

Date: 20081017

Docket: IMM-637-08

Citation: 2008 FC 1177

Ottawa, Ontario, October 17, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

Sabah EL HAGE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated January 16, 2008, that the applicant is not a “Convention refugee” or a “person in need of protection” within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act* (the IRPA).

II. Facts

[2] The applicant, a Muslim Shiite born in 1959, is a citizen of Lebanon and lived in Haret Hrayk, a suburb of Beirut. She has two sons and three daughters. Her husband and all but one of her children are still in Lebanon. She has never had a job and completed four years of schooling.

[3] On March 25, 2006, the applicant received a visa for a six-month period and came to Canada in order to help her daughter, a Canadian citizen, who had just had a baby. She lived in Canada longer than expected because of the war that broke out between the Hezbollah and Israel.

[4] In September 2006, after this conflict, when the applicant was preparing to return home, she received a call from one of her children in Lebanon. She was told that their house had been damaged in the war; that her husband and sons had been interrogated and violently beaten by the Hezbollah, who believed that they were spying for the Americans. She was told that her husband had become mentally ill, that he was hitting his children and that he had threatened to harm the applicant in the event of her return to Lebanon.

[5] The applicant therefore did not return to Lebanon when her visa expired. After she explored the possibility of being sponsored by her daughter's husband, without success, she applied for refugee protection on October 12, 2006. She says that she fears persecution at the hands of her violent husband based on the lack of state protection in Lebanon in regard to domestic violence. She is seeking Canada's protection based on her membership in a particular social group, namely

[TRANSLATION] “female Shiite victims of domestic violence” and on “a risk to life or of cruel and unusual treatment or punishment.”

[6] On January 16, 2008, the panel made a negative determination on the applicant’s refugee claim. This decision is the subject of this application.

III. Impugned decision

[7] The panel refused the refugee claim in essence on the following grounds:

1. The five-month delay in seeking protection. The applicant should have applied for protection upon her arrival in Canada rather than waiting until her status became illegal and exploring the possibility of sponsorship. This cast doubt on her fear of return;
2. Throughout the hearing, the claimant’s testimony was extremely confusing, vague and often contradictory, particularly with respect to her husband’s behaviour toward her;
3. The grounds raised by the applicant were economic. The evidence established that if the applicant had had the means, her husband would be hospitalized and she would rent an apartment with her children. Accordingly the panel determined that “the claimant invented the story of domestic violence in order to solve her family’s problems.”

[8] The panel determined that “the evidence that the claimant submitted is insufficient to establish that, should she return to her country, she would face a reasonable possibility of persecution.”

IV. Issues

[9] The applicant raises the following issues:

1. Did the Board make an unreasonable decision in determining that the applicant was not credible, that her fear of persecution was not properly founded; or that she would not be subjected to “a risk to life or of cruel and unusual treatment or punishment”?
2. Did the Board err in failing to analyze all of the evidence in the record?
3. Did the Board err in failing or neglecting to specify the reasons for its refusal?

V. Standard of review

[10] It is the panel’s jurisdiction to assess the evidence and a certain deference is required on judicial review. Determinations of fact and credibility are reviewable according to the reasonableness standard. See *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[11] The adequacy of the reasons is an issue which involves a breach of procedural fairness. The case law is consistent that such issues are reviewable according to the correctness standard. See *Olson v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 458, [2007] F.C.J. No. 631 (Lexis), at paragraph 27.

VI. Analysis

[12] The applicant’s application for protection is based on her fear of persecution at the hands of her violent spouse. The panel did not believe her and determined that she invented a domestic violence story in order to settle her family’s economic problems. The applicant’s credibility is therefore determinative of the application. According to the panel, the applicant is not credible for

the following reasons: her testimony was very confused, vague and often inconsistent, particularly in respect to her husband's behaviour toward her. Credibility was also undermined by the fact that it took her almost five months to seek Canada's protection and by the fact that she considered sponsorship. These are the only grounds found in the panel's decision to explain the rejection of the applicant's story. For the reasons that follow, I am of the opinion that these reasons are not adequate to justify the rejection of the applicant's story.

[13] On the issue of delay, the case law tells us that the element of delay depends on the circumstances of each case and that the more inexplicable the delay, the greater the probability that subjective fear is absent: *Espinosa v. M.C.I.*, 2003 FC 1324 at paragraph 5. The panel was then entitled to consider the delay, but had to do so while considering all of the evidence. In this case, the applicant had explained that she had no intention of claiming refugee status before the war began. It was not until after her children called in September, the precipitating event, that she decided in October to seek the protection of Canada as a sur place refugee. This explanation was not accepted by the panel. It was simply noted that there had been a five-month delay. The panel was led to "strongly doubt" that the applicant feared returning to her country based on this delay. In my opinion, the panel erred in not specifically addressing the applicant's explanation on the issue of the delay. This explanation could have affected the panel's finding.

[14] In regard to the applicant's efforts to explore sponsorship, I am of the opinion that this is an indirect issue that does not help much in the assessment of her subjective fear. I have difficulty seeing how these steps, in the circumstances, could undermine her subjective fear. The evidence establishes that she was simply seeking the best means to avoid removal.

[15] The panel stated in its reasons that the applicant's testimony had been extremely confused, vague and often inconsistent. On reading the transcript of the hearing before the panel, I can identify only one significant inconsistency. In fact, counsel for the respondent recognized that this was indeed the case. It involves two answers given following certain questions asked by the member at the hearing. I refer to the relevant passages of the transcript below:

[TRANSLATION]

By the member (addressing the claimant)

Q. Was this the first time in . . . in your opinion, that your husband had experienced a nervous breakdown?

A. No, he was not like that. Before, he was gentle.

- Before, he was gentle.

A. It was . . . he had . . . the episodes were shorter, milder, but after the war, he became hysterical.

Q. So, it was the state of war that made him hysterical?

A. They, his children, never saw him in that state before, pulling knives, threatening, and when your mother comes, I will kill her.

Q. Do you think he was angry with you because you were here during the war while he was alone in Beirut?

A. Before, he was violent with me, but never to the point where he would pull a knife and threaten to kill me.

Q. But you did not answer my question. The fact that he threatened to kill you after the war, was it because he was angry with you because you were not there with him during the war?

A. No.

[Emphasis added.]

[16] Although it is difficult to reconcile these two responses that are underlined, it is obvious on reading the entire transcript that the applicant always maintained that she had been abused by her husband in the past, but it was upon the precipitating event that she feared for her life. I am not persuaded that this amounts to a determinative inconsistency. This one and only “significant” inconsistency in the transcript, which is some 43 pages long, is not at all in itself sufficient to justify rejecting the applicant’s story. I am therefore of the opinion that the panel’s finding to the effect that “the claimant invented the story of domestic violence in order to solve her family’s problems” is unreasonable. It is a finding that is not supported by the evidence.

[17] The panel also stated that the applicant’s case was “economic”. It appears that the panel found that since she did not have the financial means to leave the conjugal home or to have her husband hospitalized, her allegations were therefore not credible, especially since she was an economic refugee. For the reasons that follow and the evidence in the record, I am of the opinion that this finding by the panel was unreasonable.

[18] In the record there is abundant documentary evidence on the situation in Lebanon addressing domestic violence with respect to women and poverty. This evidence establishes that when women report incidents of domestic violence, the police often ignore their complaint and in some cases female victims of domestic violence are bound by the order of certain religious tribunals to return home. The evidence also establishes that there is no agency in Lebanon to which female victims of domestic violence can turn. Considering the importance that the panel assigned to the applicant’s financial position and her economic circumstances, this documentary evidence becomes

significant and the panel had to expressly consider it, if only to assess the plausibility of the applicant's testimony in the context of the situation in Lebanon on the issue of state protection for female victims of domestic violence. In failing to carry out this analysis, the panel did not put the applicant's allegations in the context of the socio-economic reality of the country and specifically that of female victims of domestic violence in Lebanon. Considering the importance of this documentary evidence, I can only find that the panel made a decision without taking into account the evidence before it.

VII. Conclusion

[19] For these reasons, the application for judicial review will be allowed. The matter will be referred to the Refugee Division for reconsideration by a differently constituted panel in accordance with these reasons.

[20] The parties did not propose a serious question of general importance for certification as contemplated under paragraph 74(d) of the IRPA. I am satisfied that such a question is not raised in this case. No question will therefore be certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for review be granted. The matter will be referred to the Refugee Division for reconsideration by a differently constituted panel in accordance with these reasons.
2. No serious question of general importance be certified.

“Edmond P. Blanchard”

Judge

Certified true translation

Kelley Harvey, BA, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-637-08

STYLE OF CAUSE Sabah EL HAGE v. MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 17, 2008

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

DATE OF REASONS: October 17, 2008

APPEARANCES:

Stéphane Hébert
514-845-5660

FOR THE APPLICANT

Suzanne Trudel
514-283-2327

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphane Hubert

FOR THE APPLICANT

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

FOR THE RESPONDENT