

Date: 20090925

Docket: IMM-674-09

Citation: 2009 FC 966

Ottawa, Ontario, September 25, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

AYSHA HASEEN

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 (IRPA) of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) dated January 20, 2009, wherein it was determined that the applicant was not a Convention refugee and not a person in need of protection.

[2] Ms. Aysha Haseen is a 30 year old citizen of Pakistan seeking Canada's protection based on membership in a particular social group, her gender as a woman, pursuant to sections 96 and 97(1)(b) of IRPA. For the reasons that follow, the application will be dismissed.

Background

[3] The applicant claims to have been born to a fundamentalist Muslim family. When she was 18 years of age (in 1996) her parents arranged for her to marry a man who was then in his 40's. The applicant did not want this and expressed a desire to continue her studies. Her father, an educator, agreed to delay the marriage until she finished her degree. After completing her undergraduate degree, she obtained professional qualifications as an accountant and was hired by a non-governmental organization that arranged micro loans for women.

[4] In 2005, after confessing of her love for another man and refusing to marry the fiancé chosen by her father, the applicant claims to have been assaulted with an iron rod and boiling water by her brother, parents and the fiancé. According to the applicant, her family has made it a matter of family honour and threatened to kill her if she did not go through with the marriage.

[5] The applicant claims that she went to the police on three occasions but her complaint was dismissed as not serious. According to the applicant, a family member had gone to the police and paid a bribe to prevent them from assisting her.

[6] In 2006, the applicant was nominated to attend a conference in Halifax. She obtained a visa for that purpose. Upon arriving in Canada, she travelled to Toronto and made a claim for protection. In 2007, she married another Pakistani man in Canada, who, tragically, died a few weeks later from a brain tumour. Her husband's family in blames her for the death and wants nothing to do with her. She fears returning to Pakistan as an unaccompanied woman without the support of either her own family or that of her deceased husband.

Decision Under Review

[7] The Board concluded that the applicant was neither a Convention refugee nor a person in need of protection. On a balance of probabilities, the Board concluded that the applicant did not have a well-founded fear of persecution for a Convention ground in Pakistan. The determinative issue in regard to Ms. Haseen's claim was a lack of credibility.

[8] The Board drew negative inferences from the applicant's explanation of her parent's behaviour when she obtained identity documents, including a driver's license and passport, bearing photographs of her without a hijab or head-scarf. The Board found it implausible that the applicant obtained these documents with her mother's assistance and that the father merely scolded her for appearing in the photographs without a head covering. The Board considered that the applicant displayed confidence and assertiveness when she described the way she had her driver's license picture taken. The Board also noted that the applicant decided on her own to come to Canada, without permission from her family.

[9] For those reasons, the Board found it implausible, on the balance of probabilities, that the applicant suffered “physical abuse and inhumane treatment” at the hands of a fundamentalist Muslim family. In making this finding, the member took the Board’s Gender Guidelines into consideration. Consequently, the member concluded that there was not a serious possibility that the applicant would face persecution on the basis of her gender in Pakistan. As a result, the applicant was determined not to be a person in need of protection.

Issues

[10] The sole issue is whether the tribunal erred in its assessment of the applicant’s credibility.

Analysis

[11] Findings of credibility are "quintessentially findings of fact": see *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, [2003] S.C.J. No. 18 at para. 38. Since *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, [2008] S.C.J. No. 9, it has been held that a Board’s decision concerning questions of fact and credibility are reviewable upon the standard of reasonableness: *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515.

[12] The Board’s credibility analysis is central to its role as a trier of fact. As such, these findings are to be given significant deference by the reviewing Court. The Board’s credibility findings should stand unless its reasoning process was flawed and the resulting decision falls outside the

range of possible, acceptable outcomes which are defensible in respect of the facts and the law, *Dunsmuir*, above at paragraph 47.

[13] In a case such as this one, there might be more than one reasonable outcome. However, as long as the process adopted by the Board and its outcome fits comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome: *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, [2009] S.C.J. No. 12 at para. 59.

[14] The applicant argues based on *Ponniah v. Canada (Minister of Employment and Immigration) (FCA)*, 13 Imm. L.R. (2d) 241, [1991] F.C.J. No. 359, that she does not have to prove that persecution would be more likely than not. The applicant has to establish “good grounds” or “reasonable chance”.

[15] The applicant relies on *Attakora v. Canada (Minister of Employment and Immigration) (FCA)*, 15 A.C.W.S. (3d) 344, [1989] F.C.J. No. 444 and *Frimpong v. Canada (Minister of Employment and Immigration) (FCA)*, 8 Imm. L.R. (2d) 183, [1989] F.C.J. No. 441 to argue that minor or peripheral inconsistencies in her evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of her story.

[16] The respondent urged the Court to distinguish the applicant’s argument from the case at bar. In this case, it is the entire story of the applicant which was found to be not credible and it was not a question of minor peripheral inconsistencies. Consequently, it was reasonable for the Board to find

that there was no credible evidence of an objective fear of persecution or a risk to her life or a risk of cruel and unusual treatment or punishment.

[17] The member's credibility findings should stand because the record does not indicate a flawed process and the decision did not fall outside the range of possible and acceptable outcomes: *Dunsmuir*, above at paragraph 47.

[18] The Board member provided extensive reasons that resonate principles of justification, transparency and intelligibility and it is not open to this Court to review or substitute its own view of a preferable outcome: *Khosa*, above at paragraph 59.

[19] I agree with the respondent's submission that the Board's decision should not be subject to a microscopic analysis. This Court should read the Reasons of the Board as a whole: *Elezaj v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 234, [2009] F.C.J. No. 278 at para. 5; *Osaru v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1656, [2005] F.C.J. No. 2109 at para. 6.

[20] While I might have arrived at a different conclusion, the Board had the benefit of hearing the applicant's evidence directly and the decision overall was within the range of acceptable outcomes. Accordingly, I must dismiss the application. No questions were proposed for certification.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. There are no questions to certify.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-674-09

STYLE OF CAUSE: AYSHA HASEEN

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2009

REASONS FOR JUDGMENT: MOSLEY J.

DATED: September 25, 2009

APPEARANCES:

Peter Wuebbolt FOR THE APPLICANT

Daniel Engel FOR THE RESPONDENT

SOLICITORS OF RECORD:

PETER WUEBBOLT FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario