

Federal Court



Cour fédérale

Date: 20110705

Docket: IMM-6502-10

Citation: 2011 FC 822

Ottawa, Ontario, July 5, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHRISTIANA ABIODUN NAPOLEON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board determining that Ms. Napoleon was neither a Convention refugee nor a person in need of protection. The determinative issues were credibility and the well-foundedness of the applicant's fear.

[2] The applicant claimed that she feared two men. The first was Mr. Babangida, a 68-year old man she had been forced to marry. She says that he raped her on their wedding night and accused her of not being a virgin. She ran away and she says that he threatened her and her family and sent his men to get her. She suggests that he was responsible for the death of her boyfriend, father, and sister, and for beating her mother. The applicant claimed that she fled and remained in hiding at her aunts' homes and other locations. The second man she fears is her uncle, Samson Ekundayo, who she says threatened that if she refused to sleep with him he would allow Mr. Babangida to come get her. He then raped her. After coming to Canada and submitting her first Personal Information Form (PIF), Ms. Napoleon found out that she was pregnant from this rape and gave birth to an albino daughter. She claimed that both Mr. Babangida and her uncle have threatened her in Canada. She reported these threats to the Toronto police.

[3] The Board determined that there was insufficient credible and trustworthy evidence with regards to pivotal areas of Ms. Napoleon's oral and written evidence. Although the Board noted that none of the credibility concerns standing alone were sufficient to negate her claim, the cumulative effect of all of them was such that the Board did not have sufficient credible and trustworthy evidence upon which to base a determination that she was a Convention refugee.

[4] The Board found that Ms. Napoleon's credibility was compromised by contradictions between her oral testimony and the Port of Entry notes regarding her prior knowledge of Mr. Babangida. She testified that the first time she heard of Mr. Babangida was on her wedding day,

whereas during the Port of Entry interview she gave considerable details regarding Mr. Babangida's longstanding previous association with her family, including that he paid her father's medical bills and her and her siblings' tuition fees. The Board did not accept Ms. Napoleon's attempt to explain the discrepancy by stating that she was frightened of and misunderstood the interviewing officer, or that she thought Mr. Babangida had arranged for the Canadian authorities to apprehend her. The Board noted that:

- (i) while a person being detained might be frightened, this did not explain giving a detailed account of Mr. Babangida's financial involvement with her family;
- (ii) the interview took place the day after the applicant arrived in Canada;
- (iii) if the applicant really did fear that Mr. Babangida had influenced Canadian officials, as she claimed, she would not have identified him as the person from whom she feared persecution;
- (iv) it was unlikely the applicant and interviewing officer had trouble understanding one another given that the officer's notes stated that he confirmed with her that she did not need an interpreter and that at the end of the interview the officer noted that she had stated no concerns understanding his questions and had sought clarification where necessary;
- (v) the applicant was given the opportunity to write out her account not because the officer did not understand her, but because it is common practice to do so; and
- (vi) although trauma may impair a person's memory or make it difficult to describe certain events, it does not account for the detailed Port of Entry account regarding Mr.

Babangida, who the applicant later testified she had not previously known; also, the psychology articles submitted by the applicant related to the suppression of details, not the giving of detailed information and then denying it.

[14] The Board noted that an important indicator of credibility is whether a witness can tell her particular story the same way over time. The Board found Ms. Napoleon again not credible because of inconsistencies between her Port of Entry notes and PIF regarding the events after the wedding night. The Port of Entry notes explained that she went to her school and learned that Mr. Babangida's men had been there looking for her, whereas this event is omitted from her PIF and in her oral testimony she denied returning to her school. The Board did not accept Ms. Napoleon's explanation that she had never traveled before and that her "head would say anything." Again, the Board noted that while her confused mental state could account for forgetting to include information, it could not be an explanation for providing information at the Port of Entry she later testified was not true. The Board concluded the applicant was embellishing her claim at the Port of Entry and then could not keep the story straight when writing her PIF narrative.

[15] The Board found a number of allegations made by Ms. Napoleon not to be credible:

- (i) That Mr. Babangida threatened her life or is an agent of persecution; the Board was not persuaded that the applicant could avoid being found for 10 months given that Mr. Babangida's men allegedly knew the locations of both of her aunts' homes, where she often hid. The Board also found it improbable that the applicant could escape from five

men numerous times by jumping out a window, or that she would be sent back to her aunt's home where the men knew she had been and where the family had been beaten.

- (ii) That Mr. Babangida and Mr. Ekundayo threatened the applicant since she arrived in Canada; the Board did not believe the applicant's testimony that these individuals would join forces given that Mr. Babangida's men beat Mr. Ekundayo and his family and that Mr. Ekundayo harboured, and then raped, Mr. Babangida's wife (the applicant).
- (iii) That Mr. Babangida's men were pursuing her; the Board did not find it probable that the applicant would have opened the door when she heard a knock (from one of Mr. Babangida's men) given her testimony that she was always scared and that whenever there was an unusual knock she would run away through the window.
- (iv) That the applicant's boyfriend, father, and sister died because of Mr. Babangida's actions; the Board found that the applicant embellished her claim with these allegations. The Board noted that the applicant had not provided documentation regarding any of these deaths, contrary to the Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, which requires an applicant to provide documents or an explanation for their absence and steps taken to obtain them. The Board found that the applicant could have obtained such documents given that she had the assistance of counsel, that her brother sent her other documents, and that the applicant has sixteen siblings who could have assisted her with obtaining documentation.
- (v) That Mr. Babangida or Mr. Ekundayo made threatening phone calls to her in Canada; the Board acknowledged documents from the Toronto Police Service, a daycare worker, and

an employee of a legal aid clinic to this effect, but gave little weight to them given their lack of detail. The Board accepted that the applicant made a report to police but found the applicant's inconsistencies and lack of credibility extended to her allegations made to the police regarding threats over the phone.

[16] The Board noted a letter provided by Dr. Akinfemiwa Akinlabi James, a doctor from City Specialist Hospital in Nigeria, regarding the applicant's mother's injuries, but found the letter unreliable due to significant spelling and grammatical errors, lack of a date, lack of city on the letterhead, and the prevalence of fraudulent documents in Nigeria.

[17] The Board also noted documents submitted by the applicant from medical professionals and social service agencies, and it specifically discussed a psychiatric report. The Board accepted the diagnosis but found that the doctor was not in a position to know whether the events described by the applicant actually occurred. The Board cited case law holding that such evidence cannot cure all deficiencies in a claimant's testimony: *Danailov v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1019 (TD), *Rokni v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 182 (TD). The Board held that given that the applicant's claim was not credible, the medical and social service evidence had little probative value. Accordingly, the applicant's claim was rejected.

Issues

[18] The applicant raises two issues:

1. Did the Board err in its treatment of the psychological and social service evidence?
2. Did the Board err by making perverse credibility and plausibility findings?

1. Psychological and Social Service Evidence

[19] Ms. Napoleon filed evidence from six mental health professionals and social service agencies, including a psychiatrist, psychologist, and YWCA and Children's Aid Society counselors. She says that the Board erred by reasoning backwards and rejecting the documents because of a negative credibility finding. She says this approach is perverse and that the Board had to consider the psychological evidence as part of her credibility, not after already finding that she lacked credibility. She further submits that the Board erred by rejecting all the psychological and social service evidence for the same reason, even though it expressly considered only one of the documents. According to the applicant, by so doing the Board ignored the totality of the evidence given that the documents could not all be rejected for the same reason since they said different things.

[20] Ms. Napoleon says that the Board only paid "lip service" to her testimonial difficulties, contrary to the Chairperson's Guideline *Women Refugee Claimants Fearing Gender-Related Persecution* and the *Guideline on Procedures With Respect to Vulnerable Persons Appearing Before the IRB*.

[21] Lastly, she submits that the Board erred by implicitly dismissing and disbelieving the evidence of the applicant's YWCA counselor despite forfeiting an opportunity to cross-examine

her. The applicant suggests that this finding implies that she has been lying to her therapist through months of therapy, and argues that the Board should have cross-examined the counselor to determine whether the applicant was a malingerer.

[22] I accept none of these submissions. The Board quite reasonably determined that the persons who provided the psychological and social service evidence were not in a position to know whether the allegations made by the applicant were true. They worked with her to assist and to diagnose her; their role was not to judge the credibility of her narrative – this was the Board’s role. Moreover, the professionals were in no better position to judge the truth of the relevant events than the Board, especially given that they did not have before them all the evidence that the Board did. Despite the applicant’s allegations of “reasoning backwards,” it was quite appropriate for the Board to assess the psychological and social service evidence in light of its earlier negative credibility findings. As noted by Justice Reed in *Danailov*, above, at para. 2:

With respect to the assessment of the doctor's evidence, to find that that opinion evidence is only as valid as the truth of the facts on which it is based, is always a valid way of evaluating opinion evidence. If the panel does not believe the underlying facts it is entirely open to it to assess the opinion evidence as it did.

[23] The Board did not err by rejecting all the evidence for the same reason even though it expressly considered only one document. All of the documents were rejected for the same reason: because the facts upon which they were based were found not to be credible. Any differences between the documents were irrelevant to this determination.

[24] There is also no basis for the submission that the procedural accommodations granted to the applicant amounted to mere “lip service” to the applicant’s testimonial difficulties and the *Guidelines*. The record simply does not bear out the allegation made; further, reverse-order questioning, in particular, was a significant benefit intended to ease the applicant’s stress.

[25] Lastly, the Board’s decision to assign little probative value to the YWCA’s counselor’s testimony did not amount to disbelieving the counselor herself, but rather constituted a finding that the information upon which her testimony was based, information provided by the applicant, was problematic. Cross-examination would not have changed this finding.

2. Perverse credibility and plausibility findings

[26] The applicant submits that it was unreasonable for the Board to dismiss her corroborating evidence, namely documents establishing that she had reported phone threats from her uncle and husband to the Toronto police. The Board accepted that the applicant made a police report in Toronto but found that her lack of credibility extended to the allegations she made to the police. Contrary to the applicant’s submission, I find nothing “backward” in the Board’s reasoning in this respect. The underlying facts of the report came from the applicant and the Board did not believe them. Contrary to the applicant’s submissions, the Board did give reasons for rejecting this evidence. Finally, although the applicant argues that police are experts in crime and assessing witness credibility, their role is not the same as the Board’s. The Board is specifically tasked with determining the credibility of a narrative in the context of refugee protection and with the advantage of Port of Entry notes, a PIF, and a formal oral hearing.

[27] I also do not accept the applicant's submission that the Board unreasonably discredited the medical evidence of the October 2009 attack on her mother by ignoring the accompanying photograph of her mother and by suggesting that the hospital document was fraudulent merely because of spelling and grammatical errors, lack of date, lack of city name, and because of the prevalence of fraudulent documents in Nigeria.

[28] The Board's finding with respect to the doctor's note was reasonable. In addition to being riddled with grammatical errors, "x-ray" is spelled "ex-ray." It was not unreasonable for the Board to assume that a Nigerian doctor would know the correct spelling of a basic medical term. Given the Board's finding that the doctor's note was fraudulent and its determination that the applicant's narrative was not credible, the Board was not required to specifically consider the photograph of the applicant's mother.

[29] The applicant attempts to excuse the absence of documentation regarding the deaths of her boyfriend, sister, and father with speculation that the Board would not have accepted it as genuine. It is up to the Board to determine the genuineness of documents and to weigh them, and where documents or a reasonable explanation for their absence are not provided, it is open to the Board to draw a negative inference. Here the Board reasonably found that documentation could have been obtained given that the applicant had many family members in Nigeria.

[30] The Board did not "over-rely" on Port of Entry notes, and the contradictions in the applicant's evidence were not peripheral, but were directed to important aspects of the applicant's narrative and to her alleged fears in Nigeria. It is common and completely proper for

the Board to compare a claimant's evidence from the Port of Entry, PIF, and oral testimony. The Board's finding that the applicant's distressed mental state was not a reasonable explanation for her provision of detailed false information was reasonable and did not amount to an impermissible "expert psychological finding"; rather, it was the Board's assessment of the evidence before it, which it was entitled to weigh. The Board considered the applicant's explanations, the *Guidelines*, and the fact that the officer's notes confirmed that the officer and applicant understood each other, and reasonably determined that the applicant's explanation was unsatisfactory. Importantly, the discrepancy in the Port of Entry notes was only one of several problems with the applicant's evidence which led the Board to its adverse credibility determination.

[31] The excerpt from the transcript reproduced by the applicant at para. 42 of her Memorandum does not establish that the Board accepted that the rape by her uncle occurred. It merely establishes that, once the applicant had identified the location and the perpetrator of the alleged rape, the Board did not consider it necessary for her to provide explicit details of the assault. There was no violation of natural justice in the fact that the Board did not probe the applicant for further details of the rape, especially given that the Board's negative credibility findings did not relate to this incident. Just because the Board does not demand intimate details of a painful experience does not mean that the Board is compelled to accept that the experience happened in the face of overwhelming credibility concerns arising from various other aspects of an applicant's claim.

[32] It is clear that the Board found the applicant to be devoid of credibility in almost every conceivable way: based on contradictions in her evidence, based on implausibilities in her narrative, based on her failure to provide relevant documentation without a reasonable explanation, and based on her use of documents found by the Board to be fraudulent. The applicant was found, reasonably, to be thoroughly unreliable, and accordingly none of her evidence was found to be credible. For all of the reasons noted above, this finding was reasonable and this application must be dismissed.

[33] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed
and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6502-10

STYLE OF CAUSE: CHRISTIANA ABIODUN NAPOLEON v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 22, 2011

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

DATED: July 5, 2011

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