Date: 20070828

Docket: IMM-445-07

Citation: 2007 FC 854

Montréal, Quebec, the 28th day of August 2007

Present: the Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

AIDA ASLANYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA) from a decision by the Refugee Protection Division (the panel) on January 4, 2007 denying the applicant's application for refugee status, holding that the applicant was neither a Convention refugee nor a person in need of protection. The application for judicial review was allowed on April 27, 2007.

RELEVANT FACTS

[2] The applicant is a citizen of Armenia. In her capacity as a psychologist she was a member of a medical commission which was biannually responsible for the medical evaluation of military recruits. For the rest of the year, she was a personnel director at an aquatic park in Yerevan.

[3] In March 2005 the applicant said that, at an individual's request, she met with a certain Major Rustamyan, who asked her to sign a medical certificate indicating that his son was suffering from mental disability and so should be exempt from military service.

[4] Following the applicant's refusal to accede to this request the applicant said she received telephone threats in August 2005 and filed a complaint with the police, who she said refused to intervene.

[5] On September 8, 2005 the applicant said she was summoned to the prosecutor's office in the presence of Major Rustamyan, who again demanded that she sign the medical certificate required for his son, which she once again refused to do.

[6] The applicant said she then sought the advice of the chair of the medical commission and its director, before resigning in spring 2006 when they refused to help her.

[7] Additionally, during her work with the aquatic park the applicant said she was approached by an individual who asked her to hire someone, which she refused to do on the ground that the individual was not fit for work. On August 10, 2005 she said an individual again approached her at her residence asking her to hire the person. Subsequently, two individuals came into her office to get a record of employment. She did not think it advisable to make a complaint to the police.

[8] In response to her son's invitation to come and visit him, the applicant arrived in Canada on October 12, 2005 with a Canadian visa and as of that date began proceedings to obtain refugee status. To this end, she alleged she feared being persecuted in her country because of her membership in a particular social group and claimed the status of a person in need of protection.

IMPUGNED DECISION

[9] On January 4, 2007 the panel decided to deny the protection application on the ground that it attached no credibility to the applicant's story. The panel said it needed further documentary evidence to support her application, namely a copy of the complaint filed with the Armenian authorities, proof of the existence of Major Rustamyan, proof of her involvement in and resignation from the military commission, and her air ticket.

[10] The panel concluded that the applicant [TRANSLATION] "did not take reasonable steps to obtain these documents which could have proven the existence of her persecutor and the authenticity of her employment with the military recruits commission, so her credibility is vitiated".

It also added that it did not believe she was likely to be threatened since [TRANSLATION] “her assistance was not essential to the young man’s exemption from service”.

[11] To justify its decision, the panel relied on subsection 100(4) of the IRPA and RPD Rule 7, which read as follows:

100(4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.	100(4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission.
7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.	7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

PARTIES’ SUBMISSIONS

[12] The applicant’s principal argument was that in its decision the panel failed to consider the explanations she gave at the hearing of her application. She further objected that the panel created a legitimate expectation on her part by suggesting that it would not only be considering all the

evidence but would also be verifying the identity of Major Rustamyan, in accordance with the consent required by the panel and given by her. The applicant also objected to the questions raised by the panel and regarding the possibility of sponsorship by her son.

[13] The respondent, for his part, maintained primarily that due to the many weaknesses in the applicant's evidence the panel was justified in not believing her story of persecution. Further, the respondent emphasized that procedural fairness was observed since the doctrine of legitimate expectation did not apply in the case at bar as the panel had made no promise or statement and not created the slightest expectation regarding whether it would itself undertake to obtain evidence of the existence of Major Rustamyan.

ISSUE

[14] Did the panel commit an unreasonable error in not accepting the applicant's story?

STANDARD OF REVIEW

[15] It has been well settled by prior judgments of this Court that the standard of review applicable to the conclusions of a panel is patent unreasonableness (*Aguebor v. Canada (M.E.I.)*, [1993] F.C.J. No. 732 (F.C.A.), *Thavarathinam v. Canada (M.C.I.)*, 2003 FC 1469 (F.C.A.) recently applied in *Saeed v. Canada (M.C.I.)*, 2006 FC 1016; *Ogiriki v. Canada (M.C.I.)*, 2006 FC 342; *Mohammad v. Canada (M.C.I.)*, 2006 FC 352).

[16] Further, the standard of review to be applied in assessing evidence accepted by a panel is also that of patent unreasonableness (*Kirac v. Canada (M.C.I.)*, [2002] F.C.J. No. 476, at para. 10; *Ganiyu-Giwa v. Canada (M.C.I.)*, [1995] F.C.J. No. 506; *Hassan v. Canada (M.E.I.)*, [1992] F.C.J. No. 946; *Singh v. Canada (M.C.I.)* (1999), 173 F.T.R. 280).

[17] Evaluations of the evidence by tribunals are not subject to re-evaluation by the Court on judicial review unless the evaluation was unreasonable (*Chaudhry v. Canada (M.C.I.)*, [1998] F.C.J. No. 160, at para. 3). Thus, unless there is a capricious or perverse conclusion without regard for the evidence, the Court must exercise great restraint since it is the panel's function to assess an applicant's testimony and to determine his or her credibility. If the panel's conclusions are reasonable, it must be shown great deference, so that the Court should refrain from intervening.

[18] On the other hand, if the Court were to find a breach of procedural fairness the application for judicial review would be allowed, since it is well settled that the applicable standard of review for questions of natural justice and procedural fairness is that of correctness (*Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, at para. 100).

[19] Did the panel make an unreasonable error, as alleged, because it attached no credibility to the applicant's story?

[20] It is well established in law that the burden of presenting sufficiently credible and reliable evidence to establish the points in a claim rests with the applicant and no one else (*Soares v. Canada (M.C.I.)*, [2007] F.C.J. No. 254, at para. 22).

[21] The panel enjoys much greater flexibility regarding the evidence it may consider, without being bound by strict or technical rules of evidence: it may thus rely on any evidence it considers credible and reliable (IRPA, paras. 173(*c*) and (*d*); *Soares, supra,* at para. 23; *Thanaratnam v. Canada (M.C.I.)*, 2004 FC 349, [2004] F.C.J. No. 395 (QL), at para. 7).

[22] While the panel may draw negative conclusions from the lack of evidence which it considers necessary or essential in support of an application, it must still bear in mind that its negative conclusions should not be unreasonable (*Bilquees v. Canada (M.C.I.)*, 2004 FC 157, [2004] F.C.J. No. 205 (T.D.) (QL), at para. 7; *Aguebor, supra)*.

[23] As regards the applicant’s air ticket which was required by the panel, we should recall that in *Elazi v. Canada (M.C.I.)*, [2000] F.C.J. No. 212 (QL), at para. 17, Nadon J. mentioned the importance of this type of document :

> [17] I take this opportunity to add that it is entirely reasonable for the Refugee Division to attach great importance to a claimant's passport and his air ticket. In my opinion, these documents are essential to establish the claimant's identity and his journey to come to Canada. Unless it can be assumed that a refugee status claimant is actually a refugee, it seems unreasonable to me to ignore the loss of these documents without a valid explanation. In my view, it is too easy for a claimant to simply state that he has lost these documents or the facilitator has taken them. If the Refugee Division insists on these documents being produced, the facilitators may have to change their methods.
>
> [Emphasis added.]

[24] The Court notes that the applicant obtained her visitor's visa for Canada on September 19, 2005, when an entry in her work book indicated that at her own request she ceased working for the aquatic park on September 30, 2005. She left for Canada on October 12, 2005 and did not make her refugee status application until October 25, 2005, the eve of her departure by air scheduled for October 26, 2005. For the panel on the basis of these facts to also require proof of the applicant's resignation from the military commission with which she allegedly had a problem and as well to want to see the applicant's air ticket is not unreasonable. In the absence of such evidence, it is not unreasonable for the panel to conclude that the applicant initially had the intention of not returning to her country and not being sponsored by her son.

[25] As to the applicant's argument that the panel led her to have a legitimate expectation that it would check the existence of Major Rustamyan, the hearing transcript indicates the following:

> [TRANSLATION]
>
> So, madam, would you object to our seeking to determine whether this colonel – this major – really exists?
>
> . . . . .

> So if need be, we will send a request to that effect to your counsel. I have no further questions.

[26] The words [TRANSLATION] "if need be" used by the panel indicate that it did not intend to make a request to the applicant's counsel unless this was necessary. The panel thus created no legitimate expectation that it would do any research in this regard. Once again, the Court must point out that it is up to the applicant to submit all the necessary evidence in support of his or her application, and not for the panel to present such evidence or to add to that of the applicant. The applicant could choose to add to her evidence or do nothing about it, and the panel did not have to ask her or tell her what she should do.

[27] Finally, even if the RPD made some errors in giving certain aspects of the evidence more importance than others, the Court can only concur in and adopt the comments of Harrington J. in *Miranda v. Canada (M.C.I.)*, [2006] F.C.J. No. 813, at para. 13:

> [13] . . . In the case at bar, the Court must counterbalance the errors stated above with the decision of the RPD as a whole. On the basis of the evidence submitted before this Court, it does not seem patently unreasonable that the RPD questioned the applicant's credibility.

[28] Accordingly, the Court concludes that the RPD's decision taken as a whole was not patently unreasonable and the applicant is not justified in asking to have it quashed, especially as the decision is based fundamentally on questions of credibility which it was for the RPD to assess.

CERTIFICATION OF QUESTION PROPOSED BY APPLICANT

[29] The applicant submitted the following question for certification:

> [TRANSLATION]
>
> Where the applicant is unable to obtain a document or official certification from the authorities of the country against which she is seeking protection and that document or certification is considered useful or essential to establishing the validity of her application, can the panel (IRB) unreasonably refuse or refrain from exercising the power conferred on it by section 170(*a*) of the IRPA, especially when there are reasons to believe that the document or certification could be sent to it by the authorities of the country in question?

[30] The applicant submitted that as formulated the question is serious and of general importance as required by section 74(*d*) of the IRPA. She further submitted that there is no decision bearing directly on the interpretation of section 170(*a*) of the IRPA or its application.

[31] The respondent of course objected both to the formulation of the question and the necessity to certify a question. Nevertheless, to be on the safe side and only in the event that the Court considered certifying a question to be justified, the respondent suggested the following wording:

> [TRANSLATION]
>
> Can the discretionary power mentioned in paragraph 170(*a*) of the *Immigration and Refugee Protection Act* impose on the panel (the IRB Refugee Protection Division) a duty to obtain a document or official certification from authorities of the country against which the applicant is seeking protection?

The applicant admitted that the rewording of the question suggested by the respondent is more general and did not object to it provided the words [TRANSLATION] "in certain special circumstances" were added after the words [TRANSLATION] "duty to obtain". Regardless of this argument as to wording, and the fact that the Court still has the last word on the way a question is formulated, it remains to be seen whether certification of a question is justified in the case at bar.

[32] Whether reworded or not, the suggested question does not meet the criteria laid down by the Federal Court of Appeal in *Canada (M.C.I.) v. Liyanagamage*, [1994] F.C.J. No. 1637 (C.A.):

> [4] In order to be certified pursuant to subsection 83(1), a question must be one which, in the opinion of the motions judge, transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application (see the useful analysis of the concept of "importance" by Catzman J. in *Rankin v. McLeod, Young, Weir Ltd. et al.* (1986), 57 O.R. (2d) 569 (Ont. H.C.)) but it must also be one that is determinative of the appeal. The certification process contemplated by section 83 of the *Immigration Act* is neither to be equated with the reference process established by section 18.3 of the *Federal Court Act*, nor is it to be used as a tool to obtain from the Court of Appeal declaratory judgments on fine questions which need not be decided in order to dispose of a particular case.

[33] As the panel drew several conclusions regarding the applicant's credibility, contrary to several of her allegations, the only question suggested for certification, whether reworded or not, applied only to one of these questions and conclusions and could not in the circumstances be in any way determinative of the judicial review sought.

[34] Certification of the question could at most serve to obtain a declaratory judgment on it from the Court of Appeal, when it is not necessary to decide the question in order to determine the

outcome of this judicial review, bearing in mind several negative inferences drawn by the panel regarding the credibility of the applicant's story.

[35] This reason alone justified dismissing the application to certify the question suggested, but there is more.

[36] It is well established that a refugee status claimant has the burden of proof in showing the validity of the allegations on which his or her claim is based. More recently, the Court of Appeal recalled in *Soares, supra*, what it said in *Kante v. Canada (M.E.I.),* [1994] F.C.J. No. 525 (QL):

> [8] The law is clear that the burden of proof lies with the Applicant i.e. he must satisfy the Refugee Division that his claim meets both the subjective and objective tests which are required in order to have a well founded fear of persecution. Consequently an Applicant must come to a hearing with all of the evidence that he is able to offer and that he believes necessary to prove his claim.

[37] The Federal Court has restated this principle several times, that it is for the applicant and only the applicant to produce all the evidence needed in support of his or her application. This duty imposed on an applicant is moreover codified in the wording of section 7 of the *Refugee Protection Division Rules* (RPDR) and section 106 of the Act.

[38] Further, it is clear that the power conferred on the panel by paragraph 170(*a*) of the Act is optional, not compulsory.

[39] The question the application is seeking to certify attempts to shift onto the panel a duty or responsibility which both the Act and Rules, and the principles laid down by appellate courts, have consistently imposed on the applicant. The Court cannot certify the question without being in conflict with the Act, the Rules and the judgments of the Court of Appeal, which it is not prepared to do, especially as section 170(*a*) of the Act, to which the proposed question refers, clearly mentions an optional power which the applicant is seeking by her question to make compulsory.

[40] For these reasons, certification of the suggested question is denied.

JUDGMENT

THE COURT for these reasons**:**

1. dismisses the application for judicial review;

2. denies certification of the suggested question.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-445-07
STYLE OF CAUSE:	AIDA ASLANYAN -and- THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	July 11, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	LAGACÉ D.J.
DATED:	August 28, 2007

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