

**Date: 20080131**

**Docket: IMM-1739-07**

**Citation: 2008 FC 128**

**Ottawa, Ontario, January 31, 2008**

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

**BETWEEN:**

**VERONICA CASTILLO GONZALEZ**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated March 23, 2007 concluding that the applicant, Veronica Castillo Gonzalez, is not a Convention refugee or a person in need of protection, from domestic abuse in Mexico.

## **FACTS**

[2] The applicant, a 41-year-old Mexican citizen, claimed a fear of domestic abuse from her former common-law spouse, a career officer in the Mexican military, and a fear of armed robbers in Mexico.

[3] In her Personal Information Form (PIF), the applicant alleges instances of violence and abuse during her relationship with her former spouse; a relationship that lasted from June 1998 until December 2004. The applicant alleges the abuse began approximately one year after they began living together in March 1999. Further, the applicant states that while the abuse initially began as verbal abuse, it later escalated to include physical abuse, sexual abuse, and threats of death and other bodily harm. Also in the PIF, the applicant states that she was kidnapped by armed robbers in Mexico City, and feared that if she stayed in Mexico, either her ex-spouse or robbers would kill her. At the hearing, the applicant did not advance this latter claim.

[4] The abuse caused the applicant to leave her spouse in December 2004, at which time she moved to her mother's home a distance away in Tlalnepantla, Mexico. However, the applicant testified that on the same day in which she fled to Tlalnepantla, her spouse started phoning her and followed her to her mother's home to convince her to return with him to their home in Hermosillo. The applicant testified her spouse only left her mother's home after her sister began to call the police, although no actual telephone call was ever placed.

[5] The applicant alleges that while living with her mother, her spouse continued to harass and threaten her both by phone and twice in person. The applicant states that her spouse's constant harassment caused her to leave Mexico for Canada on June 5, 2005, which was four days after she was kidnapped and robbed in Mexico City.

[6] On August 10, 2005, the applicant filed a claim for refugee protection, which was heard before the Board on March 6, 2007.

**The applicant was kidnapped by two armed robbers in Mexico City**

[7] The Board's decision and the memoranda from the applicant do not refer to the applicant's PIF at page 15, which describes her kidnapping and armed robbery:

On May 30, 2005 I was kidnapped by two armed robbers when I took a taxi in Mexico City. They drove me around for half the day, forcing me to withdraw small amounts of money from bank machines. They took my identification cards and my shoes, and threw me out of the taxi cab somewhere outside the city. I reported this to the police. This incident made me think that, if I stayed in Mexico, either Alvaro or robbers will kill me.

[8] The applicant left Mexico five days later and came to Canada. In the PIF, the applicant states that being kidnapped made her think that if she stayed in Mexico either her ex-spouse or the robbers would kill her.

### Decision under review

[9] The Board accepted the applicant's evidence that she was a victim of domestic abuse.

However, the Board found that the applicant was not credible with respect to the basis for her continued fear and reason for seeking refuge in Canada. The Board gave six examples in the applicant's evidence that it found not credible. They are as follows:

- (i) there is an inconsistency between the PIF and the oral evidence of the applicant. The applicant testified that her sister only started to call the police but never completed the call to the police. In the PIF the applicant states: "The police never showed up". The Board asked the applicant about this inconsistency and the applicant said that the PIF contained a mistake. There was an important amendment made to the PIF prior to the hearing but this part of the PIF was not amended;
- (ii) the timelines for the spouse to have discovered on December 8, 2004 that his wife, the applicant, had left, and for him to make a number of telephone calls looking for the applicant, make arrangements to buy an airline ticket, travel to the airport, catch an airplane to travel to the applicant's mother's house, is all not plausible within the alleged five-hour time frame;
- (iii) there is another inconsistency between the PIF and the oral evidence. In the PIF, the applicant states that she did not contact the police between 1999 and 2004 but in her oral evidence she said she did go to the police, who advised her to report her husband to the military authorities. This is a change in her evidence, which she explained by stating that she was "confused";
- (iv) there is another inconsistency between the *viva voce* evidence and the PIF. In the PIF, the applicant states that she went to the police after going to her mother's home on approximately December 8, 2004. In her *viva voce* evidence she omitted any reference to going to the police at this time. When confronted with the inconsistency, she explained that she omitted this reference about going to the police because "the police did not do anything";
- (v) after going to her mother's, the applicant took legal action to recover her personal property from her ex-spouse; specifically her computer, her car and her personal belongings. The Board found that if the claimant was truly:

...fearful for her life and wants her ex to leave her alone, then I am satisfied that any lawyer would take very different actions than a civil suit to recover lost property.

A complaint to recover lost property I find does not advance the case that the claimant has been harmed by her ex in the past and fears he will harm her in the future as a result of her leaving him.

- (vi) there was another inconsistency between the PIF and her *viva voce* evidence. In the PIF, the applicant reported that her ex-spouse was watching her when she was working outside her mother's house. She did not mention this in her *viva voce* evidence and explained that "she was nervous and forgot." The Board stated at page 4 of the decision:

I do not accept this. I asked twice if there were other contacts and even to the second question she answered "no". I am satisfied that the claimant was given an ample chance to remember the incident outside her home if such an incident occurred.

[10] On March 23, 2007, the Board concluded the applicant was not a Convention refugee or a person in need of protection. The Board held the applicant lacked credibility and that her testimony did not demonstrate she was "giving an account of problems she personally experienced."

[11] In reaching its conclusion, the Board addressed a psychological report and two letters written by the applicant's mother, which had been proffered in support of her claim. The Board concluded that that evidence was unable to offset its finding that the applicant lacked credibility. Accordingly, the Board rejected the applicant's claim.

## **ISSUE**

[12] The issue in this application is whether the Board erred in concluding the applicant was not credible in her evidence, and whether the Board erred in its application of the psychological report and the Gender Guidelines.

## STANDARD OF REVIEW

[13] No pragmatic and functional analysis is required with respect to the issue of the standard of review of the Board's credibility findings because the standard of review is well settled in the jurisprudence as "patent unreasonableness." In *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1194, [2002] F.C.J. No. 1611 (QL), I held:

¶ 4 ... Before a credibility finding of the Board is set aside ... one of the following criteria must be established ... :

1. the Board did not provide valid reasons for finding that an applicant lacked credibility;
2. the inferences drawn by the Board are based on implausibility findings that in the view of the Court are simply not plausible;
3. the decision was based on inferences that were not supported by the evidence; or,
4. the credibility finding was based on a finding of fact that was perverse, capricious, or without regard to the evidence.

See *Bains v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1144 at para. 11 per Madam Justice Reed.

¶ 5 Credibility findings of the Board are entitled to the highest degree of curial deference, and the Court will only set aside credibility decisions, ... in accordance with the criteria outlined above. The Court should not substitute its opinion for that of the Board with respect to credibility or plausibility except in the clearest of cases. For this reason, applications seeking to set aside credibility findings have a very heavy onus to discharge ...

## ANALYSIS

**Issue: Did the Board err in concluding the applicant was not credible in her evidence and in its application of the psychological report and the Gender Guidelines?**

### **The Board's credibility findings**

[14] The applicant submits that the Board's decision is patently unreasonable. For the following reasons, the applicant has failed to show that the Board's decision was patently unreasonable.

#### 1<sup>st</sup> basis for credibility finding

[15] The Board first relied on an inconsistency and contradiction between the applicant's PIF narrative and her oral testimony at the hearing. In the PIF, the applicant stated that her ex-common-law spouse appeared at her mother's house on December 8, 2004 just after the applicant had travelled there to seek refuge. In the PIF, the applicant stated that her ex-spouse tried to force the applicant to go with him but that the applicant's sisters came to her aid. One of her sisters called the police and when her ex-spouse saw the sister calling the police, he left, threatening the applicant that he would get her one day when she was alone. The PIF with respect to this subject concludes: "The police never showed up." The PIF narrative states:

... Rosaro (a sister) called the police when Alvaro saw Rosaro calling the police, he left, ... the police never showed up.

At the hearing the applicant testified that no telephone call was ever made to the police. The Board member asked the applicant how it was possible for the police to respond to a call that was never placed. In response, the applicant testified that her PIF was misinterpreted and that:

I put that there because I'm making a statement of what happened at that time. I was asked, "The police arrived?" And I said, "No, the police didn't arrive" because the phone call was never made.

The Board member then stated that if this was, in fact, a misinterpretation, then the PIF narrative should have been amended prior to the hearing.

[16] The applicant states she was unaware of any contradiction between her oral and written testimony until confronted with it at the hearing. Further, the applicant states that because her written testimony was prepared, read to her in Spanish, and signed approximately 17 months prior to the hearing, she could not reasonably be expected to amend the narrative at the start of the hearing. Accordingly, the applicant submits the Board was patently unreasonable in rejecting her credibility because she failed to amend her PIF narrative at the start to the hearing.

[17] However, the applicant's response in this regard defies the fact that she did amend her PIF narrative at the start of the hearing to include a claim that she sought the aid of a women's shelter in December 2004, but could not afford the fee to stay there. If the applicant was capable of recounting the fact that her original PIF narrative did not include such a detail, it was reasonably open to the Board member to find it prudent to amend her narrative regarding the details of her sister calling the police. Accordingly, it was open to the Board to conclude that the applicant provided inconsistent evidence regarding whether the police were actually phoned on December 8, 2004, and also to conclude that such inconsistencies impacted negatively on the applicant's credibility.

2<sup>nd</sup> basis for credibility finding

[18] The Board's decision that the applicant was not credible was also based on several other findings. Amongst these findings, the Board found the applicant's evidence implausible that the



applicant's ex-spouse could pursue the applicant from her hometown of Hermosillo to her mother's hometown, Thalnepantla, on the day the applicant fled and arrive at the applicant's mother's home by 5:00 p.m. that day. The Board stated at page 2 of its decision:

In addition, the timelines outline[d] for the husband's activities on December 8, 2004 are implausible. The claimant testified that her husband started calling her at all hours as soon as she arrived at her mother's house. In oral evidence, she clarified this was approximately 12:00 noon. However, she later testified he arrived at her mother's home at approximately 5:00 PM after a one and one-half hour flight.

I am satisfied that there is insufficient time for the husband to make a number of phone calls to the claimant, make arrangements to buy a ticket, travel to the airport, catch a one and one-half hour flight, travel from the airport to the mother's house, all in approximately five hours. Certainly on the basis of the implausibility on its own, I would not reject the incident; however, this, combined with what I am satisfied is a change in testimony regarding the calling of the police, satisfies me that this incident was created to advance a refugee claim.

[19] The applicant argues that the Board did not have the evidentiary basis upon which to find that her spouse's actions between 12:00 p.m. and 5:00 p.m. were implausible. The applicant further argues that she was not confronted with the Board's implausibility concerns during her testimony or given an opportunity to address such concerns. Accordingly, the applicant submits that such a finding was patently unreasonable. In support, the applicant referred the Court to Madam Justice Mactavish's Judgment in *Pulido v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 209, [2007] F.C.J. No. 281 (QL) at paragraph 37:

¶ 37 ... it is well established in making plausibility findings, the Board must proceed with caution, and that such findings shall only be made in the clearest of cases, where, for example the facts are either so far outside the realm of what could reasonably be expected

and the trier of fact could reasonably find that it could not possibly have happened, or where the documentary evidence before the Tribunal demonstrates that the events could not have happened in the manner asserted by the claimant ...

[20] In response, the respondent argues that the timelines provided by the applicant created “cogent credibility concerns” about the applicant’s trip and her spouse’s alleged pursuit. The respondent submits that the Board’s implausibility finding was based on a view that the timelines were not in harmony with the preponderance of the probabilities that a practical and informed person would recognize as reasonable, rational, and commonsensical. I agree with the respondent that the Board could reasonably make an adverse finding of plausibility based on the applicant’s timelines, and that the Board’s finding that the underlying incident was “created to advance a refugee claim” was reasonably open to it. The plausibility finding was based on what the Board found to be a clear case where the facts were outside the realm of what could reasonably be expected.

### 3<sup>rd</sup> basis for credibility finding

[21] The applicant also submits that the Board was patently unreasonable in finding contradictions in the applicant’s written and oral testimony regarding whether the applicant notified authorities about being abused between March 1999 and December 2004. The applicant’s PIF narrative lists a number of reasons why she felt unable to notify the police about her spouse’s abusive nature during this time, and states she did not have any contact with the police until she arrived in Tlalnepantla. However, at the hearing before the Board, the applicant stated that she did, in fact, contact authorities prior to leaving Hermosillo on December 8, 2004. When asked why she

did not include such a detail in her PIF narrative, the applicant stated that it was in the narrative and pointed to a detailed account of the police report she filed against her husband on December 10, 2004, *after* arriving in Tlalnepantla. When again asked if she ever approached the authorities while living in Hermosillo, the applicant recanted her initial testimony, stating that she had never contacted the police in Hermosillo because of a fear that her spouse would find out due to the connection between the police and military.

[22] Having reviewed the record, I conclude that despite the applicant's confusion regarding the exact times when she may have approached the police, the questions of both the Board member and the applicant's counsel were clear in referencing whether the applicant had contacted authorities *before* leaving Hermosillo. For example, in one exchange between the applicant and her counsel, counsel asked:

Q. You went to the police in Hermosillo? Is that what your evidence is, that you went to the police in Hermosillo, yes or no?

A. Yes, and they told me – they said that he belonged to the military and that I had to go to the military authorities.

Q. And when was that about? When did you go to the police in Hermosillo?

A. That was around 2004. That was before going back to my mother's house.

[Emphasis added.]

Accordingly, based on the clear nature of the questions proffered, I find that the applicant's inconsistent and contradictory testimony in this regard made it reasonable for the Board to draw a negative credibility inference from her testimony.

4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> bases for credibility findings

[23] The applicant raises a number of other findings of the Board that she alleges are patently unreasonable. These include:

1. that the Board erred in concluding that the applicant omitted mentioning in her oral testimony that she had gone to the police two days after the confrontation with her spouse;
2. that the Board erred in finding that the lawyer would have taken action other than “a civil suit to recover lost property” had the applicant truly feared for her life. The Board found at page 4 of its decision:

A complaint to recover lost property I find does not advance the case that the claimant has been harmed by her ex in the past and fears he will harm her in the future as a result of her leaving him.

3. that the Board erred in its treatment of the two letters from the applicant’s mother and in failing to address the police complaint filed by the applicant’s father on October 18, 2006. The Board found at page 5 of its decision:

The claimant’s mother has written two letters. Both letters indicate that the claimant’s ex is trying to find her to sign over the car. This is part of the civil matter. Further, there is no record of the ex contacting the family between January 2005 and July 2006.

[24] Having reviewed the record, I conclude that these findings were reasonably open to the Board on the evidence before it, and will not be interfered with by this Court on judicial review. Accordingly, the Court concludes that the Board was not patently unreasonable in impugning the applicant’s credibility on the above-noted findings.

**The Board's consideration and application of the psychological evidence and the Gender Guidelines**

[25] Despite concluding that the Board's credibility findings were open to it on the evidence, there are two other matters to be considered before reaching an ultimate conclusion. First, the applicant argues the Board erred in failing to assess her credibility in light of the psychologist's report that was filed on behalf of her claim. That report, conducted by Dr. J.E. Pilowsky and dated August 18, 2006, concludes that the abuse suffered by the applicant has caused her to become "very depressed" and "incapable of enjoying activities she used to take pleasure in." Further, it states the applicant "has frequent ruminations about her abuse," as well as nightmares and panic attacks. While the applicant admits that the Board considered the psychological report, she submits that it failed to apply the psychological evidence therein to its assessment of her credibility as the Court required in *Pulido*, above, at paragraph 35.

[26] The Court cannot agree. The depressed and anxious mental condition of the applicant cannot explain or excuse the inconsistencies, contradictions, and implausibilities upon which the Board relied in finding the applicant not credible.

[27] Second, the applicant argues that the Board erred in its consideration of the Chairperson's 1996 Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution (the Gender Guidelines), which state that women refugee claimants face special problems in demonstrating that their claims are credible and trustworthy. For example, the Gender Guidelines state in Section D(3) :

Women refugee claimants who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome, and may require extremely sensitive handling. Similarly, women

who have been subjected to domestic violence may exhibit a pattern of symptoms referred to as Battered Woman Syndrome and may also be reluctant to testify. ...

[28] The applicant submits that the Board was insensitive to how the “symptoms” of her alleged abuse may affect her testimony as outlined in both the psychological report and the Gender Guidelines. However, it is clear that in reaching its decision, the Board was cognizant of the Gender Guidelines and, in fact, accepted as true the applicant’s account of alleged abuse between March 1999 and December 2004. Further, the Board stated at page 5 of its decision:

Areas where the claimant gave conflicting evidence was canvassed to allow the claimant to spontaneously correct her evidence before being confronted with the contradiction or omission. Again, it was only when the claimant failed to spontaneously respond that her inconsistencies or omissions became part of the analysis.

Accordingly, the Board adequately considered the Gender Guidelines and the Court will not intervene in this regard. As Mr. Justice Martineau stated in *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1168, [2005] F.C.J. No. 1408 (QL) at paragraph 4, the symptoms outlined in the Gender Guidelines do not “excuse contradictions or omissions of serious incidents in a claimant’s previous statements.”

## **CONCLUSION**

[29] For these reasons, I find that this application for judicial review must be dismissed since the Board committed no reviewable error. In this case, the Board accepted that the applicant was a victim of domestic abuse but rejected as not credible the material parts of the applicant’s testimony

upon which she claimed a continued fear of her ex-spouse, which caused her to seek refuge in Canada.

**CERTIFIED QUESTION**

[30] Both parties advised the Court that this application does not raise a serious question of general importance that should be certified for an appeal. The Court agrees so that no question will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that this application for judicial review is dismissed.

“Michael A. Kelen”

---

Judge



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

**DOCKET:** IMM-1739-07

**STYLE OF CAUSE:** VERONICA CASTILLO GONZALEZ v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Kingston, Ontario

**DATE OF HEARING:** January 29, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** KELEN J.

**DATED:** January 31, 2008

**APPEARANCES:**

Mr. Neil Cohen FOR THE APPLICANT

Mr. Jamie Todd FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Neil Cohen FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, ON

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada