

Federal Court



Cour fédérale

**Date: 20161005**

**Docket: IMM-956-16**

**Citation: 2016 FC 1108**

**Ottawa, Ontario, October 5, 2016**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**SAVITA RAMRATTAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench in Toronto, Ontario on September 14, 2016)**

**I. Overview**

[1] Savita Ramrattan [Ms. Ramrattan] seeks judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD], dated February 9, 2016 (File No. TB5-11232). The RAD found that Ms. Ramrattan was neither a Convention refugee nor a

person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2011, c. 27 [the IRPA].

[2] For the reasons herein, I would dismiss the application for judicial review.

## II. Facts

[3] Ms. Ramrattan is a citizen of Trinidad and Tobago, born on August 28<sup>th</sup>, 1965. In December 2007, she began a common law relationship with the head of a gang that apparently sold drugs. Over the course of their one-year relationship, her spouse assaulted her on four occasions. Ms. Ramrattan testified at the RPD hearing that she did not require medical attention as a result of the assaults. In addition, she testified that did not report the incidents to the police because of threats from her spouse and because she had seen him drinking and exchanging drugs with the police. In her Basis of Claim Form, contrary to her testimony, Ms. Ramrattan indicated she had reported the assaults to the police.

[4] After separating from her common law spouse in December 2008, Ms. Ramrattan returned to her parents' home. She claims that for the following two months, her former spouse and his fellow gang members drove around her parents' home shouting profanities, in an attempt to persuade her to return to him. In February 2009, her former spouse was killed by a fellow gang member. Following her former spouse's death, Ms. Ramrattan applied for and obtained a six-month visitor's visa to enter Canada.

[5] In May 2009, two months after having received her visitor's visa, Ms. Ramrattan travelled to Canada. She has remained unlawfully in this country since the expiry of her visa. Ms. Ramrattan testified she was unaware of the refugee process and only made a claim on July 27, 2015, after facing a risk of deportation. This risk arose from her apprehension by Toronto Transit Commission authorities and a subsequent police investigation which revealed her unlawful status in Canada.

### III. Impugned Decisions

[6] The RPD found Ms. Ramrattan's testimony lacked credibility and trustworthiness. It did not accept her assertion that members of her late common law spouse's gang would still be interested in persecuting her six years after his death and her departure from Trinidad and Tobago. Further, the RPD considered it relevant that Ms. Ramrattan had not made a refugee claim upon the expiry of her visa; and, that she waited two months after obtaining her visa before leaving her country. These factors militated against her subjective fear. With respect to her status as a refugee claiming domestic abuse, the RPD specifically stated it considered *The Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Prosecution [Guidelines]*. In addition, due to Ms. Ramrattan's apparent nervousness and inability to respond to the RPD's initial questions, the RPD permitted a change in the order of questioning by allowing her counsel to pose questions first.

[7] Ms. Ramrattan appealed the RPD's decision to the RAD where she essentially raised two issues. First, she contended the RPD did not follow the *Guidelines* with respect to the treatment of women who have been subjected to domestic violence. The RAD found that the RPD had

followed the *Guidelines*. Second, she contended the RPD, in rejecting her claim, afforded too much weight to her delay in claiming refugee status. The RAD found that the six-year delay in making the claim for refugee status militated against Ms. Ramrattan's claim of subjective fear of persecution or harm if she were to return to Trinidad and Tobago.

#### IV. Standard of Review, Issues and Analysis

[8] Both parties agree that the standard of review is whether or not the RAD's decision is reasonable. This Court may only intervene if the decision fails to demonstrate justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] SCJ No. 9 [*Dunsmuir*]. During oral argument Ms. Ramrattan contended that failure to properly apply the *Guidelines* resulted in erroneous conclusions regarding credibility, state protection, and the consequences of her delay in claiming refugee status.

##### A. *Credibility and State Protection*

[9] Ms. Ramrattan contends the RAD did not consider the *Guidelines* when assessing whether or not she failed to seek state protection, and, in general, with respect to its evaluation of her credibility.

[10] Ms. Ramrattan first contends that the RAD failed to consider "alternate forms of evidence" as recommended by the *Guidelines*, which, according to her, should have included her

own oral testimony. I disagree. She was represented by counsel throughout the proceedings and did not request an oral hearing.

[11] The RAD found discrepancies in her testimony, including divergence between her testimony and the Basis of Claim form regarding whether she reported the assaults to the police. In addition, the RAD noted she attempted to change her testimony with respect to the length of her common law relationship in Trinidad and Tobago. Ms. Ramrattan contends that any discrepancies in her testimony are due to the trauma related to domestic violence.

[12] The RAD concluded Ms. Ramrattan answered questions regarding the assaults in a straightforward manner and noted that the trauma had occurred six years prior to the hearing. Further, the RAD considered that Ms. Ramrattan has been in a common law relationship with a Canadian citizen since 2013. While it is, of course, possible for the trauma to continue over a longer period of time (extending beyond the six-year period in this case), it is not this Court's role on judicial review to re-weigh the RAD's assessment of the evidence in this regard.

[13] The *Guidelines* can be a practical tool to assist a panel (be it the RPD or the RAD) in assessing a refugee claim with the required sensitivity; however, they are not binding: *Ahmed v Canada (Citizenship and Immigration)*, 2012 FC 1494 at para 34, [2012] FCJ No. 1598. That being said, I am of the opinion that decision makers should be sensitive to the trauma faced by victims of domestic violence and consider their testimony in light of that context. It is apparent the RPD and the RAD took such an approach in this case.

[14] The RAD considered the *Guidelines*, the discrepancies in Ms. Ramrattan's testimony and other factors, to conclude she did not report the alleged assaults to the police; thereby failing to test the availability of state protection (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at para 42, [2013] FCJ No. 1099; *Canada (AG) v Ward*, [1993] 2 SCR 689, [1993] SCJ No. 74).

B. *Sufficiency of Reasons*

[15] When I consider the whole of Ms. Ramrattan's submissions and her contention that the RAD did not apply the *Guidelines* "in a meaningful way", I find that she essentially contends that the RAD's reasons were insufficient as they relate to credibility.

[16] Ms. Ramrattan relies on *Keleta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 56 at para 17, [2005] FCJ No. 54, where Justice Tremblay-Lamer opined that a panel must give reasons if it doubts the credibility of an applicant who alleges to have suffered domestic abuse. In this case, I am satisfied the RAD provided fulsome reasons for its conclusions regarding credibility. I am satisfied the RAD was "alive to the question at issue and came to a result well within the range of reasonable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 26, [2011] SCJ No. 62.

C. *Delay in Making Refugee Claim*

[17] Ms. Ramrattan also contends the RAD did not adequately consider the *Guidelines* when it concluded the six-year delay in making a refugee claim was unreasonable in the circumstances. She says the RAD, properly applying the *Guidelines*, would not have rejected her contention that the delay arose from her ignorance of the law. As already stated, it is not the role of this Court, on judicial review, to review those findings. My view might be different had the RAD wholly ignored the *Guidelines*. In this case, rather than ignore them, the RAD applied them with sensitivity.

[18] Although a delay in making a refugee claim is not necessarily a determinative issue, it is the RPD who decides the weight such a delay should be accorded. Indeed, it is the RPD who had the opportunity to hear the witness, observe Ms. Ramrattan's facial expressions and demeanour on the witness stand, and make conclusions regarding credibility. These are the reasons the RAD and this Court are called upon to show deference to the RPD's conclusions regarding credibility.

[19] I find the RAD's decision to disbelieve Ms. Ramrattan's explanation as to her ignorance of the law is reasonable, given that she had been living in Canada for six years, was employed and is in a common law relationship with a Canadian citizen. The RAD's conclusion that the delay in seeking protection undermines Ms. Ramrattan's alleged fear of persecution or risk to her life or cruel or unusual punishment if she is returned to Trinidad and Tobago, is reasonable in the circumstances.

[20] In conclusion, I find that the RAD's decision to be justified, transparent and intelligible and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

[21] Accordingly, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed without costs. No question is certified.

“B. Richard Bell”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**STYLE OF CAUSE:** SAVITA RAMRATTAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 14, 2016

**JUDGMENT AND REASONS:** BELL J.

**DATED:** OCTOBER 5, 2016

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