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Docket: IMM-709-07

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Toronto, Ontario, February 4, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**ISAKOVA INGA ISAKOVA a.k.a.
INGA BORISOVNA ISAKOVA**

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant bases her claim for protection on evidence that she was abducted and held prisoner for the purpose of forced prostitution in her native Armenia.

[2] In rejecting her claim, the Refugee Protection Division of the Immigration and Refugee Protection Board (RPD) made a number of individual implausibility findings with each stated to be conclusive that the “the claimant is not a credible or trustworthy witness”. The Applicant argues that these findings are made in reviewable error. I agree.

[3] In my opinion, the RPD used an inappropriately rigid and highly subjective standard to conclude that the Applicant's evidence is implausible and, therefore, that she is lying about the existence of the grounds of her claim for protection. This result is achieved through several critical decision-making errors: failure to apply the *Gender Guidelines* to the Applicant's claim of gender persecution; claiming "specialized knowledge" without providing a verifiable source; and providing no reasons for the findings that certain elements of the claim are unbelievable.

I. The Applicant's Evidence

[4] The Applicant is a citizen of Armenia. She claims refugee status on the basis of her gender, and, more particularly, her status as a woman who has been abducted for the purposes of forced prostitution. The Applicant's evidence, given in her personal information form (PIF), is that in June of 2005 she went to a restaurant to celebrate the birthday of Ashot, a man that she had recently met. At the restaurant she drank coffee and, soon afterwards, began to feel strange and lost consciousness. When she awoke she did not know where she was, was very upset and began screaming. Ashot entered the room, began to beat her, and raped her. The Applicant was then held prisoner in this room for three weeks. During this time she was repeatedly raped by a number of different men. In her testimony before the RPD, the Applicant described the room that she was held in as a simple white room with a bed, a table, a narrow window high above the floor, and with a bathroom attached. She testified that she did not recall the building in much detail because the only time she saw it was when she was escaping, but that it was a three-storied house in the middle of the city.

[5] The Applicant explained at her hearing that, one day, one of her captors forgot to lock the door when he was called away while bringing her food. The Applicant ran out of the house, found a traffic officer and asked him how to find the nearest police station. She was directed to the police station and told her story; however, after she told the police officer the name of the restaurant where she had been drugged the police officer made a phone call. Shortly thereafter, a silver haired man in a nice suit came and paid the policeman some money. The silver haired man then threatened her and said that if her life was dear she would forget about everything.

[6] As the Applicant had been away from home for some time, her father had already reported her missing. The Applicant testified that, at first, it was too difficult for her to tell her parents what happened. After some prodding she was able to tell her mother, who then related the tale to her father. When her father found out, he went to the police station to make a report. However, he only received empty reassurances from the police. Nevertheless, he persisted and went to several different police stations. One night in July, four men burst into the Applicant's house, put a knife to her and told her father that he should stop pursuing his complaints or else they would kill the Applicant. The next day the Applicant and her father reported this event to the police. On July 21, 2005 the Applicant's father went out of the house and never returned. He was found that evening by the Applicant and her mother, beaten unconscious. He had significant injuries and required hospitalization.

[7] The Applicant's PIF also describes repeated telephone threats from the "mafia" who abducted her. Due to these threats, she contacted her sisters, who lived in Rustov, Russia for help.

The Applicant's sisters arranged for a man named Yukov to help the Applicant and her parents leave Armenia and cross the border into Russia.

[8] Only 24 hours after arriving in Rustov, the Applicant says she received a phone called from Ashot who said, "You think we will not find you in Rostov?" Due to these threats, the Applicant, with help from her sisters, arranged to come to Canada. After transiting through Colombia, the Applicant arrived in Canada on February 16, 2006 and claimed refugee status.

II. The Issue for Determination

[9] The primary aspects of the RPD's Decision challenged by the Applicant are the numerous implausibility findings, each of which is said by the RPD to be determinative the Applicant's credibility and, as a result, the credibility of her claim. Therefore, the issue for determination is: Are the RPD's implausibility findings made according to law?

III. The Law on Implausibility Findings

A. Presumption of truth and need for reasons

[10] There is a presumption that the evidence provided by an applicant, who has sworn to tell the truth, is true (*Maldonado v. M.E.I.*, [1980] 2 F.C. 302, 31 N.R. 34 (C.A.)). The result of this presumption is that, before the RPD can impeach a claimant's credibility, it must have clear reasons for doing so. In *Hilo v. Canada*, (1991), 130 N.R. 236, the Federal Court of Appeal stated at para. 6:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable

terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms.

[11] The need for reasons is particularly pronounced when the RPD makes findings based on the perceived implausibility of an applicant's story; when making a negative credibility finding based on an implausibility the RPD must clearly articulate why the evidence is outside the realm of what could reasonably be expected in the specific circumstances of an applicant's case. Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131 at para. 7 (*Valtchev*), discussed the rigors necessary before an implausibility finding can be made:

[7] A tribunal may make adverse findings of credibility **based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant.** A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

Justice Muldoon in *Valtchev* goes on to quote from *Leung v. M.E.I.* (1994), 81 F.T.R. 303 (T.D.) to emphasize the need for reasons in light of the subjective nature of implausibility findings:

[14] ...Nevertheless, the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.

[15] This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. **Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions.**

[16] ... **The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility...**

[Emphasis in original]

[12] It is only in the clearest of cases that an applicant's testimony should be rejected because his or her story is "unreasonable" or "implausible"; plausibility findings are inherently subjective assessments as to what is reasonable in the circumstances. In order to make such findings, the RPD must state what is expected of an applicant's behaviour, given the applicant's specific circumstances and clearly give reasons as to why the applicant's behaviour is outside of what could reasonably be expected in the situation.

B. *The Gender Guidelines*

[13] The Applicant's claim is a story of abduction and forced prostitution and, as such, is based on a fear of persecution on the ground of her gender. In recognition that claims based on gender persecution require special consideration, guidelines have been promulgated as to how to appropriately deal with such cases: *Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution (Gender Guidelines)*. The *Gender Guidelines* recognize the profound effect that gender-related persecution

can have on an individual, and directs the RPD to be mindful of this during the decision-making process. The portion of the *Gender Guidelines* most relevant to the Applicant's claim is the section dealing with determination hearings:

D. SPECIAL PROBLEMS AT DETERMINATION HEARINGS

Women refugee claimants face special problems in demonstrating that their claims are credible and trustworthy.

Some of the difficulties may arise because of cross-cultural misunderstandings. For example:

...

(3) Women refugee claimants who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome. [30] 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. [31] In some cases it will be appropriate to consider whether claimants should be allowed to have the option of providing their testimony outside the hearing room by affidavit or by videotape, or in front of members and refugee claims officers specifically trained in dealing with violence against women. Members should be familiar with the UNHCR Executive Committee Guidelines on the Protection of Refugee Women. [32]

Footnotes:

30: The UNHCR Executive Committee Guidelines on the Protection of Refugee Women, *supra*, footnote 10, at p. 27, discuss the symptoms of Rape Trauma Syndrome as including "**persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive feeling of loss of control, and memory loss of distortion.**"

31: F. Stairs & L. Pope, *supra*, footnote 5, at p. 202, stress that decision-makers should be, ...sensitive to the fact that women whose children are attached to their claim may also be reticent to describe the details of their persecution in front of their children. Further, if the claimant's culture dictates that she should suffer battering silently, the use of an interpreter from her community may also intimidate her.

For a discussion of the battered woman syndrome see *R. v. Lavallee*, [1990] 1 S.C.R. 852. In *Lavallee*, Madame Justice Wilson addressed the mythology about domestic violence and phrased the myth as "[e]ither she was not as badly beaten as she claims, or she would have left the man long ago. Or, if she was battered that severely, she must have stayed out of some masochistic enjoyment of it." The Court further indicated that a manifestation of the victimization of battered women is a "reluctance to disclose to others the fact or extent of the beatings". In *Lavallee*, the Court indicated that expert evidence can assist in dispelling these myths and be used to explain why a woman would remain in a battering relationship.

32: It should be noted that Amnesty International, in *Women in the Front Line: Human Rights Violations Against Women*, *supra*, footnote 1, at p. 54, recommends that:

In procedures for the determination of refugee status governments should provide interviewers trained to recognize the specific protection needs of women refugee and asylum-seekers.

[Emphasis added]

[14] Of particular importance to this application is the mention in footnote 31 of the Supreme Court of Canada's decision in *Lavallee* which, at para. 38, speaks to the caution that must be taken when judging actions of an abused woman as reasonable or unreasonable:

If it strains credulity to imagine what the "ordinary man" would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical "reasonable man".

The point being made in this quote is that an applicant's evidence must be viewed from that applicant's position in her real life context, not from a removed and uninformed position. The conduct that is to be expected in an applicant's circumstances is a matter of evidence that is to be placed on the record.

C. The use of specialized knowledge

[15] The use of specialized knowledge on the part of the RPD is also a feature of the Decision under review. In cases where the RPD seeks to use “specialized knowledge”, notice must be given in accordance with Rule 18 of the *Refugee Protection Division Rules*, Can. Reg. 2002-228, (Rule 18):

- | | |
|---|--|
| <p>18. Before using any information or opinion that is within its specialized knowledge, the Division must notify the claimant or protected person, and the Minister if the Minister is present at the hearing, and give them a chance to</p> <p>(a) make representations on the reliability and use of the information or opinion; and</p> <p>(b) give evidence in support of their representations.</p> | <p>18. Avant d'utiliser un renseignement ou une opinion qui est du ressort de sa spécialisation, la Section en avise le demandeur d'asile ou la personne protégée et le ministre — si celui-ci est présent à l'audience — et leur donne la possibilité de :</p> <p>a) faire des observations sur la fiabilité et l'utilisation du renseignement ou de l'opinion;</p> <p>b) fournir des éléments de preuve à l'appui de leurs observations.</p> |
|---|--|

[16] The purpose of Rule 18 is to enable a claimant to have notice of the specialized knowledge and to give him or her the opportunity to challenge its content and use in reaching a decision.

Therefore, in order for Rule 18 to be effective, the RPD member who declares specialized knowledge must place on the record sufficient detail of the knowledge so as to allow it to be tested. That is, the knowledge must be quantifiable and verifiable. As stated by Justice Teitelbaum in *Mama v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1515, unverifiable personal knowledge does not qualify as specialized knowledge:

The applicant submits (and I agree), that the personal and/or professional experiences of the Board members, the full extent of which was unclear, hardly justified their claim to "specialized knowledge". The Board did not purport to take judicial notice of any facts with respect to European border controls and there was no evidence whatsoever before it as to the efficacy of these.

Once the RPD has disclosed its knowledge, Rule 18 then mandates that the RPD allow a claimant to make submissions and present contradictory evidence.

D. Making global credibility findings

[17] If the RPD properly makes a credibility or implausibility finding with respect to one aspect of an applicant's evidence, this will not necessarily provide a basis for rejecting the entirety of the applicant's claim. Justice Martineau makes this point in *R.K.L. v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 116 at para. 11-14:

However, not every kind of inconsistency or implausibility in the applicant's evidence will reasonably support the Board's negative findings on overall credibility. It would not be proper for the Board to base its findings on extensive "microscopic" examination of issues irrelevant or peripheral to the applicant's claim: see *Attakora v. Canada (Minister of Employment and Immigration)*, (1989), 99 N.R. 168 at para. 9 (F.C.A.) ("Attakora"); and *Owusu-Ansah v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 442 (QL) (C.A.) ("Owusu-Ansah").

...

Finally, the applicant's credibility and the plausibility of testimony should be assessed in the context of her country's conditions and other documentary evidence available to the Board. Minor or peripheral inconsistencies in the applicant's evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of the applicant's story: see *Attakora, supra*; and *Frimpong v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 441 (QL) (C.A.).

[18] The decision in *R.E.R. v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1634, 2005 FC 1339 at para. 9 confirms that all evidence with respect to an applicant's claim must be considered before a global credibility finding is made:

First, it is only fair and reasonable for parties to litigation to expect that the decision-maker will consider the evidence in its entirety, with an open mind, before making findings about the value to be placed on critical elements of the evidence. For the general proposition that the evidence must be considered in its entirety see *Owusu-Ansah v. Canada (Minister of Employment and Immigration)* (1989), 98 N.R. 312 (F.C.A.). In the present case, I find that the RPD was in error in not considering the whole of the evidence, including the wife's rape evidence and the cogent independent evidence about the apparent effects of the torture and rape in the form of photographs and reports, before making the critical finding of negative credibility against the principal Applicant (also see *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 422, and *Herabadi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1729).

[19] However, this is not to say that the RPD must refer to every single piece of evidence before it in reaching a decision, but, when evidence which supports an applicant's claim is not mentioned and other evidence is selectively relied upon, the RPD errs by ignoring relevant evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), at para.15).

IV. Application of the Law to the RPD's Credibility Findings

A. Failure to seek medical treatment not plausible

[20] The first implausibility finding made by the RPD relates to the Applicant's conduct following her abduction and forced prostitution:

The claimant had medical training. She was asked if she sought medical treatment after she had escaped. The claimant stated that she had not. The claimant was asked if she did not fear sexually transmitted diseases. She replied that although she did, she was too embarrassed to go to the doctor. I do not accept this as credible. The claimant told a male...police officer what had happened to her immediately after her alleged escape and her father repeatedly went to the police and told different departments and offices about what had allegedly happened to his daughter. On a balance of probabilities, I find the claimant not to be a credible or a trustworthy witness.

[21] In my opinion, this finding does not comply with the *Gender Guidelines*. Although, the RPD's Decision states that the *Gender Guidelines* were taken into consideration, this statement is has no impact if the reasons fail to show that the RPD actually applied them. Indeed, this implausibility finding demonstrates that the RPD failed to properly apply the *Gender Guidelines*, because the RPD remained completely indifferent to the explanation provided by the Applicant as to why she did not seek medical treatment. The testimony of the Applicant in this respect is as follows:

Presiding Member: Okay. When you went home did you go to a doctor?

Claimant: No.

Presiding Member: You didn't go to a doctor?

Claimant: No.

Presiding Member: Why not?

Claimant: It was just so embarrassing you know, it's very different in my country. It was so embarrassing for me, I was so ashamed to talk about it.

Presiding Member: Why wouldn't you go to a female doctor?

Claimant: I just didn't want it, you know, I just didn't want anybody to touch me.

Presiding Member: You were a medical person yourself, were you not afraid of sexually transmitted diseases?

Claimant: Of course I was afraid of it, yes.

Presiding Member: So why didn't you get yourself tested?

Claimant: It's very hard to explain, you know, I just didn't want to because I was feeling so lost and I was feeling that you know, a part of me was taken, taken away from me and I was feeling so lost.

(Tribunal Record, pp. 164-165)

[22] The Applicant also provided testimony with respect to her feelings after she had escaped from the kidnappers, witnessed the corruption of the police, and returned home to her parents. It is evident from the transcript that talking about these experiences in the hearing caused some agitation on the part of the Applicant:

Claimant:... I went home. And when my parents saw me they were so shocked and they started to say that you know, what happened to you and where were you at this time, all this time. Why you were absent these days and why didn't hear anything from you. We were so much worried. [sic] But I couldn't talk, I couldn't say anything, I just went to my room.

Then I went to the bathroom and I was trying to get this dirt out of me. It was too hard to forget all this, everything was just there. It was not only one person, there were other people there.

Presiding Member: Would you like to take a break?

Claimant: No.

Interpreter: She says no.

Presiding Member: Are you sure, we can stop for just a few minutes if you like?

Claimant: No, I'll try to calm down, it's okay.

(Tribunal Record, p.147)

[23] In concluding that the Applicant's conduct is not believable, the RPD set up an un-supported subjective standard that a woman who had been raped would logically want to find out if she had acquired a sexually transmitted disease; therefore, she would be expected to seek medical treatment. In my opinion, the inflexibility of this assumption is clearly at odds with the approach required by the *Gender Guidelines*, namely, a contextual approach which takes into account the trauma of a sexual assault.

[24] Although the *Gender Guidelines* are not highly detailed with respect to what might be expected of someone who has been sexually assaulted, what they do say is directly applicable to the evidence presented by the Applicant. As quoted above, the *Gender Guidelines* state that a person in this situation might feel "persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive feeling of loss of control, and memory loss of distortion". This is directly in accordance with the evidence presented by the Applicant.

[25] There is also ample evidence on the public record as to what might be expected of a sexual assault victim. For example, the *United Nations High Commission for Refugees Executive Committee Guidelines on the Protection of Refugee Women, EC/SCP/67* (UNHCR Guidelines),

which are referred to in footnote 30 of the *Gender Guidelines*, provides several statements that are relevant to the Applicant's testimony. For example,

As a result of the fear of social stigma, most victims/survivors never report the incident. Indeed, most incidents of sexual and gender-based violence go unreported.

(UNHCR Guidelines, p.24)

After an incident of sexual and gender-based violence, the victim/survivor may experience many different emotional and psychological responses, including fear, shame, guilt, depression and anger. She may adopt strong defence mechanisms, such as forgetting, denial and deep repression of the traumatic event she survived. Family members may also experience a variety of emotions and need to receive support during this traumatic period.

(UNHCR Guidelines, p.60)

The type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility. Interviewers and decision-makers should understand that cultural differences and trauma play an important and complex role in determining behaviour. For some cases, it may be appropriate to seek objective psychological or medical evidence.

(UNHCR Guidelines, p.120)

[26] In my opinion, the failure of the RPD to apply the *Gender Guidelines* in any meaningful way constitutes a reviewable error.

B. *Conditions while being held prisoner not plausible*

[27] The RPD also made implausibility findings with respect to the Applicant's abduction and imprisonment:

It is not credible that the abductors who placed her in a room with high windows, would then supply her with clothes (oral testimony)

and allow her to wear shoes (oral testimony) in which she allegedly escaped. On a balance of probabilities, I find the claimant not to be a credible or a trustworthy witness...on a balance of probabilities, I find it implausible that the claimant would be provided with a room and bathroom. Had the claimant really experienced being kept for the purpose of prostitution or rape or being trafficked, she would have known that it is not reasonable that such amenities are provided in such circumstances.

(RPD Decision, p. 4)

The only evidence with respect to the conditions under which the Applicant was held is her testimony as follows:

Presiding Member: Okay. Tell me a little bit about where you were when you woke up?

Claimant: It was a room and also the bathroom. That's it.

Presiding Member: What did the room look like?

Claimant: Just a simple white room.

Presiding Member: mm-hmm.

Claimant: That's it. When I left this room, you know, I don't remember anything because I was just running in order to find a way out so I don't remember.

Presiding Member: How long were you in the room?

Claimant: Three weeks

Presiding Member: Okay. So you were in a room for three weeks and you don't remember what it looks like?

Claimant: It was, as I said it was just a simple white big room and there was a bed and a small table and the window was very high.

Presiding Member: Okay.

Interpreter: I'm sorry, yeah, the windows were kind of on the top I would say by the room itself was light because the colours were very light, the painting.

Presiding Member: And was it in an apartment or a house?

Claimant: House.

Presiding Member: And how big was the house?

Claimant: Yes.

Presiding Member: How big was the house?

Claimant: I just know that it was a three floors house. There were stairs because I remember that there were stairs and it got many rooms in it (sic).

Presiding Member: Okay. Now without going into details that will upset you, tell me about a typical day.

Claimant: Should I say it?

Presiding Member: Yes.

Claimant: Every day I had six, let's say, men visitors, every evening they were coming to me.

Presiding Member: What would you do during the day time?

Claimant: Nothing, the door was locked and I was locked inside.

Presiding Member: And when would you eat, what time of the day would you eat?

Claimant: At twelve noon, it was just one time a day.

Presiding Member: Okay. Now during the time that you were in the room what would you wear?

Claimant: I was in my clothes, sometimes they were bringing me clothes and they gave me underwear twice and then I was washing the clothes by myself, by hand and then once they dry I would wear them and then washing other one.

(Tribunal Record, pp.159-161)

[28] I find that there is absolutely no evidentiary basis upon which the RPD could conclude that the Applicant's evidence respecting the conditions under which she was held is implausible.

C. Actions of the Armenian police not plausible

[29] The RPD's Decision goes on to discuss the Applicant's claim that she went to the police but obtained no help. The RPD explicitly accepted that the police in Armenia are corrupt and that they accept bribes at traffic stops; however, it found that the testimony of the Applicant with respect to a man paying money to the police in her presence was implausible:

[O]n a balance of probabilities, I find that it is not credible that:

- The officer would immediately call someone for a bribe without any investigation into the claimant's allegations, but would immediately accept the word of the claimant;
- That a man would immediately respond to the officer's call;
- That the man would give money to the officer in the presence of the claimant, thus confirming her allegations with respect to the restaurant and abductor"

(RPD Decision pp.4-5).

[30] The question which arises from this passage is: Where is the evidence to support the RPD's implausibility opinion? Indeed, there is none. In giving this opinion, the RPD failed to reference substantial documentary evidence that details other circumstances of police corruption, including cases where the police have been in direct collusion with human traffickers.

[31] As part of the information package available to the RPD, and quoted in the Applicant's factum, the U.S. Department of State Report of Human Rights in Armenia released on March 8, 2006 notes in several places that police and other public bodies have been found complicit in prostitution and human trafficking:

Corruption was perceived to be widespread. According to a September 2004 opinion survey by a local research institute, a large majority of citizens believed that corruption exists "in all spheres and at all levels" in the country. A similar survey in 2003 indicated that citizens believed that corrupt authorities were not truly committed to fighting corruption.

(Tribunal Record, p.55)

Prostitution and sex tourism are not illegal, but operating brothels is prohibited. Operating a brothel and other forms of pimping are punishable by one to ten years' imprisonment. According to the NGO Hope and Help, there were between 5 and 6 thousand prostitutes, approximately 1,500 of them in the capital. Police and other security forces participated in or tolerated prostitution.

(Tribunal record, p. 56)

Victims reported that Russian and Armenian border guards were easily bribed or commonly worked with traffickers. Some prosecutors were also reportedly complicit in trafficking. There were persistent allegations that senior members of the prosecutor general's office were susceptible to outside influence. Some observers asserted agreements between corrupt court officials and traffickers were also common. There were persistent reports that police employees and employees of the country's international airport assisted traffickers with transportation of victims to and through the country. Unlike in previous years, there were no arrests in these types of cases.

(Tribunal Record, p.58)

[32] The RPD did not mention this information, which is significant because the RPD appears to have decided that it is implausible that the Armenian police are corrupt beyond accepting bribes at

traffic stops. Although the RPD is not obliged to mention all the evidence, given that this documentary evidence specifically contradicts the RPD's conclusions, I find that the RPD was obliged to explain how, in light of such evidence, the Applicant's scenario was outside of what could reasonably be expected in the circumstances.

D. Specialized knowledge regarding Applicant's failure to provide police reports

[33] The RPD held that it was unreasonable that the Applicant did not produce a police report either from her visit to the police or from the subsequent visits made by her father. The RPD declared specialized knowledge that such reports would be available:

Counsel submitted that it was not likely that police would issue reports when they did nothing to help the claimant. The panel declared specialized knowledge that police reports are available to those who request them, even if they took no action to assist the complainant. Counsel stated that this should be available in writing. However, specialized knowledge is that knowledge gained in the hearing room from hearing claims in countries; this member have [sic] heard many claims from countries of the former Soviet Union, including Armenia, where police keep records even when they refuse to or are unable to provide assistance...[I]t is not enough for the claimant to state that she did not attempt to obtain such documents because she thought that they would not be forthcoming, nor for counsel to submit that it is unlikely that a corrupt police force would issue such a document. On a balance of probabilities, I find that the claimant made no attempt to obtain such documents because there were no such complaints made. On a balance of probabilities, I find the claimant not be a credible or a trustworthy witness

(RPD Decision, p.8)

[34] At the hearing, the Applicant's former counsel asked to know the source of this specialized knowledge:

Now, moving to the police report, as I indicated to the panel in the middle of the hearing if the panel wishes to rely upon specialized knowledge, the panel inferred that such reports are readily made available to Armenian citizens [sic]. Such a document has to be available, that's really the most basic form of procedural fairness. That has to be made available to a claimant or a claimant's counsel and then submissions could be made with respect to the document.

Specialized knowledge doesn't just fall out of the sky and land on the member's head. Specialized knowledge come by way of documents with respect to the particular issues that the member is asserting that she has specialized knowledge over.

(Tribunal Record. p. 175)

[35] In my opinion, the RPD's statement that its knowledge came after hearing a number of other claimants from former Soviet countries is an insufficient basis on which to declare specialized knowledge; the basis for specialized knowledge must be quantifiable and verifiable. The RPD's reliance on past experience, without providing any specific details, does not allow the Applicant to test the reliability of such knowledge.

[36] Indeed, the RPD did not respond to Counsel for the Applicant's request, and since a finding was made against the Applicant's claim without providing a response, I find that this failure constitutes a breach of due process

E. Applicant not taken by her attackers not plausible

[37] The RPD found that it was unreasonable that the Applicant was not abducted when the masked men entered her home:

Therefore, if, as the claimant alleged, the criminals were after her in Russia, as well as in Armenia, on a balance of probabilities, I find

that they would have taken her at knife point when they invaded her home. On a balance of probabilities, I find the claimant not to be a credible or a trustworthy witness. The panel finds the entire scenario described by the claimant not to be either credible or plausible.

(RPD Decision, p.6-7)

[38] Although the Applicant suggests many possible reasons as to why she was not taken, the RPD does not explain why taking the Applicant was the only plausible conduct of the intruders in that situation. As the RPD did not provide reasons, I find it was not open for the RPD to conclude that the intruders' action was outside of what could reasonably be expected. Indeed, what basis is there to judge the reasonableness of the actions of masked intruders who invade a house and threaten people at knife point?

F. Applicant not tendering her passport

[39] The Applicant did not submit her passport at the hearing and was not questioned on this issue during the hearing. However, the RPD made a credibility finding on this issue:

The panel notes that the claimant did not tender her passport, which she would have had to produce when she left Armenia, in order to show her exit visa. On a balance of probabilities, I find the claimant would have had to have her Armenian passport if she left Armenia. While the claimant stated that a person named Yukov took care of all their leaving problems, exit visas are a source of [sic] income for border authorities. While the issue of her passport was not put to the claimant, she knew or should have known that she required an exit visa to leave Armenia and stamps would have been evident as to the time of departure for Russia. On a balance of probabilities, I find the claimant did not produce her Armenian passport because she did not want the board to see its contents.

(Decision, p.7)

This finding is made in error for two reasons.

[40] First, the RPD states that Armenian border agents make revenue from exit stamps in passports and, therefore, the Applicant would necessarily have had her passport when she exited the country. This information is provided without any source being cited. Perhaps the RPD was relying again on “specialized knowledge”; however, it did not make this clear, gave no notice, and provided no verifiable basis for such knowledge.

[41] Second, this information was never put to the Applicant. The RPD uses the passport issue to conclude that the Applicant has deliberately withheld information in order to build a fabricated refugee claim. This is a serious allegation, as it labels the Applicant as a liar and a cheat. If the RPD wanted to use the lack of passport in this way, procedural fairness mandates that the RPD put this to the Applicant.

G. The contents of the medical report are implausible

[42] At the hearing, the RPD criticised the fact that the Applicant had not submitted a medical report to substantiate the occurrence of an attack on her father. The Applicant, therefore, obtained a report and submitted it post- hearing. The RPD finding relating to the medical report is as follows:

On a balance of probabilities, I find that even taking into account cultural differences, doctors in Armenia know the names of bones and would, on a balance of probabilities, refer to them in a medical report. Under treatment, the report states, in part, cardiac medications, but does not name of same [sic]. On diagnosis on discharge, the report states, in part, ‘healed fractures of left forearm bone and two fingers of the left hand.’ The report states nothing with respect to the permanent damage to the claimant’s father’s fingers,

evidenced by the photograph in Exhibit C-3. In this photograph, the damage appear to be to the last two fingers of the left hand, but with cultural differences, this could be the manner in which Armenians refer to those digits. On a balance of probabilities, that is why it is crucial to have medical terms in medical reports. On a balance of probabilities, given the lack of medical terms and the reference to the healing of the fingers which to the lay person's eyes appear to be damaged, I give the report no weight and find that the claimant has tendered a false document in a deliberate attempt to mislead the board. Therefore, on a balance of probabilities I find the claimant not to be a credible or a trustworthy witness.

(RPD Decision, p.9)

[43] The medical report, translated from Russian, submitted by the Applicant reads:

This is to certify that the patient ISAKOV Boris Nikolaevish... was taken by ambulance to the Department of Surgery on July 19, 2005 at 9 p.m. with domestic multiple injuries. He complained on [sic] headaches, nausea, memory loss of the incident, impossibility to open the mouth [sic], pains and deformation of the left forearm and pains in the first and second fingers of the left hand.

Examination: X-ray radiography of the lower jaw, left hand and left forearm, ECG, blood and urine tests, neurosurgeon's, traumatic surgeon's and oral surgeon's consultations; the patient has been diagnosed.

Diagnosis: Concussion of the brain, fraction [sic] of the low left side of the jaw, fration [sic] of the first and second fingers of the left hand and both of the left forearm bones.

After anti-shock procedures fractures were reduced and immobilized by a plaster splint; splinting of the low jaw was done.

Treatment: analgesics, antibiotics, fluid and dexintoxications therapies, antiaggregants, hyotensive angiprotectors, cardiac medications.

After check [sic] X-ray radiography the plaster splint was removed. The patient was discharged on September 20, 2005; recommendation were given [sic].

Diagnosis on discharge: residuals after the closed concussion of the brain, concussion of the brain with left herniparesis. Healed fractions [sic] of the left forearm bones and two fingers of the left hand. Healed fraction [sic] of the low jaw.

(Tribunal Record. p. 134)

[44] In my opinion, the RPD's finding that the report lacks medical terms is erroneous. On the face of it, the report contains medical terms. In addition, there was no evidence before the RPD as to how medical reports are written in Armenia and what types of terms are normally present. Therefore, I find that the RPD had no basis for concluding that the report is a false document.

V. Conclusion

[45] On the basis of the above analysis, which concludes that each of the RPD's implausibility findings are not made in accordance to law, I find that the decision under review is patently unreasonable.

ORDER

Accordingly, the RPD's decision is set aside and the matter is referred back to a differently constituted panel for re-determination.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-709-07

STYLE OF CAUSE: ISAKOVA INGA ISAKOVA a.k.a. INGA
BORISOVNA ISAKOVA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 23, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: FEBRUARY 4, 2008

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