

Federal Court



Cour fédérale

Date: 20100423

Docket: IMM-2921-09

Citation: 2010 FC 445

Ottawa, Ontario, April 23, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MABEL HIGBOGUN

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated May 20, 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of both Italy and Nigeria. She moved from Nigeria to Italy in 1997. In 1999, she became romantically involved with Mr. Pace, the owner of her dwelling in Verona, Italy. The Applicant married Mr. Pace in 2001. His children were opposed to the marriage because of the age difference between their father (69) and the Applicant (26).

[3] The Applicant's marriage deteriorated over time. Mr. Pace drank excessively and became verbally and physically abusive. In 2005, an incident occurred in which the Applicant was slapped and beaten by her husband and his children. The Applicant hid at a friend's house, but returned home soon thereafter when her husband threatened to withdraw his sponsorship for Italian citizenship.

[4] The Applicant became an Italian citizen in August, 2005. Around this time she began having an affair with Mr. Uyi, who she had met while staying with a friend. The Applicant discovered she was pregnant with Mr. Uyi's baby. Upon learning of this pregnancy, her husband threatened to kill her if the baby was not his. The Applicant was concerned because Mr. Pace had connections to the mafia.

[5] Because of the pregnancy, the Applicant was also threatened by Mr. Uyi and her father. She felt she could not return to Nigeria. She came to Canada on December 13, 2007 and made a refugee claim shortly thereafter.

DECISION UNDER REVIEW

[6] The RPD focused its reasons and Decision on the Applicant's experiences in Italy. The RPD's determination centered on an adverse finding of credibility.

[7] The RPD determined that there were "a number of serious discrepancies" between the Applicant's oral testimony, her Personal Information Form (PIF), and other evidence. One such example of these inconsistencies occurred when the Applicant failed to mention the allegedly "severe injuries" she sustained at the hands of her husband and his children in her PIF. According to the RPD, "if [she] had been severely injured during the incident, I would have expected her to mention that in the PIF." Moreover, the RPD found that the Applicant was evasive in giving testimony, and required that questions be repeated before providing an answer.

[8] Furthermore, the Applicant failed to mention Mr. Pace's mafia connections to the immigration officer upon her arrival to Canada in December, 2007; nor did she mention these connections in her original PIF filed in 2008, or the PIF amendments filed by her former counsel. Rather, the alleged mafia connections were not mentioned until July, 2008. The RPD was not satisfied with the Applicant's explanation that she had told her counsel about this information and "thought that it had been mentioned," since this aspect became one of the most significant parts of her claim after it had been brought to light. With regard to this omission from the PIF, the RPD found that "to not notice, or notice, and then not insist on an immediate correction, the total

omission of the very basis for the ability of the alleged agent of persecution to hurt her makes absolutely no sense at all.”

[9] The RPD also had doubts as to the existence of the Applicant’s friend Juliet, since Juliet is not an Italian name, despite the usage of the name in the “famous story ‘Romeo and Juliet’” which is set in Verona. After some hesitation, the Applicant gave an African surname for her friend Juliet, but was not able to explain why she could not provide the name immediately when asked.

[10] When asked why she did not call the police, the Applicant stated that Mr. Pace “knew people” in the police. The RPD noted that this had not been mentioned in any “version of her story.” The Applicant, however, stated that she meant that Mr. Pace “was in the mafia and had connections everywhere.” The RPD was not satisfied by this explanation.

[11] The Applicant stated in oral testimony that Juliet made all the arrangements for her to flee Italy and took her to the airport. However, the Applicant told the immigration officer upon arrival in Canada that Mr. Pace had taken her to the airport. When asked to explain this discrepancy, the Applicant stated that since the immigration officer had become suspicious about her travelling without her spouse during the holidays while pregnant, she made up the fact that Mr. Pace took her to the airport. In response to the RPD’s determination that suspicions had not arisen until later in the interview with the immigration officer, the Applicant explained that she was scared at the time. The RPD did not understand why the Applicant felt the need to lie with regard to who had taken her to the airport if the immigration officer had not yet become suspicious of her.

[12] Furthermore, while the Applicant stated that she was told to flee to Canada to make a refugee claim, she did not make a claim immediately upon her arrival. Rather, she said that she was coming for a visit. The RPD noted that it was only after being detained for some time that she filed a refugee claim. The RPD was not convinced by the Applicant's explanation that Juliet had told her not to make a claim at the airport and that she was scared of being deported.

[13] The Applicant's counsel conceded that everything the Applicant told the immigration officer upon her arrival in Canada was false. The RPD found that the Applicant "attempted to adopt at least some of this false information in her own testimony before me," including an instance in which the Applicant "lied repeatedly to the immigration officer and then attempted to explain the lies with an explanation that just does not make sense" with regard to an alleged acquaintance.

[14] The Applicant also provided a letter that was allegedly written by her father. The RPD did not find this letter credible because of its friendly tone at the beginning which then "degenerates into death threats." Other aspects of the letter were suspicious to the RPD as well, including the way in which Mr. Pace's name was written, and a typographical error within the letter which read "this is the voice of my your father Paul." The RPD found that it appeared that the Applicant had written the letter herself and had forgotten to erase the word "my" with reference to her father. It held that the letter was a forgery.

[15] Although the Applicant's counsel explained that any difficulties with regard to the Applicant's testimony should be considered in light of the abuse she faced in Nigeria, the RPD

found that “no actual medical evidence was presented” to corroborate the Applicant’s story of having her genitals mutilated and having her father pour scalding water over her during this procedure. Rather, only a photograph of the Applicant with a substance smeared on her thighs was presented to the RPD. Furthermore, the RPD noted that “no independent psychological evidence was presented to show that the [Applicant] would have any difficulty in testifying at the hearing, or have difficulty in telling her story.”

[16] In summary, the RPD concluded as follows:

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to major issues, I find the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened.

ISSUES

[17] The issues on the application can be summarized as follows:

1. Whether the RPD erred in its consideration of the Applicant’s evidence and in making an adverse finding of credibility;
2. Whether the RPD erred in failing to consider the Gender Guidelines.

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence

subject them personally	habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de

is also a person in need of protection.

personnes auxquelles est reconnu par règlement le besoin de protection.

[19] The following provisions of the Guidelines Issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*, Guideline 4: “Women Refugee Claimants Fearing Gender-Related Persecution” are also applicable to these proceedings:

A. DETERMINING THE NATURE AND THE GROUNDS OF THE PERSECUTION

...

I. GENERAL PROPOSITION

Although gender is not specifically enumerated as one of the grounds for establishing Convention refugee status, the definition of Convention refugee may properly be interpreted as providing protection for women who demonstrate a well-founded fear of gender-related persecution by reason of any one, or a combination of, the enumerated grounds.

Before determining the appropriate ground(s) applicable to the claim, decision-makers must first identify the **nature** of the persecution feared by the claimant.

A. DÉTERMINATION DE LA NATURE ET DES MOTIFS DE LA PERSÉCUTION

...

I. PROPOSITION GÉNÉRALE

Même si le sexe n'est pas mentionné de façon explicite comme l'un des motifs permettant d'établir le statut de réfugié au sens de la Convention, la définition de *réfugié au sens de la Convention* peut être interprétée à bon droit de façon à protéger les femmes qui démontrent une crainte justifiée de persécution fondée sur le sexe pour l'un des motifs énumérés ou une combinaison de ceux-ci.

Avant de déterminer le ou les motifs qu'il convient d'appliquer dans un cas donné, les décideurs doivent d'abord préciser la **nature** de la persécution que la revendicatrice redoute.

Generally speaking, women refugee claimants may be put into four broad categories, although these categories are not mutually exclusive or exhaustive:

Women who fear persecution on the same Convention grounds, and in similar circumstances, as men. That is, the risk factor is not their sexual status, per se, but rather their particular identity (i.e. racial, national or social) or what they believe in, or are perceived to believe in (i.e. religion or political opinion). In such claims, the substantive analysis does not vary as a function of the person's gender, although the nature of the harm feared and procedural issues at the hearing may vary as a function of the claimant's gender.

Women who fear persecution solely for reasons pertaining to kinship, i.e. because of the status, activities or views of their spouses, parents, and siblings, or other family members . Such cases of "persecution of kin" typically involve violence or other forms of harassment against women, who are not themselves accused of any antagonistic views or political convictions, in order to pressure

Généralement, les revendicatrices du statut de réfugié peuvent être classées en quatre grandes catégories, bien que ces catégories ne soient pas mutuellement exclusives ou exhaustives:

Les femmes qui craignent d'être persécutées pour les mêmes motifs et dans les mêmes circonstances que les hommes. Dans ce cas-ci, le facteur de risque ne réside pas dans leur sexe en tant que tel, mais plutôt dans leur identité particulière (sur les plans racial, national ou social) ou dans leurs croyances, imputées ou véritables (c'est-à-dire leurs croyances religieuses ou leurs opinions politiques). Dans ces cas, l'analyse essentielle ne varie pas en fonction du sexe de la personne, mais la nature du préjudice redouté et les questions de procédure à l'audience peuvent varier.

Les femmes qui craignent d'être persécutées uniquement pour des motifs liés à la parenté, c'est-à-dire en raison du statut, des activités ou des opinions de leurs conjoints, père et mère, et frères et soeurs, ou autres membres de leur famille. Dans ces cas de « persécution de la parenté », les femmes craignent habituellement que l'on commette des actes de violence à leur endroit ou

them into revealing information about the whereabouts or the political activities of their family members. Women may also have political opinions imputed to them based on the activities of members of their family.

Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons. In the refugee law context, such discrimination may amount to persecution if it leads to consequences of a substantially prejudicial nature for the claimant and if it is imposed on account of any one, or a combination, of the statutory grounds for persecution. The acts of violence which a woman may fear include violence inflicted in situations of **domestic violence**² and situations of **civil war**.³

Women who fear persecution as the consequence of failing to

d'autres formes de harcèlement sans qu'elles soient elles-mêmes accusées d'avoir des opinions ou convictions politiques opposées, pour les inciter à révéler des renseignements concernant les allées et venues ou les activités politiques des membres de leur famille. Elles peuvent également se faire attribuer des opinions politiques en raison des activités des membres de leur famille.

Les femmes qui craignent d'être persécutées à la suite de certains actes de grave discrimination sexuelle ou d'actes de violence de la part des autorités publiques ou même de citoyens privés, lorsque l'État ne veut pas ou ne peut pas les protéger de façon appropriée. Dans le contexte du droit des réfugiés, cette discrimination peut équivaloir à de la persécution, si elle cause un grave préjudice pour la revendicatrice et qu'elle est imposée en raison de l'un des motifs de persécution énumérés dans la loi ou d'une combinaison de ceux-ci. Les actes de violence qu'une femme peut redouter comprennent les situations de **violence familiale** et de **guerre civile**.

Les femmes qui craignent d'être persécutées pour avoir violé certaines

conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin.

Such laws and practices, by singling out women and placing them in a more vulnerable position than men, may create conditions for the existence of a **gender-defined social group.**

The religious precepts, social traditions or cultural norms which women may be accused of violating can range from choosing their own spouses instead of accepting an arranged marriage, to such matters as the wearing of make-up, the visibility or length of hair, or the type of clothing a woman chooses to wear.

...

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:

Women from societies

coutumes, lois et pratiques religieuses discriminatoires à l'endroit des femmes dans leur pays d'origine.

En isolant les femmes et en les plaçant dans une position plus vulnérable que les hommes, ces lois et pratiques peuvent créer des conditions préalables à l'existence d'un **groupe social défini par le sexe.** Les préceptes religieux, traditions sociales ou normes culturelles que les femmes peuvent être accusées de violer sont variés, qu'il s'agisse du choix de leur propre conjoint plutôt que de l'obligation d'accepter un mariage imposé, du maquillage, de la visibilité ou de la longueur des cheveux ou du type de vêtements qu'elles choisissent de porter.

...

D. PROBLÈMES SPÉCIAUX LORS DES AUDIENCES RELATIVES À LA DÉTERMINATION DU STATUT DE RÉFUGIÉ

Les femmes qui revendiquent le statut de réfugié font face à des problèmes particuliers lorsque vient le moment de démontrer que leur revendication est crédible et digne de foi. Certaines difficultés peuvent survenir à cause des différences culturelles. Ainsi,

Les femmes provenant

where the preservation of one's virginity or marital dignity is the cultural norm may be reluctant to disclose their experiences of sexual violence in order to keep their "shame" to themselves and not dishonour their family or community.

Women from certain cultures where men do not share the details of their political, military or even social activities with their spouses, daughters or mothers may find themselves in a difficult situation when questioned about the experiences of their male relatives.

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. 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

de sociétés où la préservation de la virginité ou la dignité de l'épouse constitue la norme culturelle peuvent être réticentes à parler de la violence sexuelle dont elles ont été victimes afin de garder leur sentiment de « honte » pour elles-mêmes et de ne pas déshonorer leur famille ou leur collectivité.

Les femmes provenant de certaines cultures où les hommes ne parlent pas de leurs activités politiques, militaires ou même sociales à leurs épouses, filles ou mères peuvent se trouver dans une situation difficile lorsqu'elles sont interrogées au sujet des expériences de leurs parents de sexe masculin.

Les revendicatrices du statut de réfugié victimes de violence sexuelle peuvent présenter un ensemble de symptômes connus sous le nom de syndrome consécutif au traumatisme provoqué par le viol³⁰ et peuvent avoir besoin qu'on leur témoigne une attitude extrêmement compréhensive. De façon analogue, les femmes qui ont fait l'objet de violence familiale peuvent de leur côté présenter un ensemble de symptômes connus sous le nom de syndrome de la femme battue et peuvent hésiter à témoigner. Dans certains cas, il conviendra de se demander si la revendicatrice devrait être

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*.

autorisée à témoigner à l'extérieur de la salle d'audience par affidavit ou sur vidéo, ou bien devant des commissaires et des agents chargés de la revendication ayant reçu une formation spéciale dans le domaine de la violence faite aux femmes. Les commissaires doivent bien connaître les *Lignes directrices pour la protection des femmes réfugiées* publiées par le comité exécutif du HCR.

STANDARD OF REVIEW

[20] Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] The RPD's findings of credibility are to be reviewed on a standard of reasonableness. See *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732. The RPD is also entitled to considerable deference with regard to its assessment of the evidence. This is a fact-based question which is to be reviewed on a standard of reasonableness. See *Dunsmuir* at paragraph 51.

[22] The Applicant alleges that the RPD failed to consider her claim in the context of the Gender Guidelines issued by the Chairperson pursuant to section 65(3) of the Act, concerning Women Refugee Claimants Fearing Gender-Related Persecution, dated March 9, 1993 (the Gender Guidelines). In the context of an assessment of credibility, the consideration of the Guidelines “become[s] subsumed in the standard of review of reasonableness as applied to credibility findings.” See *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 106, [2009] F.C.J. No. 109 at paragraph 11. As such, this issue will be considered on a standard of reasonableness.

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

Unreasonable Examination of Evidence

[24] With regard to Mr. Pace's connections to the Mafia, the Applicant explained that this information had been shared with her former counsel. This evidence was not contradicted.

[25] The RPD erred by ignoring uncontradicted evidence from the Applicant that supported a well-founded fear of persecution. See, for example, *Chandra v. Canada (Minister of Employment and Immigration)*, 58 N.R. 214, [1985] F.C.J. No. 123. The RPD also erred in disbelieving her evidence simply because she did not immediately provide a last name for Juliet.

[26] The hearing occurred at a tumultuous time in the Applicant's life. Moreover, she was scared. Because of her fear of her husband's mafia connections, the Applicant was precluded from contacting the Italian police. The Applicant was also frightened by the white authorities because she believed there to be "a lot of racism in Italy."

[27] The RPD did not examine the Applicant's evidence in a fair way. Rather, it examined the evidence in a microscopic and selective fashion, and misconstrued the evidence before it.

[28] The RPD considered the letter written by the Applicant's father in assessing her credibility. The RPD noted the "bizarre shift in the tone of the letter," and the reversal of the first and last

names of the Applicant's spouse. The Applicant explained to the RPD that her father was angry with her for dishonouring the family. The Applicant's counsel also explained that the Applicant's father was not educated. Regardless, the RPD did not accept the explanation given by the Applicant or her counsel and determined that the document was a forgery and written by the Applicant herself. In making this finding, however, the RPD neglected to consider that the Applicant had provided the envelope in which the letter was received, which clearly originated from Nigeria.

[29] While a board is presumed to have considered all of the evidence before it, it must nonetheless refer to evidence which is directly contrary to its finding. See *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425; and *Garcia v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 807, [2005] F.C.J. No. 1008. The RPD erred by failing to acknowledge the origin of the letter as being from Nigeria.

[30] Moreover, in concluding that the letter was forged, the RPD failed to appreciate that "individuals' level of education, customs, traditions and social norms differ greatly from those in North America." The RPD neglected to consider how these differences might account for the concerns it had with regard to the authenticity of the letter.

Gender Guidelines Not Considered

[31] The RPD did not consider the Applicant's evidence in the context of the Gender Guidelines. It was difficult for the Applicant to relive the trauma she experienced in Italy. As such, she did not provide the full extent of her injuries in her PIF.

[32] The RPD's examination of the Applicant's evidence demonstrates that it did not consider this evidence in the context of a vulnerable woman. In its assessment of the evidence, the RPD should have considered factors such as the Applicant's psychological condition, her young age, and her vulnerable circumstances as an abused woman. Similarly, in the case of *Ogbebor v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 490, [2001] F.C.J. No. 770, the Court found that it was an error for a tribunal to ignore a psychologist's evidence of the claimant's shame and to criticize the claimant for not mentioning a rape that took place while he was in detention.

[33] The Applicant submits that the RPD erred in failing to properly consider all of the evidence before it. See, for example, *Djama v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 531.

The Respondent

Lack of Credibility

[34] The RPD made a reasonable finding that the Applicant lacked credibility based on the omissions and contradictions in her evidence as well as her demeanour at the hearing. Additionally, the RPD noted a lack of supporting evidence and the low probative value of the evidence provided.

[35] The Applicant failed to include pieces of information that were crucial to her claim in her PIF, despite the fact that she filed two PIF amendments prior to her hearing.

[36] The Applicant then made statements of fact in her oral testimony that had not been disclosed in her PIF. The hearing is not intended to be an opportunity to disclose new issues or facts, but simply to explain the information found in the PIF. See *Basseghi v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867; *Jeyaraj v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 88, [2009] F.C.J. No. 99. The Applicant failed to disclose important facts prior to the hearing despite having being given ample opportunity to do so.

[37] Furthermore, the RPD found the Applicant's explanations for her numerous omissions were not credible. The Applicant's omissions, including the serious nature of her injuries, Mr. Pace's mafia connections, and Mr. Pace's connections to the police, were of great importance to her claim. The Respondent submits that, considering the importance of these facts, it was reasonable for the RPD to consider such omissions in determining that the Applicant lacked credibility. See, for

example, *Grinevich v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 444; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 536.

[38] The RPD also based its credibility findings on the Applicant's demeanour during the hearing. The RPD noted that the Applicant's testimony was "evasive, unsatisfactory, contradictory, and nonsensical." One such example was the Applicant's contradictory evidence as to who took her to the airport in Italy.

[39] Jurisprudence has held that confusion, a failure to respond to questions, evasions, inconsistencies and contradictions create a perception of a lack of credibility. See, for example, *Mostajelin v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 28; *Tong v. Canada (Secretary of State)*, [1994] F.C.J. No. 479; *De Rouiche v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 946, [2002] F.C.J. No. 1228. The Respondent submits that the RPD's findings with regard to a claimant's demeanour are "unassailable on judicial review in the absence of perverseness." See, for example, *De Rouiche*, above.

[40] Moreover, inconsistencies within a claim may be held against an applicant. See, for example, *Sun v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1255, [2008] F.C.J. No. 1570. In the case at hand, the Applicant provided several pieces of evidence in which she contradicted previous statements made at the port of entry, in her PIF, and in her previous testimony before the RPD.

[41] The RPD considered the Applicant's inconsistent statements in determining her credibility and clearly identified which elements of her testimony were inconsistent. Based on the numerous inconsistencies that it identified, the RPD's finding that the Applicant lacked credibility was reasonable. See, for example, *Yu v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 720, [2003] F.C.J. No. 932.

[42] The RPD also drew negative inferences from the Applicant's lack of corroborating evidence with regard to the damage sustained to her eye and her claim of female genital mutilation. With regard to her eye, the Applicant could have provided photographs of her eye or a medical report. While the Applicant may have experienced trauma due to the genital mutilation, the Applicant failed to provide any psychological evidence that she "would have any difficulty in testifying at the hearing or have any difficulty in telling her story in any of the previous opportunities."

[43] The RPD is entitled to seek corroborating evidence when an applicant's evidence is in question and is unsupported. See, for example *Sinnathurai v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 2003, [2007] F.C.J. No. 1437. While there is no legal requirement to provide corroborating evidence, in some factual circumstances it is not unreasonable for the RPD to consider a lack of corroborating evidence in determining the well-foundedness of an applicant's fear. See, for example, *Muthiyansa v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 17, [2001] F.C.J. No. 162.

[44] In this instance, the Applicant did not provide evidence to satisfy the RPD that she was the victim of female genital mutilation. The Applicant provided the RPD with a photograph of her with “orange and black substances smeared on her thighs.” However, the RPD determined that this photograph did not lend “any credence to the Applicant’s claim.”

[45] Moreover, while the Applicant provided the RPD with a letter allegedly written by her father, the RPD determined that this letter had been forged. The RPD made this finding based on many considerations, including the change of tone, the reversal of names, and the inclusion of a suspect sentence within the letter. The RPD was not satisfied with the Applicant’s explanation that her father lacked education to explain “all the errors” contained within the letter. Rather, the RPD determined that the letter cast doubt on both the Applicant’s evidence and her credibility.

[46] While the Applicant argues that the RPD erred in failing to consider the fact that the envelope came from Nigeria, the Respondent submits that the fact that the letter arrived in an envelope from Nigeria “does not disturb the RPD’s finding that the letter was a forgery.” Indeed, the RPD found that the letter was written in a nonsensical fashion that suggested it had been forged. The Applicant also argues that the RPD ignored the existing cultural differences in assessing the letter. While the RPD must consider all evidence in a socially and culturally sensitive manner, it must also determine whether the Applicant has a well-founded fear of persecution (which includes an objective standard). Furthermore, the RPD’s finding with regard to the letter was simply one of several findings of adverse credibility made in this instance.

[47] The RPD weighed the evidence in a reasonable fashion and it is not the Court's prerogative to intervene. Essentially, the Applicant is simply asking the Court to reweigh the evidence before the RPD.

Gender Guidelines Properly Considered

[48] The Gender Guidelines are to be considered by the RPD in the context of a gender-based claim. However, the Guidelines are not binding on the RPD. The Guidelines state that a claimant must demonstrate that the harm feared is "sufficiently serious to amount to persecution."

[49] In this case, there was no psychological evidence of battered women's syndrome, rape trauma syndrome, or post-traumatic stress disorder. As such, the Guidelines were not applicable. Even where there has been evidence of rape trauma syndrome, the Court has determined that the mere existence of the syndrome "does not excuse contradictions or omissions of serious incidents in a claimant's previous statements." See *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1168, [2005] F.C.J. No. 1408 at paragraph 4.

[50] The RPD did not err in failing to consider the Gender Guidelines, since the Applicant did not provide any evidence to demonstrate that the Guidelines ought to be considered in her case. Furthermore, the Guidelines "cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth." See *Newton v. Canada (Minister of Citizenship and Immigration)*, 182 F.T.R. 294, [2000] F.C.J. No. 738 at paragraph 18.

The Respondent submits that in this case, as in any case of a strong adverse credibility finding, it is unnecessary to consider the Guidelines.

ANALYSIS

[51] In the face of what is an almost overwhelming negative finding on credibility, the Applicant has attempted to raise several issues to show that the Decision was unreasonable. She says that the RPD was both “microscopic” with its assessment of the evidence and misconstrued and/or ignored cogent evidence. But the Applicant’s submissions on these issues are notably lacking in examples, except for the issue of the letter from Nigeria. As a result it is difficult for the Court to see what the Applicant means.

[52] As regards the letter from Nigeria which the RPD concluded was a forgery, the Applicant says that the RPD ignored the envelope which showed that the letter came from Nigeria. However, the envelope reveals nothing more than that the envelope came from Nigeria, and it was the peculiarities in the letter itself that caused the RPD to rule that it was forged. The Applicant has not adequately accounted for the strangeness of the letter. Although she has suggested cultural and educational issues to try and explain away the problem, the RPD, not unreasonably, concluded that it did not accept her explanations. Whether or not the letter came from Nigeria, I cannot say that the Board’s conclusions on its authenticity were unreasonable, or that the Board’s failure to specifically mention the envelope and its apparent origin gives rise to a reviewable error.

[53] In any event, the letter is only one issue in a Decision that cites many inconsistencies in evidence and evasiveness in demeanour.

[54] In the end, the Applicant's claim is based on the allegation that the RPD was not alert and alive to her vulnerable circumstances as a woman and failed to apply the Gender Guidelines. In other words, she is suggesting that the inconsistencies, omissions, implausibilities, and lack of corroborating documentation in her evidence can all be attributed to the fact that she was vulnerable, afraid, and has suffered the kind of trauma that explains her testimony as something other than fabrication.

What triggers the need to consider the Gender Guidelines?

[55] Based on the Federal Court jurisprudence available and the Gender Guidelines themselves, there does not seem to be a need for an identifiable objective trigger in order to bring the Guidelines into play.

[56] Rather, it seems that the Guidelines should be considered in the context of the allegation contained in the claim. Accordingly, one must consider the nature and grounds of the persecution feared by the Applicant to determine whether it is appropriate to consider the Guidelines in the context of the claim: see the Guidelines at 2(A), *Determining the Nature and Grounds of the Persecution*.

[57] Federal Court jurisprudence has held that the Guidelines ought to be considered by members of a tribunal in “appropriate cases.” See *Fouchong v. Canada (Secretary of State)*, [1994] F.C.J. No. 1727. Such cases include when an applicant’s claim is based on a gender-related fear of persecution.

[58] In *Griffith v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1142, Justice Campbell found that the Gender Guidelines suggest that “to assess the actions of a woman subjected to domestic violence, special knowledge is an essential tool to use in reaching a fair and correct judgment.” Accordingly, Justice Campbell held that it is

incumbent on panel members to exhibit the knowledge required, and to apply it in an understanding and sensitive manner when deciding domestic violence issues in order to provide a fair result and avoid the risk of reviewable error in reaching findings of fact, the most important being the finding respecting the claimant’s credibility.

In summary, it appears that whether the Guidelines ought to be considered in a particular case is determined by the nature of the Applicant’s claim and her alleged fear of persecution.

Was the RPD required to consider the Guidelines in this case?

[59] The Applicant claims to have suffered physical abuse at the hands of her husband and his family. As such, the nature of the Applicant’s claim in this instance would put her within a particular social group of women who are victims of violence. See *Khon v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 143. As stated by Justice Tremblay-Lamer in *Khon*, above,

when the panel is faced with a case where the applicant has made a claim of persecution based on her membership in a particular social

group, i.e. women victims of violence, in all fairness, the claim cannot be examined without reference to the Guidelines.

[60] The Guidelines do not have the force of law and are not binding. However, the Chairperson of the IRD has stated that tribunal members “are expected to follow the Guidelines unless there are compelling or exceptional reasons for adopting a different analysis.”

[61] In some instances, however, a tribunal has found that because of its determination of the applicant’s credibility, it was not required to consider the Gender Guidelines: see, for example, the RPD decision cited within *Kaur v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1015. In this instance, Justice Jerome dismissed the application for judicial review, finding that

the Board is entitled to make an adverse finding of credibility based on the implausibility of an applicant’s story, and between the applicant’s story and other evidence before it, provided the inferences drawn can be reasonably said to exist.

[62] In the case of *Diallo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1450, [2004] F.C.J. No. 1756, however, Justice MacTavish suggested that such reasoning is circular. In *Diallo*, the Board had determined that it did not have to consider the Guidelines because the claimant was not credible. However, Justice MacTavish held that “the Gender Guidelines exist, in part, to ensure that social, cultural, traditional and religious norms do not interfere with the proper assessment of an Applicant’s credibility.” As such, it was an error for the officer in that case to fail to consider the Guidelines because of a negative finding of credibility.

Does the failure to consider the Guidelines constitute a reviewable error?

[63] In his Decision, the Officer does not explicitly consider the Gender Guidelines. However, he does appear to consider that their consideration might have been appropriate if the Applicant had brought objective evidence to show that she would have difficulty in testifying at the hearing. I think that, if the Decision is read as a whole, the Officer is saying that he did not observe that the difficulties that the Applicant had in giving evidence were related to gender or trauma, and there was no objective evidence to show this was the case. According to the Officer, no independent psychological evidence was presented to show that the claimant would have any difficulty in testifying at the hearing, or that she would have difficulty in telling her story in any of the previous opportunities.

[64] If this statement by the Officer was meant to imply that the Applicant is required to submit objective evidence in order to have the Guidelines considered in her case, then I think the Officer would be in error. The memorandum distributed along with the Guidelines says that members “are expected to follow the Guidelines unless there are compelling or exceptional reasons for adopting a different analysis.” It is also true that “individuals have a right to expect the Guidelines will be followed unless compelling or exceptional reasons exist for departure from them.” See *Khon*, above. But the Officer’s statement about “independent psychological evidence” cannot be read in isolation. In the context of the Decision as a whole, I think it is clear that the Officer is saying that the enormous discrepancies and inconsistencies in the Applicant’s testimony cannot be explained away by gender-based trauma, and that the Applicant has provided no independent psychological evidence to suggest that she is suffering from such trauma.

[65] This Court has held that a failure to consider the Guidelines does not necessarily result in overturning a decision. See, for example, *Diallo*, above, and *Sy v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 379, [2005] F.C.J. No. 462. In *Diallo*, Justice MacTavish held that, even though the Board failed to consider the Gender Guidelines, “the fact is that the Board had many reasons for finding Ms. Diallo not to be credible.” As such, Justice MacTavish concluded that “I am not persuaded that this error, on its own, provides a sufficient basis for setting aside the Board’s decision.”

[66] Similarly, in *Sy*, above, Justice Snider found that while the Board erred in not taking into account the Gender Guidelines while making a negative finding of credibility, there was “sufficient evidence to support the Board’s conclusion and the error is not sufficient to set aside the Board’s decision.”

[67] Similarly, in the present case, there were many problems with the Applicant’s testimony (the letter allegedly from her father in Nigeria, for example, or the question of who took her to the airport) that cannot be attributed to any gender-based trauma alleged by the Applicant. Consequently, even if the Gender Guideline issue was not appropriately addressed in this instance (and my reading of the Decision does not suggest that this was the case), I am not persuaded that this error alone would provide a sufficient basis for setting aside the Decision on the facts of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is denied.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2921-09

STYLE OF CAUSE: MABEL HIGBOGUN

APPLICANT

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

RESPONDENT

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 3, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:**

HON. MR. JUSTICE RUSSELL

DATED: April 23, 2010

APPEARANCES:

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