

Federal Court



Cour fédérale

**Date: 20111031**

**Docket: IMM-7561-10**

**Citation: 2011 FC 1239**

**Ottawa, Ontario, October 31, 2011**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**LYSETTE YANEL SOLIS MORALES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review submitted pursuant to subparagraph 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board) dated November 29, 2010, that Lysette Yanel Solis Morales (applicant) is neither a refugee under section 96 of the *IRPA* nor a person in need of protection under section 97 of the *IRPA*.

[2] For the following reasons, this application for judicial review is dismissed.

## **I. Facts**

[3] The applicant is a native and citizen of Mexico. She contends that she was persecuted by her former spouse, Ruben Morales Rosier, an investigator with the federal investigation agency. She is alleging the following facts. In April 2007, she completed her master's degree in computer science. While she was pursuing her studies, she was also working at the office of the Attorney General of the Republic [AGR]. It was at that time that she moved in with Ruben Morales Rosier and noted, over the following weeks, that her spouse was associating with members of organized crime. In addition to being a violent man, he was apparently involved in kidnappings. In October 2006, he assaulted her physically. He also asked her to give him confidential information about her work at the AGR. The applicant used various pretexts to avoid giving him information.

[4] She also alleges that on May 2, 2007, her spouse cut her hand using an X-Acto-type knife. She sought treatment the next day. At that point, she decided to leave her spouse and move in with her parents. She states that she did not tell her parents about the episodes of spousal abuse so as not to alarm them, given that they were elderly and her father had diabetes. On May 4, 2007, the applicant was allegedly followed by accomplices of her former spouse. Because she feared him, she went back to live with him. She then asked her employer for a transfer to another department to avoid giving information to her spouse. However, her spouse asked her for information concerning her new job. The applicant continued to use pretexts so as to avoid giving him the information requested. She alleges that her former spouse beat her frequently and threatened her daily. She

resigned from the office of the AGR in July 2007. She arrived in Canada on August 16, 2007, and claimed refugee protection on her arrival.

[5] The Board found that the applicant had not discharged her burden of proving that there is a serious possibility that she would face persecution on a Convention ground or that she would be subject to a danger of torture or a risk of cruel and unusual punishment if she were to return to her country.

[6] The Board specified that it took into account Guideline No 4, *Women Refugee Claimants Fearing Gender-Related Persecution* (the Guidelines), since the applicant alleges being a female victim of spousal abuse who could not obtain state protection. The Board finds that the applicant did not credibly establish the elements essential to support her refugee claim. The decision notes different contradictions, additions and implausibilities in the testimony and in the evidence submitted by the applicant to establish the essential facts justifying her refugee claim.

## **II. The applicable law**

[7] Section 96 of the *IRPA* reads as follows:

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.

### **III. Issue and applicable standard of review**

[8] In this case, there is only one issue: did the Board err in finding that the applicant is not credible?

[9] The reasonableness standard applies to the assessment of the credibility of a refugee claimant (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR190 at para. 47; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 227, [2011] FCJ No 266 at para 12).

### **IV. Position of the parties**

#### **A. Applicant's position**

[10] The applicant is claiming that the Board erred in finding that she is not credible. She also contends that at no time did the Board point out this problem to her.

[11] According to the applicant, it was not possible for the Board to find, based on her testimony, that her relationship with her spouse was of short duration.

[12] The applicant is also contending that the Board could not state that the record did not contain evidence to establish that she had left the family home and that she was living with her former spouse. She adduced a copy of a lease and other documents to attest to her conjugal

relationship. The applicant also believes that she provided sufficient explanations to satisfy the Board concerning the fact that her parents' address was still on her voter's card.

[13] According to the applicant, the Board did not properly apply the Guidelines. The Board had to take into consideration the fact that it is normal for a battered woman to feel guilty and to try to conceal the behaviour of a violent spouse before finding that it was implausible that the applicant did not talk about her relationship problems to her family or relatives.

[14] The applicant is also criticizing the Board for having failed to inform her that the additions made to the Personal Information Form [PIF] the morning of the hearing adversely affected her credibility. She is also challenging the Board's finding that she did not credibly establish that she worked full time at the AGR's office from 2006 to 2007. In that regard, she relies on Exhibits R-2, R-4, R-6 and R-13, as well as copies of cheques adduced in the record as evidence.

[15] The applicant is also contending that the Board was not entitled to put itself in the position of her former spouse to determine the plausibility of the incidents of spousal abuse and pressure to obtain the information sought.

[16] The Board erred by not attaching any probative value to all of the medical evidence submitted which, according to the applicant, corroborates her testimony. She also states that the Board did not have any medical expertise to find that the treatment received after the incident with the X-Acto was not connected to the alleged injury.

**B. Respondent's position**

[17] The respondent began by responding that the Board explained in detail the reasons for its finding that the applicant is not credible.

[18] According to the respondent, the applicant is asking the Court to substitute its own assessment of the evidence for that of the Board. The Board is still in the best position to assess the plausibility of testimony. In addition, the respondent contends that it is perfectly acceptable for the Board to put itself in the position of another person to assess the plausibility of certain allegations.

[19] The respondent also stresses that the decision clearly shows that the Board was aware that it had to examine the file in light of the Guidelines. It is inaccurate to claim that the Board did not take into account the applicant's allegations that she was the victim of spousal abuse in her country. The Board had sufficient grounds for doubting the truthfulness of the applicant's account.

[20] The respondent states that the Board was not required to inform the applicant of all of its concerns about her credibility. The decision accurately reflects the Board's legitimate concern at the start of the hearing when the applicant, who has been in Canada since August 2007, filed ten additional exhibits and made several additions to her initial statement.

[21] According to the respondent, the applicant did not specifically show how the Board disregarded the Guidelines.

[22] As for the applicant's criticism that the Board did not attach probative value to certain documentary evidence on the spousal abuse she suffered, the respondent claims that the applicant's allegations lack details and explanations and are not sufficient in this case to warrant the Court's intervention.

## V. Analysis

[23] The case law of this Court is clear on the assessment of an applicant's credibility. The Court must show deference because the assessment of testimony is at the very core of the Board's power. The Court must intervene only if the Board's findings are perverse, capricious or made without regard to the evidence in the record (*Ortiz v Canada (Minister of Citizenship and Immigration)*, 2011 FC 726, [2011] FCJ No 910 at para 8).

[24] The case law also establishes that the Board was not required to inform the parties to the proceeding of all of its concerns regarding their credibility (*Tekin v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357, [2003] FCJ No 506) at para 14:

[14] In addition, the Board did not err by failing to specifically mention to the Applicant its credibility concerns related to this omission from his PIF. The Board is not obligated by the duty of fairness to put all of its concerns regarding credibility before the Applicant (*Appau v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 300 (T.D.) (QL); *Akinremi v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 808 (T.D.) (QL); *Khorasani v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 936, [2002] F.C.J. No. 1219 (QL)). In this case, the Applicant was represented by counsel, the parties were on notice that credibility was an issue and the inconsistency between the Applicant's PIF narrative and

his oral testimony was readily apparent. As a result, the Board was not required to put this inconsistency to the Applicant and its failure to do so was not a reviewable error (*Ayodele v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1833 (T.D.) (QL); *Matarage v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 460 (T.D.) (QL); *Ngongo v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1627 (T.D.) (QL)).

[25] A reading of the hearing transcript clearly shows that the Board informed the applicant several times about its concerns regarding her credibility. At the start of the hearing, it noted its concerns about the late filing of new documents, which it nevertheless allowed.

[26] The Board also asked the applicant why she did not inform her parents of her relationship problems. It also questioned the applicant in order to understand how she could have been working on her master's degree at the same time as working full time for the AGR.

[27] The Court cannot accept the applicant's claim that the Board failed to inform her of its concerns about her credibility. The Court therefore cannot intervene on that ground.

[28] According to *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at para16, the Board is presumed to have taken into account all of the evidence in the record; it is not required to hypercritically read or explain its assessment of every piece of evidence.

[29] In its decision, the Board referred to the lease signed by the applicant and her former spouse but, because of the difference between the address indicated on it and the address appearing on the



various forms, it drew a negative inference. This finding is part of the possible and reasonable outcomes in the circumstances.

[30] As regards the applicant's employment, the Board did not dispute that she had worked for the AGR for a certain time, but found that she did not establish that she had worked there full time for a year, from 2006 to 2007. The following documentary evidence is in the record:

- 1) a business card proving that she has a degree in administrative computer science;
- 2) proof of employment indicating that she was assigned to the AGR from March 21 to March 28, 2007;
- 3) a letter dated August 15, 2007, stating that she was leaving her employment; and
- 4) a 2007 identification card showing that she was employed at the AGR.

[31] None of this evidence clearly shows that the applicant worked there full time for a year, from 2006 to 2007. The Board's finding therefore cannot be characterized as unreasonable.

[32] The Board is also permitted to attach to the pieces of documentary evidence provided by the applicant to prove the alleged incidents of spousal abuse the probative value that it believes appropriate. The following documentary evidence is in the record:

- 1) a prescription for an antibiotic eye solution and other nasal care products;
- 2) a prescription for a dermatological ointment;
- 3) a medical document indicating that a physician treated the applicant by applying a bandage to her hand on May 3, 2007.

[33] Did the Board err by finding that this evidence did not clearly establish that the applicant had been violently struck in the face several times and seriously injured with an X-Acto-type knife? This assessment of the evidence does not appear unreasonable or arbitrary to us.

[34] Finally, the Court finds that the Board took the Guidelines into account. Simply mentioning in its decision that it did so is not sufficient. However, the Board placed itself in the applicant's situation. It questioned her on the quality of her relationships with her loved ones and it closely examined her immediate environment to weigh the truthfulness of the alleged facts. The case law of this Court is clear: taking the Guidelines into account must not be a fetter on the Board's duty to assess the truthfulness of testimony. The Guidelines are to be used instead to make the panel sensitive to the factors which may influence the testimony of women who have been the victims of persecution (*Newton v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 738, 182 FTR 294 at para 17). In this case, the Court cannot concur with the applicant's claim that the Board did not follow the Guidelines.

[35] In short, the Court notes that the Board's decision does not contain any finding that is perverse, capricious or made without regard to the evidence in the record. The Court's intervention is unwarranted.

## **VI. Conclusion**

[36] For all these reasons, this application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that**

1. The application for judicial review is dismissed.
2. There is no question of general importance to certify.

“André F.J. Scott”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-7561-10

**STYLE OF CAUSE:** LYSETTE YANEL SOLIS MORALES  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 13, 2011

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

**DATED:** October 31, 2011

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