F ederal Court		Cour fédérale

Date: 20100126

Docket: IMM-1875-09

Citation: 2010 FC 90

Toronto, Ontario, January 26, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ODETTE BYAJE

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 (RPD) of the Immigration and Refugee Board of Canada (the Board) dated March 4, 2009, wherein it was determined that the applicant was not a Convention refugee and not a person in need of protection. These are my reasons for dismissing the application.

Background

[2] The applicant, Odette Byaje, is a citizen of Rwanda.

[3] The applicant's husband left Rwanda for Canada in October 2002 and was accepted as a Convention Refugee in Montréal, Québec, for reasons unrelated to this application.

[4] In July 2004, when the applicant was working as an assistant to the consul at the United States (US) Embassy in Kigali, Rwanda, four visa applicants were arrested by the local authorities for having submitted false documents to the consulate.

[5] After the four individuals were arrested, the applicant says that she began receiving death threats on her mobile phone at all hours of the day, her home was broken into and the windows were broken, and her security guard was assaulted.

[6] According to the applicant, due to her position at the US Embassy and the popular misconception that she made decisions regarding visa applications, she was targeted for revenge by people linked to the arrested individuals.

[7] The applicant did not report the threats, break-in and property damage to the police or to her Embassy employers. She says that she was warned not to by the callers and had found out that one of the persons who had been arrested had a relative who worked at the Ministry of Information.

[8] The applicant says that she was paralyzed with fear. She left for the United States on August 24, 2004 since she was already in possession of a US visa.

[9] After being refused refugee protection in the United States in September 2004 and seeing her appeal of that decision postponed three times, the applicant came to Canada in December 2007 to make a refugee claim. She did not rejoin her husband, who had not sponsored her to come to Canada as she had been expecting, but went to live with friends in Hamilton, Ontario.

Decision Under Review

[10] The RPD member determined that "revenge" is not a Convention ground and that consequently section 96 of the IRPA is not applicable. He assessed the claim on the basis of paragraph 97(1)(b) of the IRPA: whether the applicant was subject to a risk to life or to a risk of cruel and unusual treatment or punishment.

[11] The member did not believe the story of the applicant for the following reasons:

- Alleging to have received threats due to her position at the US Embassy, the applicant had not reported the threats, break-in and property damage to the Embassy authorities;
- The applicant had not reported the incidents to the police stating at the hearing, that it would not have changed anything and that anyway, she had a US visa. By not reporting to the police, the member found, the applicant is not in a position to demonstrate that the Rwandan authorities are unable/unwilling to protect her;
- The applicant's claim for refugee protection in the US was not supported by any correspondence from the US Embassy in Kigali, as would be expected in the circumstances.

[12] The member had difficulty accepting the applicant's explanations at the hearing. The applicant did not believe that a letter from the US Embassy attesting that she was receiving threats due to her position at the consul's office in Kigali would have been beneficial to her claim for asylum in the US.

[13] Choosing to leave Rwanda because she possessed a US visa, the member found that the applicant was seeking to reunite with her husband in Canada rather than to evade the threats in Rwanda.

[14] The member found that the applicant was not credible.

Issues

[15] The sole issue is whether the Board member's findings regarding plausibility and the overall credibility of the applicant's claim were reasonable?

Analysis

[16] 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; see also *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, [2008] F.C.J. No. 463, at paras. 11-15.

[17] 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*, supra, at para. 47.

[18] 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.

[19] It is a well established principle that the Board need not mention every piece of evidence in its decision. However, it must address the evidence that could have an impact on its decision: *Gajic v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 108, [2003] F.C.J. No. 154, at para. 14. There also exists a presumption that the Board considered all the evidence before it: *Arizaj v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 774, [2008] F.C.J. No. 978, at para. 20, citing: *Florea v. Canada (Minister of Employment and Immigration)* (F.C.A.), Appeal No. A-1307-91, [1993] F.C.J. No. 598.

[20] While I agree with the applicant that the Board member can assess the applicant's testimony according to the RPD's policy document/guidelines of January 2004: "Assessment of Credibility in Claims for Refugee Protection", it is a well established principle that these guidelines are not law and accordingly not binding. The RPD guidelines are of assistance to the Court in reviewing discretionary decisions: *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 307, [2008] F.C.J. No. 429, at para. 10, citing: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457, at para. 20.

[21] I am unable to accept the applicant's argument that since her testimony was not directly questioned by the Board, it is presumed to be truthful: *Maldonado v. Canada (Min of Employment & Immigration)*, [1980] 2 F.C. 302, [1979] F.C.J. No. 248. A presumption of truthfulness exists only in so far as there are no reasons to doubt the truthfulness: *Maldonado,* paragraph 5. In this case, such a reason is that the member found the applicant's story not plausible. Members are entitled to rely on common sense in assessing credibility: *Shahamati v. Canada (Minister of Employment and Immigration)* (F.C.A.), Appeal No. A-388-92, [1994] F.C.J. No 415.

[22] I am also unable to find in the member's reasons comments disclosing that the claimant's testimony was not respected. The testimony was not distorted by the member, as argued by the applicant relying on *Maruthapillai v. Canada (Minister of Citizenship and Immigration)*, (2000), 205 F.T.R. 263, [2000] F.C.J. No. 761, at para. 13. The reasons clearly indicate that the member did not believe the story of Ms. Byaje and had difficulty believing her explanations at the hearing.

[23] I do not find that the member's statement "ça n'aurait rien donné" was a distortion of the applicant's testimony when she explained why she did not complain to the police. Noting that the applicant was fearful of the authorities because one of the persons who had been arrested was alleged to have a relative who worked at the Ministry of Information, the applicant herself answered the tribunal's question with the expression "ça ne sert à rien."

[24] Contrary to the applicant's argument, I do not find that the member's statement above reveals that he erred by ignoring the evidence explaining apparent inconsistencies, such as why the

applicant did not report to the police, before making his adverse credibility finding: *Owusu-Ansah v. Canada (Minister of Employment and Immigration)* (F.C.A.), (1989), 8 Imm. L.R. (2d) 106, [1989] F.C.J. No. 442; cited in *Mohammadi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1028, [2003] F.C.J. No. 1302, at para. 26.

[25] This is also not a case, as was argued, in which the Board erred by requiring documentary evidence to corroborate the claimant's uncontradicted testimony as in: *Ahortor v. Canada (Minister of Employment and Immigration)*, (1993), 65 F.T.R. 137, [1993] F.C.J. No. 705, at para. 50; *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 974, [2007] F.C.J. No. 1267.

[26] I agree with the respondent that the member found that the applicant's actions were not consistent with the events of her story. Consequently, I would agree with Justice Blanchard's reasons in *Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473, [2001] F.C.J. No. 742, at para. 24, indicating that the Board will not err when it requires corroborating documents in circumstances in which it had credibility concerns:

> 24 I accept the contention that this Court has held that the CRDD may err when it requires corroborating evidence to support the claimant's uncontradicted testimony. However, in the circumstances of this case, given the credibility concerns explicitly put to applicants, I am of the opinion that this principle does not apply. The CRDD noted the abundance of and supportive documentary evidence made available to it by the applicants for the earlier years. Given the credibility concerns expressed by the CRDD, it was open to it to draw a negative inference by reason of the fact that the applicants failed to provide any such evidence. [My underlining]

[27] In *Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 442, [2009] F.C.J. No. 534, at para. 15, Justice Beaudry states:

> 15 On numerous occasions, this Court has confirmed that the panel may draw a negative inference because a claimant has not produced corroborative evidence to support his or her testimony when the panel has credibility concerns (*Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473, 105 A.C.W.S. (3d) 725; *Muthiyansa v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 17, 103 A.C.W.S. (3d) 809; *Dhindsa v. Canada (Minister of Citizenship and Immigration)*, 102 A.C.W.S. (3d) 165, [2000] F.C.J. No. 2011 (F.C.T.D.) (QL); *Quichindo v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 350, 115 A.C.W.S. (3d) 680). [My underlining]

[28] I am also unable to give weight to the applicant's argument that the member erred by requiring corroborative documents as in the recent case of *McDowell v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 601, [2009] F.C.J. No. 786. In *McDowell*, it is noted, at paragraph 49, that it was a case wherein the applicant's credibility was not questioned.

[29] It was reasonable and within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law, for the Board member not to refer to (1) the medical certificate and to (2) the letter from the social worker in his decision as these documents would not have materially altered the negative credibility findings: *Dunsmuir*, supra, at para. 47.

[30] With regards to the medical certificate, I agree with the respondent that it pertained to the applicant's security guard who was injured during the alleged break-in in July 2004. The document does not directly pertain to the applicant. Further, the medical certificate indicating that the security guard needed to rest from July 15 to July 30, 2004 is inconsistent with the applicant's PIF stating

that the break-in occurred during the last week of July. As the medical certificate was not directly probative of the applicant's claim, it was reasonable for the member not to discuss it in his reasons.

[31] It was also reasonable for the member to omit a reference to the letter from the social worker of the Hamilton Health Centre, some four years after she had left Rwanda. While the letter states that the applicant has symptoms that would appear to be those of post-traumatic stress disorder (PTSD) due to a troubled past before her arrival in Canada, it does not bolster the applicant's credibility. This letter does not consist of a diagnosis but is merely a reflection of the applicant's claim as reported to the social worker. It was not necessary for the member to refer to it.

[32] I find another inconsistency in the applicant's PIF when she stated that she was not threatened prior to 2004. This statement undermines her claim that she had reported threats to the US Embassy in 2000-2001 and was told they could not protect her at home. However, I note that the member did not elaborate on this in his analysis.

[33] In considering (a) that the applicant did not speak to her employer (the US Embassy) about the threats received in July 2004 due to her position at the Embassy; (b) that the applicant did not complain to the police when her house was broken into; (c) that the applicant did not think it would have been useful to have a letter from the Embassy stating her problems to support her application for refugee protection in the United States before seeking protection in Canada, it was a reasonable outcome for the Board member to determine that the applicant was not a person in need of protection.

[34] Having found that the decision of the member was a reasonable result in this case, it is not open to this Court to substitute its own view of a preferable outcome: *Khosa*, supra, at para. 59.

[35] 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

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