

Federal Court



Cour fédérale

Date: 20101103

Docket: IMM-1129-10

Citation: 2010 FC 1080

Ottawa, Ontario, November 3, 2010

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

**ALIA ROBINA
SHABIR SYED SHANAWAR**

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

REASONS FOR JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) 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 (the Board), dated February 16, 2010, where it determined that the applicants were neither Convention Refugees nor people in need of protection under sections 96 and 97 of the *IRPA*. The Board found that the principal applicant, Alia Robina (the Applicant) was not credible. It did not believe the core elements of her story.

[2] The following are the reasons in support of the oral judgment rendered in Montreal on October 13, 2010, where I allowed the application for judicial review and concluded that the Board had made errors that warranted the Court's intervention.

Background

[3] The Applicant is a 44 year old divorced single mother. Her son, Shabir Syed Shanawar, is 15 years old. They are both citizens of Pakistan. They arrived in Canada on July 14, 2007 and claimed refugee protection upon arrival. The son's claims were based on his mother's.

[4] The Applicant's allegations are as follows:

[5] The Applicant worked as a doctor at a clinic in Gujrat, Pakistan. On May 30, 2007, the local Nazim (a municipal administrator), came to inspect the clinic. Upon being dissatisfied with what he found, he asked the Applicant to go to his office the next day to discuss improvements.

[6] During the Applicant's visit to the Nazim's office on May 31, 2007, he attempted to sexually assault her. She managed to escape. She informed her supervisor who urged her to keep the incident quiet and told her that she would try to address the issue. The supervisor apparently talked to the Nazim because the following day (June 1, 2007) the Nazim called the Applicant and threatened to "take revenge."

[7] She went to the police the following day (June 2, 2007) to file a complaint against the Nazim. However, the police were rude to her and said that they would not accept her complaint unless she undertook a medical examination. The Applicant explained that a medical examination

was not necessary, as she had managed to escape the Nazim's sexual assault. Nonetheless, the police refused to accept her complaint. Shortly thereafter, the Nazim called the Applicant again and threatened her by saying he would "rip off [her] clothes in public."

[8] On June 20, 2007, the Applicant was asked to present herself before an internal board of inquiry that was established at the clinic to investigate alleged charges of embezzlement against her. She was being investigated in relation to approximately 500 000 Rupees, which had been stolen from the clinic between October 2006 and June 2007.

[9] On June 22, 2007, she appeared before the board of inquiry and discovered that the Nazim was on the panel. On making this discovery, she objected to the proceedings on the grounds that he was not neutral. Eventually, the proceedings were halted and scheduled to continue the next day. The Applicant was upset and frightened by the situation and, as such, she submitted an application for sick leave to the clinic and did not appear the next day for the continuation of the proceedings.

[10] On June 24, 2007, the Nazim, accompanied by his hooligans, went to her house and told her mother (the Applicant was not at home) that the Applicant would be publicly disgraced and sexually assaulted as a result of her accusations against the Nazim. The police also visited her house later that same night and talked to her mother. She says that they referred to her as "a big criminal" and indicated that she was to report to the police station.

[11] At some point during this period, the Nazim went to the police and complained that he was being defamed by the Applicant.

[12] The Applicant left and hid with her cousin's family in Lahore. On June 27, 2007, her cousin's husband contacted a lawyer in order to find out why the police were looking for her. The police told the lawyer that they were looking for the Applicant in relation to her allegations against the Nazim.

[13] Before leaving Pakistan, while in Lahore with her cousin's family, the Applicant learned that the Nazim and the police were still looking for her. She also heard, during that time, that the local Sunni cleric had denounced her in a sermon, calling her a fraud, and saying she should be punished for her dishonesty.

[14] The Applicant left Pakistan with her son on July 12, 2007. They arrived in Canada on July 14, 2007, and claimed refugee protection. The Applicant claimed that she feared persecution at the hands of the Pakistani police, the local Nazim (and his hooligans), as well as the local Sunni cleric.

[15] After arriving in Canada, the Applicant says she discovered that the Nazim and his men had visited her cousin's house at the beginning of August, 2007. They had supposedly inquired as to her whereabouts.

The decision under review

[16] The Board based its decision to deny the Applicant's claim on its assessment of her credibility. It found that she was not credible on matters central to the claim.

[17] The Board started its credibility analysis by pointing out that the Applicant had indicated, at the hearing, that she feared "prosecution" in relation to the "false" embezzlement charges. When

asked if she was aware of the difference between “prosecution” and “persecution”, the Applicant stated that she knew the difference and that she believed prosecution would lead to her persecution, since the police would “definitely... torture me and put me into prison.” It is unclear why the Board started its credibility analysis this way and whether the Board made an adverse credibility finding based on this “prosecution” vs. “persecution” distinction.

[18] Aside from the above, the Board made adverse credibility findings with respect to six different aspects of the Applicant’s story :

- a) The Board did not understand why the Applicant had not obtained a letter from her supervisor at the clinic in order to corroborate that she had first complained to her about the Nazim’s attempted assault. It found her explanation in this regard to be implausible.
- b) The Board found it implausible that, facing potentially serious criminal allegations (i.e. the alleged embezzlement), the Applicant did not seek legal advice;
- c) The Board did not understand why no First Information Report (FIR) was registered by the police in relation to the Nazim’s supposed complaint regarding defamation by the Applicant. The Board was not satisfied with the Applicant’s explanation in this regard and found the explanation given by the Applicant’s counsel to be implausible;
- d) The Board found that the principal Applicant’s explanation for not having independent documentation (ex. a copy of the board of inquiry’s proceedings, a copy of the letter of suspension, a copy of her application for sick leave) to corroborate her story about the false accusations of embezzlement was not plausible;
- e) The Board also noted that there was no FIR to corroborate that the principal Applicant had complained to the police regarding being sexually harassed by the Nazim. The Board did not seem to give any weight to the Applicant’s explanation in this regard;
- f) The Board found that the Applicant’s explanations regarding a previous visa application were contradictory.

[19] The Board concluded as follows:

[17] The claimant had no independent or official documentation to corroborate the core elements of her claim. She had no FIR to corroborate that she complained to the police. She had no FIR to corroborate that the Nazim complained to the police concerning her alleged [slanderous] complaint. She had no documentation concerning the board of inquiry and she had no documentation to corroborate that she complained to her superior concerning the Nazim's attempted sexual assault. The lack of independent documentation to corroborate the core elements of the principal claimant's story when viewed in the context of major plausibility concerns, leads to a negative inference on the over all credibility of the claimant.

Issue

[20] This application raises the issue of whether the Board's assessment of the Applicant's credibility was reasonable.

Standard of review

[21] It is trite law that in matters of assessment of evidence and credibility, the applicable standard of review is that of reasonableness (*Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para 53; *Ndam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 513, [2010] F.C.J. No. 637, at para 4; *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 798, [2009] F.C.J. No. 933, at para 7. "Credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Siad v. Canada (Secretary of State)*, [1997] 1 F.C. 608, at para 24). The Court must not substitute its own view even if an alternative outcome appears preferable, nor is it its function to reweigh the evidence. The Court's role when reviewing a decision against the standard of reasonableness has been defined in *Dunsmuir*, above, at para 47:

. . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of [page221] justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Did the Board err in its assessment of the Applicant's credibility?

[22] The Applicant contends that the Board's adverse credibility findings were unreasonable. She argues that the Board's conclusions as to implausibility demonstrated a lack of understanding of the country conditions and the context in which the events had occurred. The Applicant further submits that the Board failed to consider the relevant documentation regarding the treatment of professional women in Pakistan who are victimized in the workplace. She argues that the Board applied a western way of thinking throughout its analysis.

[23] The Respondent, on the other hand, contends that the Board's implausibility and credibility findings were reasonable in light of the evidence, especially given the lack of corroborating documentation provided by the Applicant. The Respondent argues that the Applicant merely disagrees with the Board's appreciation of the evidence and, thus, the Court should not intervene for the purposes of substituting its own opinion for that of the Board.

[24] Despite the fact that deference is owed to the Board's assessment of the evidence and its appreciation of the Applicant's credibility, I am nonetheless of the view, after having reviewed the hearing transcript and the documentary evidence regarding country conditions, that the Board's assessment of the Applicant's credibility was unreasonable.

[25] In *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, 208 F.T.R. 267, the Court held that the Board must be careful when rendering a decision on plausibility, since actions that appear implausible by Canadian standards may be plausible when considered from within the claimant's milieu. At para 7, Justice Muldoon indicated:

[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]

[26] The same principle was applied by Justice Martineau in *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, 228 FTR 43, at paras. 9 and 12:

[9] Normally, the Board is entitled to conclude that an applicant is not credible because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in "clear and unmistakable terms": see *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236 (F.C.A.); *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.) ("*Aguebor*"); *Zhou v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1087 (QL) (C.A.); and *Kanyai*, supra, at para. 10.

...

[12] Furthermore, the Board should not be quick to apply the North American logic and reasoning to the claimant's behaviour: consideration should be given to the claimant's age, cultural

background and previous social experiences: see *Rahnema v. Canada (Solicitor General)*, [1993] F.C.J. No. 1431 at para. 20 (QL) (T.D.); and *El-Naem v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 185 (QL) (T.D.). Likewise, a lack of coherency or consistency in the claimant's testimony should be viewed in light of the claimant's psychological condition, especially where it has been medically documented: see *Reyes v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 282 (QL) (C.A.); *Sanghera v. Canada (Minister of Employment and Immigration)* (1994), 73 F.T.R. No. 155; and *Luttra Nieves v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 34 (QL) (T.D.).

[27] In *Santos v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 937, [2004] F.C.J. No. 1149, Justice Mosley insisted that the Board should be required to explain the rationale behind its implausibility findings. At para. 15, he wrote:

[15] It is clear that plausibility findings are subject to the same deference as credibility findings, that being patent unreasonableness: see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.). However, as stressed in *Valtchev*, supra, plausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions. The cautions set out in both *Valtchev*, supra, and *Leung v. Canada (Minister of Employment and Immigration)* (1994), 81 F.T.R. 303 are worth keeping in mind in the Court's review of plausibility conclusions.

[Emphasis added].

[28] In this case, the Board made a number of central implausibility findings. The rational basis for these findings, however, is unclear. Moreover, the implausibility determinations appear to have

been made without considering the cultural context involved and without regard to the evidence adduced concerning the treatment of women in Pakistan.

[29] Given the Applicant's position and the cultural context, I find that the Applicant's description of events does not fall outside the realm of reason. After having reviewed the transcript of the Applicant's testimony, I fail to find any basis to support the implausibility findings reached by the Board.

The absence of a letter from the Applicant's former supervisor

[30] The Board did not understand why the Applicant had not obtained a letter from her former clinic supervisor to corroborate her story. It found her explanation in this regard to be implausible.

[31] The explanations given by the Applicant during her testimony were as follows:

Q: Did you think of, or were you advised to, either, by your counsel, to get this woman, who is not a family member, to corroborate your story, where she has first-hand knowledge, according to your story?

A: Sir, I cannot ask her, because if I will ask her a letter, so still anyhow she is going to tell the district administration and the same people, and my mom, and my sister, they're still there, they will cause problems for them. So I cannot ask her. Sir, if I could ---

Q: I don't understand. You're in Canada asking this woman, who is another woman in a secular position like yourself, why she would not provide you a letter saying, yes, so-and-so came to me and said so-and-so did this.

A: I don't think so.

BY THE COUNSEL (to the claimant)

Q: Why do you think she would not provide you with a letter?
That's the question.

A. They are there under the control, and she would not like to go against the district administration. She would not like to get into trouble because of me, because I'm already out of the clinic. I don't think so that she would---

BY THE PRESIDING MEMBER (to the claimant)

Q: But how would anybody know? Unless she herself tells the district administration that she mailed you a letter, how would they know?

A: No, sir, it's an official thing. They will know.

[32] The Board's conclusion, with respect to the Applicant's explanations, reads as follows:

[12] . . . Asked how District officials would know if her former boss, the retired LCol, sent the principal claimant a letter to confirm elements of the latter's story, the principal claimant replied "they will know." I find this explanation implausible and the principal claimant's credibility is eroded.

[33] This conclusion is unreasonable for a number of reasons. First, the Board references the Applicant's explanation out of context. Second, the Board does not explain *why* it found the Applicant's explanation to be implausible. Third, the Applicant's explanation is, in fact, entirely plausible. It is consistent with her previous allegation that, when she complained to her supervisor about the attempted assault, the Nazim was informed and contacted her the next day to threaten her. The Board focused on the implausibility of the Nazim finding out about the letter under the assumption that the supervisor would act in the Applicant's best interest and send the letter without mentioning it to anyone. The Board's reasoning in this regard is deficient and, thus, I find its rejection of the Applicant's explanation to be unreasonable.

The Applicant's failure to retain counsel

[34] The Board also made a negative credibility finding based on the fact that the Applicant did not seek legal advice *prior to* appearing before the Board of Inquiry regarding the suspected embezzlement of clinic funds.

[35] The Applicant did retain counsel on June 27, 2009, shortly *after* appearing before the Board of Inquiry and shortly after the Nazim and the police visited her mother. During her testimony she explained why she did not seek legal advice earlier:

...

Q: Did you have a lawyer?

A: No, sir.

Q: We don't -- we are not supposed to have a lawyer at that time, because I was suspected. No decision was made in my case.

Q: So you were suspected, not charged at this point.

A: Yes, sir.

...

Q: So you were accused of embezzlement.

A: Yes, sir.

Q: Tell me how the hearing unfolds now.

A: So, sir, when I was told about the charges that you have done---

Q: The accusations.

A: Yes, sorry. So I said that I have not done any embezzlement in the clinic funds. My conscience is 100 percent clear. But even then I am ready to answer all the questions asked by the Inquiry Commission, and I'm ready to explain my situation.

Q: Okay. So then what happened?

A: So Chaudhry Mazahar Nat [the Nazim] said that, "We have proof that you have done the embezzlement."

Q: And what was the proof?

A: Sir, they didn't show me any proof. So I said, "May I see those proofs?"

Q: Okay. Then what?

A: So then they said we have to ask you a few questions before that. So I said, "I'm ready to answer the questions, whatever the respected Inquiry Commission want to ask me. But I don't want to answer the questions in the presence of this person." I pointed him, because, sir, I believed that this is not a neutral inquiry. I knew that they were playing around, because I complained against him and this is to scare me, or to -- So I said, "I will answer your questions, but not in the presence of this person. I want a neutral inquiry, and I want the head of the district administration, or head of my -- or, somebody come from my head office to assemble in the inquiry." Because this is a total partial inquiry, I was sure it was not neutral.

Q: Did you hire a lawyer?

A: No, sir, I didn't hire a lawyer.

Q: Why not?

A: Sir, I was not supposed to hire a lawyer, because there was no case registered against me, or there was no decision made in my case. So I was not -- the Inquiry Commissions, they work like this. We are not supposed to have a lawyer in the inquiry.

Q: So you refused to answer questions because what's his name was on the panel, right?

A: Yes, sir, he was on the panel.

Q: And so then the meeting adjourned?

A: Sir, they said you have no right to object to any member of the Inquiry Commission.

Q: And then -- So did you answer questions then?

A: No, sir. I said I have the right because this is against me, so I have the right to ask for a neutral inquiry.

Q: Then what happened?

A: Sir, then it was prayer time, so they said we have to check the witness out for other people, so you go and sit outside.

[*Sic* throughout]

...

[36] The Board found that the Applicant's explanations were implausible. It wrote:

[13] . . . Asked what happened the day of the inquiry she said they read the accusations against her and that she denied any wrong doing but that she was ready to answer their questions. She said she was accused of stealing approximately 500,000 Rupees between October 2006 and June 2007. The Nazim, a member of the panel, said they had proof she had embezzled funds but they did not show her the proof. The principal claimant was asked if she had hired a lawyer and said no, she was not allowed to have a lawyer at an inquiry. Even if the claimant was not allowed to have counsel present at the Board of Inquiry, and I am somewhat dubious on that claim, I find it implausible that, facing potentially serious criminal allegations against her, that she would not have at least sought legal advice. Her credibility is eroded in consequence.

[37] The Board's conclusion in this regard is unreasonable. I see nothing implausible about the Applicant's explanation as to why she did not seek legal advice prior to appearing before the Board of Inquiry. I also fail to see why the Board was dubious as to the Applicant's claim that she was not allowed to be accompanied by a lawyer while in front of the Board of Inquiry.

[38] First, there was very little time between when the Applicant received notice of the investigation (June 20, 2007) and when she was required to appear before the Board of Inquiry (on June 22, 2007). Second, it was only when the Applicant appeared before the Board of Inquiry that she was provided with the details of the accusations against her. Third, she did not know that the Nazim was a member of the Board of Inquiry until she appeared before it. Fourth, she was not facing any criminal allegations at that time; she was facing allegations that were being investigated by an internal Board only. There is no indication that the Applicant was aware of the potential for criminal charges on June 22, 2007. Fifth, she stated that her conscience was 100 percent clear and that she was ready to answer any questions. As such, she believed that she had nothing to fear, until she realized that the Nazim was a member of the panel. Sixth, her description of the hearing before the Board of Inquiry demonstrates that she was capable of representing herself.

[39] In any event, the Applicant did contact a lawyer, through her cousin's husband, when she realized that things were becoming more serious (i.e. when she realized that: the Nazim was a member of the Board of Inquiry, that the Nazim had visited her parents and had threatened to publicly disgrace and sexually assault her, and that the police had visited her parents and had referred to her as a "big criminal").

[40] The Board's implausibility finding on this point was unreasonable.

The absence of a FIR to corroborate the Nazim's complaint against the Applicant

[41] The Board was not satisfied by the explanations provided as to why the Nazim had not filed a complaint with the police against the Applicant. The Board wrote the following in its reasons:

[15] The principal claimant was asked if the Nazim went to the police to complain against her for her allegedly false accusations against him and she said yes. Asked if there was a FIR raised on the basis on the Nazim's complaint against her, the principal claimant said no, the police were just trying to keep the Nazim happy, and were "just playing around, wanted to prove that he's not bad, I am bad." The question was then asked again why a FIR was not raised and the principal claimant's counsel suggested that the police were probably just harassing the principal claimant in order to keep her quiet and that if a FIR had been registered there would have been more publicity which the Nazim wished to avoid. Taken alone this is a plausible explanation. However, in the context of a board of inquiry, the Nazim's threats to publicly humiliate the principal claimant, and the alleged fact that the local Sunni cleric was publicly attacking the principal claimant over her allegedly false claims, I find that a desire on the part of the Nazim to avoid registering an FIR to avoid publicity implausible. Therefore the absence of a FIR based on the Nazim's alleged complaint of being libelled or slandered by the principal claimant has not been adequately explained. Her credibility is further diminished.

[42] The Board's line of questioning, in this regard, arose in the context of one of the letters submitted by the Applicant's lawyer in Pakistan. For ease of understanding the context in which the questions were asked, I will reproduce the lawyer's letter:

TO WHOM IT MAY CONCERN

Upon the verbal request of Dr. Robina Alia, I am hereby updating her present legal situation in Pakistan.

Since **8th of December 2007** there is no progress in her case. The complaint against her is still pending with the police authorities. Further action against her probably would be taken upon her arrest.

The complainant in her case, Choudhry Mazhar Nat is still active in the area and has a lot of influence on the local police.

Therefore her return to Pakistan would be dangerous for her life and liberty.

[43] In order to follow my conclusions with respect to the Board's findings, it is useful to also consider the following excerpts from the hearing transcript which contextualize the answers given by the Applicant with respect to the absence of an FIR:

...

BY THE PRESIDING MEMBER (to the claimant)

Q: Yeah, but what does this --“the complainant in her case”, but he didn't -- did he make a formal complaint against you?

A: Sir, he complained that I did the embezzlement. I don't have any FIR or the legal document ---

Q: Sorry, again, you're anticipating. "The complainant in her case, Chaudhry Mazahar Nat"---

A: Yes sir.

Q: Okay. Did he file an official complaint against you with the police?

A: Sir, the complaint by him was that I'm putting forth false charges of sexual harassment against him.

Q: And did he lodge a complaint about these false charges you made with the police?

A: Yes. Sir, I don't know exactly because I was not having any -- I don't have any documentary proof, but I think that he complained. That's why he took police to my home.

BY THE COUNSEL (to the presiding Member)

Q: Officially there is nothing. I think it's all -- we're trying to read between the lines and understand what happened. So officially there is no FIR, but in light of the particular society and what happened, the opinion is that he is behind everything, all the troubles the claimant has faced. So I think that's what it is, "the complainant". He's the complainant.

A: I see that, but ---

Q: He's the complainant. He's the one who has made all these troubles for her.

A: But the ---

Q: So there's nothing official.

A: But the lawyer is using official words, "the complainant".

Q: Well, we are assuming he is the complainant. Everybody knows he is the complainant.

A: "The complaint against her is still pending, with the police authorities. Further action would probably be taken upon her arrest." I mean there is no arrest warrant against her.

BY THE CLAIMANT (to the Presiding Member)

Q: No. But, sir, if they could find me they can arrest me and they can ---

A: But there are no formal charges against you.

Q: Sir, they do that. Sir, the justice system, to arrest me they don't need an FIR against me. They could arrest me. That's the government agency, they work with these politicians, they try to make them happy. They work with that

administration. So they could file a case against me at any time. That is not difficult for them.

A: Why didn't the police -- do you have any idea why the police would not raise an FIR against you based on the nazim's complaint?

Q: Sir, in my opinion, whatever they did, it was by this Chaudhry Mazahar Nat. They wanted to harass me. They wanted me to keep quiet or -- sir, they just play around and they caused problems for me. And they wanted -- because they wanted to prove that he is not bad, I am bad. Whatever happened, I was responsible for that, he did nothing. Because, he is a strong politician, so ---

A: Right, exactly. So why not -- why would they not raise an FIR against you and then find you guilty?

Q: Sir, they ---

A: I don't understand why the police would -- I can understand what you're saying, why they would not raise an FIR based on your complaint against the nazim. He's powerful and you're just a woman. But when he comes in and says she's making false accusations against me, I do not understand why the police, based on his complaint against you, why they would not raise an FIR.

Q: Sir, they didn't.

A: I know they didn't. But why not? He's not the weak woman. He's a powerful politician. He makes a complaint against you.

BY THE COUNSEL (to the Presiding Member)

Q: If I may intervene? I know that I will address that during my submissions, it's just that it causes for the claimant to provide an opinion, and so we have to speculate as to why he would do this and would not do that. And I understand the Board has to evaluate plausibility, and that's the way of doing it. It's just that there are many possible ---

Q: Can you think of a different way of phrasing it?

BY THE PRESIDING MEMBER (to the claimant)

Q: Oh, I'm asking for an opinion, there is no question. You have no direct firsthand knowledge. But to me it's implausible.

A: Yes, sir.

Q: That if a powerful -- based on your testimony, that if a powerful local nazim complains to the police, who are under his control, about you, that they don't raise an FIR.

A: Yes, sir.

BY THE COUNSEL (to the presiding member)

Q: I actually have an opinion about that.

A: And you're going to tell me.

Q: Yes.

A: But ---

Q: Do you want to tell me now, or in submissions -- because I'm almost finished.

A: Yes. For me -- well, the way -- this case has been going on for quite some time.

Q: But, we only started at 9:00 ---

A: No, no I mean the case of the claimant.

Q: Ah.

A: The case of the claimant, she has been in Canada for a couple of years, and so she has actually testified she has tried to find out during this time what had been happening in her home country concerning her. The way I understand it is -- and again it's speculation, and my opinion is as good as anybody else's. But this is -- as the claimant explained, the police have been harassing her as a way of intimidating her, as a way of telling her to keep quiet, as a way of telling

her to disappear, as a way of telling her to drop whatever it is that she was trying to accomplish by complaining against the nazim. If an FIR had been registered, then that would have brought more publicity, more people would have come to know. There would have been a case in court. And I don't think the nazim is interested in having people know. So I think that's why he has stopped short of making this official and charging her and taking this to court. This would only make it more visible and more known to the community. That's my opinion. But, as to why he's using the police, it's clearly to intimidate. Clearly to intimidate, to harass, to frighten, to scare; and that's along the lines of what the claimant testified to earlier, that these allegations of embezzlement ---

Q: Okay, got it. That's a plausible explanation why no formal FIR, because they are on the public record. There's one at the police house, one at the court house, and there's another copy somewhere elsewhere.

...

[44] I have serious issues with the Board's reasoning and its conclusion in this regard. First, the Applicant testified very candidly that she did not know whether the Nazim had filed an official complaint and that she did not know whether a FIR had been created. As such, the explanations provided by the Applicant were purely speculative. The Board asked the Applicant to provide an opinion; she answered by pointing to what she thought might explain the absence of an FIR. I find it unreasonable for the Board to draw an adverse credibility finding in this context. The Applicant's opinion was elicited by the Board after she had indicated that she had no knowledge of why a third party, namely the police, did not create an FIR. I also fail to see why the Board found the opinion that was provided to be implausible. Furthermore, it was totally unreasonable to draw a negative credibility finding from an opinion provided by the Applicant's counsel in which the Applicant had no say.

The Applicant's explanations for not having independent documentation to corroborate the embezzlement accusations

[45] The Board was not satisfied with the Applicant's explanation as to why she was not able to obtain documentary evidence to corroborate that she had been accused of embezzlement. The Board found as follows:

[16] The principal claimant was asked if she had any official or independent documents to corroborate her story about the false accusations of embezzlement and the board of inquiry; such as a copy of the Board's record of proceedings. She answered that they refused to give it to her. She was asked if she had a copy of the letter of suspension and said no, it had not been provided to her. She was then asked if she had a copy of her application for sick leave and said she did not. The principal claimant was asked what steps she took to obtain documents to corroborate her story of being falsely accused of embezzlement. She replied that she contacted "them" (hospital administrative office), and asked for documents but they did not send them. The principal claimant said that "Aslam" (a hospital official) told her when she telephoned in September 2007, that there was no decision yet in her case but that she must come back to the inquiry and that she would then be given proof of the inquiry etc. Asked why the hospital staff refused to provide her proof that she was under suspicion of embezzlement, the principal claimant said that the hospital staff don't want to go against the District Administration and local politicians [the Nazim]. I fail to understand why providing such documents would be going against District Officials in any way. The principal claimant's explanation is not plausible. Her credibility is damaged.

[46] I consider the Board's conclusion in this regard to be unreasonable. First, the Board did not adequately explain its implausibility finding. Second, the Board's determination was made without any apparent regard to the context of the "false charges of embezzlement" and without any apparent understanding of the cultural context. Further, I find that there is a certain measure of consistency in the Applicant's explanation: the position taken by the hospital official she contacted in order to

request corroborating documentation was consistent with the Applicant's allegation that the Board of Inquiry had refused to give her any "proof" of the alleged embezzlement.

The absence of a FIR to corroborate the Applicant's complaint to the police against the Nazim

[47] The Board noted that there was no FIR to corroborate that the principal Applicant had complained to the police regarding being sexually assaulted. A finding of credibility based on this aspect ignores the principal Applicant's testimony that the police had refused to file a complaint against the Nazim. Thus, this finding was also unreasonable.

The contradiction in the Applicant's explanation regarding her previous visa application

[48] Prior to the events described above, the Applicant and her son had submitted a Canadian temporary visa application from Pakistan. The Applicant explained that she had planned to visit her brother in Canada. That application was rejected in March of 2007. Authorities made the following note regarding the rejected application: "Personal bank statements with normally low to limited funds with unusual successive deposits nearing date of bank statement."

[49] The Board found that the Applicant's credibility was "tarnished" as a result of contradictory explanations she gave for the "unusual successive [bank] deposits" mentioned by officials in relation to the visa application. There did appear to be a contradiction between the answer she gave to the Board regarding these deposits (i.e. that there were no unusual deposits) and the answer she gave later in response to questions by her counsel (i.e. that she had made deposits into the account because friends had paid back money that they owed her). However, given that this one

contradiction was not related to the core elements of the Applicants' refugee claim, and given the errors made by the Board with respect to the implausibility findings, this one inconsistency is not enough to render the Board's overall credibility determination reasonable.

[50] Accordingly, this application for judicial review is allowed. The matter is returned to a newly constituted Board for rehearing and redetermination. No question was proposed for certification.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is allowed. The matter is returned to a newly constituted Board for rehearing and redetermination.

“Marie-Josée Bédard”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1129-10

STYLE OF CAUSE: ALIA ROBINA ET AL. v. MCI

PLACE OF HEARING: Montreal

DATE OF HEARING: October 13, 2010

REASONS FOR JUDGMENT: Justice Marie-Josée Bédard

DATED: November 3, 2010

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