she had been in a rush to leave the country. However, according to Ms. Salih herself, she did not leave Sudan until August of 2013, more than six months after her husband's hospitalization. In light of this, it was reasonable for the Board to reject Ms. Salih's explanation for why she failed to seek out documentary evidence of her husband's detention and subsequent hospitalization.

VI. Ms. Salih's Failure to Claim in the United States

[21] The Board also found that the credibility of Ms. Salih's story was undermined by her failure to seek refugee protection during the two months that she spent in the United States before coming to Canada. Not only did Ms. Salih not take issue with this finding in her

memorandum of fact and law, it is, moreover, well established that the failure of a refugee claimant to seek refugee protection at the earliest opportunity can indicate a lack of subjective fear on his or her part.

[22] It also bears noting that the explanation provided by Ms. Salih for her failure to claim in the U.S. has varied over time. She says in her Basis of Claim form that her brother living in the United States had invited her to come to the United States, but that associates of her husband had recommended that she come to Canada to seek refugee protection because of Canada's historical support for victims of oppression.

[23] In contrast, Ms. Salih stated in her testimony that she did not make a refugee claim in the United States "because it takes a long time" and because she had a brother in Canada and she preferred to come and stay with him.

[24] In light of this, Ms. Salih has not demonstrated that the Board's finding with respect to her failure to seek refugee protection in the United States was unreasonable.

VII. Conclusion

[25] The Board's reasons may not have been perfect, but perfection is not the standard against which the reasonableness of administrative decisions is to be judged. The Board had numerous reasons for disbelieving Ms. Salih's story, and most of these findings were reasonable. The decision therefore falls within the range of possible acceptable outcomes which are defensible in light of the facts and the law as contemplated by *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para. 59, [2009] 1 S.C.R. 339.

[26] The application for judicial review is therefore dismissed. I agree with the parties that the case is fact-specific, and does not raise a question for certification.

JUDGMENT

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

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-570-15

STYLE OF CAUSE: EIMAN GLUBAWY MOHAMED SALIH v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: MACTAVISH J.

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