

Date: 20070730

Docket: IMM-6103-05

Citation: 2007 FC 796

Ottawa, Ontario, July 30, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**MILDRED CHRISTINA ROBERTS
DONNA MARIE ROBERTS
AND KAREN LEE ROBERTS**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mildred Christina Roberts (the Principal Applicant) and her daughters are citizens of Tanzania who base their claim to protection on the grounds of race, being “Asian” in a predominantly black African country and membership in a particular social group, namely “women alone without a male head”. In a decision dated September 9, 2005, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the Applicants were not Convention refugees or persons in need of protection.

[2] The Board rejected the claim on two key bases:

1. The Board did not find the Principal Applicant to be credible; in particular, the Board did not believe that the Principal Applicant's husband had disappeared as alleged; and
2. The harassment of the Applicants, as Asians in a predominantly black Tanzania, did not amount to persecution.

[3] The Applicants seek to overturn this decision. For the reasons that follow, I will allow this Application.

Issues

[4] The Applicants raise the following issues:

- 1) Did the Board make a reviewable error by failing to address the aspect of the Applicants' claim that was based on gender?
- 2) Did the Board make a reviewable error by misconstruing significant portions of the evidence and making findings of fact against the Applicants that were unsupported by the evidence?

Analysis

Standard of Review

[5] The alleged errors relate to the findings of the Board; these findings were based on the Board's assessment of the evidence before it. Thus the decision will only be overturned if any errors of fact are material or if the Board misapprehended or ignored evidence before it.

Issue #1: Gender

[6] The Applicants submit that the entire gender aspect of the claim was ignored; more particularly, the Board did not deal with the fact that the Applicants were women living alone in Tanzania without the protection of a "male head". As I understand this submission, it is basically that the Board misapprehended the claim by considering only whether the Applicants would be at risk as ethnic Asians in a black African country.

[7] In the narrative of her Personal Information Form (PIF), the Principal Applicant stated that "I fear persecution if sent to Tanzania on the basis of my race and membership in a particular social group, that is women alone without a male head". Right from the beginning of the decision, the Board appears to have misapprehended the claim. At p. 1 of the decision, the Board states that the Applicants "base their claims to Convention refugee status on the grounds of their membership in a particular social group, namely, the family". The basis of the claim is not, as stated by the Board, membership in a family; rather, the claim is based on the fear of being "women alone without a male head".

[8] In considering the ‘family’ aspect of the claim, the Board focused on the disappearance of the father. The Board found the Applicants’ story not to be credible. Nowhere in the reasons does the Board explain that, because of this finding, there is no need to deal with the gender component of the claim.

[9] Given that the Applicants are women, the question arises of whether the Board had regard for the Gender-Related Persecution Guidelines. In *Keleta v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 56, [2005] F.C.J. No. 54 (QL), Madam Justice Danièle Tremblay-Lamer wrote:

[14] Though it is not necessary to explicitly cite the guidelines in the course of its reasons, it is "incumbent on the Board to exhibit a special knowledge of gender persecution and to apply the knowledge in an understanding and sensitive manner when dealing with domestic violence issues": *A.Q. v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 834 (F.C.)(QL), citing *Newton v. Canada (Minister and Citizenship and Immigration)* (2000), 182 F.T.R. 294 (F.C.T.D.), and *Griffith v. Canada (Minister of Citizenship and Immigration)* (1999), 171 F.T.R. 240 (F.C.T.D.).

[10] Here, not only was there no mention of the Gender-Related Persecution Guidelines by the Board in its reasons, it does not appear that the Board ever turned its mind to this aspect of the claim. Even when considering the objective fear of persecution, the Board focused solely on race (being part of the ‘Asian’ minority) and made no mention of gender.

[11] Furthermore, even if the Board did not believe that the husband had disappeared under mysterious circumstances, in order to reject the Applicants’ allegations to be women living without the protection of a male relative, it would be necessary for the Board to conclude that the Applicants would not be alone in Tanzania. While the Respondent seems to suggest that, from the

Board's rejection of the alleged disappearance, such a conclusion should be implied. I am unable to draw that inference. Rather, it appears to me that the more reasonable inference to be drawn from the decision as a whole is that Board simply did not address this aspect of the claim.

[12] Of course, it remains that the Board made a general finding of lack of credibility, stating that it found the Applicants to be "neither credible nor trustworthy witness". Relying on the decision of the Federal Court of Appeal in *Sheikh v. Minister of Employment and Immigration*, [1990] 3 F.C. 238, [1990] F.C.J. No. 604 (QL), it could be argued that a general finding of lack of credibility may extend to all relevant elements emanating from a claimant's testimony, and that it was thus open to the Board to dispose of the Applicants' claim on the basis that it simply did not believe them.

[13] However, such an argument implies that the finding on credibility was reasonable, which I am not convinced that it was in this case, as will be discussed below.

Issue #2: Credibility

[14] The Board's overall conclusion that the claimants were neither credible nor trustworthy witnesses appears to have been based on a number of key problems with the Applicants' testimony or evidence:

- The Board found that the principal Applicant had made no efforts to locate her missing husband, and had not taken steps to approach the police or the Tanzanian Embassy;

- The principal Applicant had omitted from her PIF the fact that she had been denied a Canadian visa three times;
- The allegedly missing husband had provided his consent to allow his daughters to obtain visitor visas to come to Canada;
- In her application for a temporary resident visa, the principal Applicant stated that her husband was in the United Arab Emirates, which is inconsistent with her current claim that her husband has disappeared; and
- The Applicants' testimony that her daughters were not entitled to get Tanzanian citizenship was not consistent with the documentary evidence.

[15] In oral submissions, the Applicants highlighted two findings which, in my analysis, were clear errors. I will discuss each of these.

Husband's Disappearance

[16] As noted, the Board found that the Principal Applicant had not made efforts to find her husband. The husband's disappearance was the central element of the Board's decision. However, there are clearly portions of the reasons which do not reflect the information provided by the Applicants in their PIF or during the hearing.

[17] With regards to the Principal Applicant's actions following the alleged disappearance of her husband, the Board wrote the following:

When asked if she reported her husband's disappearance to the police, the principal claimant stated, "No, she did not." The panel finds the principal claimant's inaction (she made no efforts to locate her husband), inconsistent with that of a person whose spouse went missing. The panel finds it reasonable to believe that in the circumstances alleged, the principal claimant would have taken steps to approach the police, the Tanzanian Embassy, Red Cross etc; in order to locate her husband rather than returning to Tanzania. The panel notes that even after arriving in Canada the principal claimant or her family did not take any steps for instance [to] contact Amnesty International or other NGO's for [sic] that caliber to assist her in locating her husband. It leads the panel to find that on a balance of probabilities that the claimant's husband did not disappear, as alleged.

[18] There are many problems with this part of the analysis. First, as revealed by the transcripts of the hearing, when asked by the Board whether she made any efforts to contact the police about her husband's disappearance, the Principal Applicant in fact replied "Yes, I did", contrary to what was noted in the Board's reasons. She also stated later on during the hearing that she had contacted her husband's mother in the United States, but that she had not heard from him either.

[19] Second, the Principal Applicant also stated in her PIF, and at the hearing, that she approached both the Tanzanian Embassy in Abu Dhabi and the Indian Embassy for assistance, which directly contradicts the Board's statement that she failed to contact the Tanzanian Embassy as she should have.

[20] As for the Board's comment with regards to her returning to Tanzania rather than continuing to look for her husband, the Principal Applicant explained at the hearing that she and her daughters

were on her husband's visa and that the house they lived in belonged to the company; as a result, they could not stay in the UAE without her husband.

[21] It was open to the Board to disbelieve the Principal Applicant's story. It may have been open for the Board to draw adverse inferences from the level of effort of the Principal Applicant in locating her husband. However, it is simply wrong for the Board to make a blanket statement that she had not gone to the police or the embassy for help or had abandoned the search for her husband by choosing to return to Tanzania, when she clearly stated otherwise in her PIF and testimony.

[22] In my view, this error cannot be described as immaterial, as submitted by the Respondent. The disappearance of the husband was a key component to the claim. This particular finding was directly related to that component. On the basis of the reasons given by the Board, I cannot determine how much this error impacted the overall credibility finding.

Daughters' Citizenship

[23] With respect to the daughters' citizenship, the Board stated in its reasons that the Principal Applicant claimed that they did not have citizenship in Tanzania, which it found not to be credible.

The Board wrote:

The panel notes that the principal claimant is a Tanzanian citizen. [...] This information is in conflict with the documentary evidence. According to the documentary evidence the Director of the Immigration Service of the Ministry of Home Affairs of the United Republic of Tanzania stated that a parent or guardian could apply for naturalization as a Tanzanian citizen on behalf of a minor. The claimant's explanation for this information was that her husband was needed to get travel documents for their daughters. The panel does not find the claimant's explanation to be reasonable. [...] There is no credible or trustworthy evidence

before the pane [*sic*] to show that the minor claimant's [*sic*] were denied any rights to obtain Tanzanian citizenship.

[24] In fact, the Principal Applicant claims that her daughters do not have citizenship in the UAE or in India, while it is clear from the PIF and from her testimony that they do in fact claim to have Tanzanian citizenship. The first line of the PIF narrative reads as follows:

My daughters and I are citizens of Tanzania and no other countries.

[25] The PIF narrative also contains the claim that the Principal Applicant and her daughters were not entitled to citizenship in the UAE or in India. As stated in the PIF narrative:

Although my daughters were born in the United Arab Emirates (hereinafter referred to U.A.E.), they are not entitled to citizenship in that country.

[...]

They also told me that while my youngest daughter might be entitled to Indian citizenship, the problem we faced was that we could not prove that my husband was alive. He would have to ask that my daughter be given citizenship. My eldest daughter was over the age of eighteen and thus, did not qualify.

Further explanations to that effect were also provided by the Principal Applicant at the hearing.

[26] It is clear that the Board completely misunderstood the Applicants' allegations on the issue of citizenship, and thus found their credibility to be undermined by a claim that they never in fact made. Once again, it is difficult to assess how much of an impact this factual error had on the overall finding of credibility. However, given that the Board wrote one whole page related to this

clear error, I must assume that it was an important element in the overall finding that “key aspects of the principal claimant’s story were found not to be credible”.

Conclusion

[27] In conclusion, I find that the failure of the Board to deal with the gender aspect of the Applicants’ claim, together with the two material factual errors, warrants the intervention of the Court.

[28] Neither party proposed a question for certification. I agree that this case does not raise any questions of general importance.

ORDER

THIS COURT ORDERS that:

1. The application is allowed, the decision quashed and the matter returned to be reconsidered by another panel of the Board; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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