

Federal Court



Cour fédérale

Date: 20111130

Docket: IMM-2692-11

Citation: 2011 FC 1391

Ottawa, Ontario, November 30, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

**TEFORN TARAN RICHARDS
AND NASHON DELON RICHARDS**

Applicants

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 (the Board) dated March 29, 2011. The Board determined that the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

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

I. Background

[3] The Applicants, Teforn Taran Richards and Nashon Delon Richards, are minors and citizens of Saint Vincent and the Grenadines (St Vincent). They came to Canada in July 2009 with the assistance of relatives and made a refugee claim in September 2009. They claimed to have been physically abused by their father, Nathaniel. Teforn has suffered a brain injury that his mother, Denise Richards, claimed was the result of this abuse.

[4] The Applicants' mother also acted as their Designated Representative (DR) during the refugee hearing. She came to Canada prior to the Applicants in 1999. In her 2003 refugee claim, she alleged that she was abused by her common law spouse and the Applicants' father, Nathaniel. However, this claim was refused in 2004.

II. Decision Under Review

[5] The Board initially questioned why the DR delayed in bringing forward her sons' claims, given that the same issue had significant consequences for her own failed refugee claim. The Board found that if the DR truly feared for her children's safety at the hands of Nathaniel, she would not have made the same mistake for them as she did for herself.

[6] The Board also highlighted some inconsistencies and embellishments in the DR's testimony. She claimed that Nathaniel would kill the children if they returned to St Vincent but it appeared that he had facilitated the sons' travel in signing for passports. While the PIF stated abuse began in 1999, Nashon suggested that it only started in 2007.

[7] A negative inference as to credibility was made based on the DR's failure to provide documentary evidence that would corroborate her allegations. There was no evidence to confirm that Nathaniel was violent. The DR claimed that her sons were beaten in front of the school but a letter from their Principal merely referred to knowledge that there were problems at home, not any physical abuse. There was also no medical evidence to support her claim that Teforn's brain injury was caused by his father punching him in the head. Based on these negative credibility findings, the Board found that Nathaniel had not physically abused the claimants.

[8] In addition, it was possible for the Applicants to live with their Aunt Cynthia if returned to St Vincent, despite Nathaniel's opposition. They had remained in that country without the DR's protection for eight years. There simple was not enough credible evidence to support a refugee claim based on the threat posed by Nathaniel.

III. Issues

[9] This application raises the following issues:

(a) Did the Board err in relying on testimony of the Designated Representative?

(b) Did the Board err in making negative inferences regarding the Applicants' credibility?

(c) Did the Board err in ignoring some of the Applicants' documentary evidence?

IV. Standard of Review

[10] Questions of fact and credibility are reviewed according to the reasonableness standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 732, 42 ACWS (3d) 886 (FCA) at para 4).

[11] Reasonableness is “concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *Did the Board Err in Relying on Testimony of the Designated Representative?*

[12] The Applicants contest the Board's emphasis on the testimony and credibility of their mother as the DR. While only their claims were before the Board at the hearing, negative

credibility findings were made against her. The Applicants insist that they are capable of expressing themselves and negative inferences should not have been made from their lack of fulsome testimony.

[13] The Applicants' submissions are not convincing. This Court has recognized a role for the DR in providing evidence and acting as a witness (see *Duale v Canada (Minister of Citizenship and Immigration)*, 2004 FC 150, [2004] FCJ no 178 at para 17). The Board is entitled to weigh evidence provided by a minor child's DR (see *Canada (Minister of Citizenship and Immigration) v Patel*, 2008 FC 747, [2008] FCJ no 950 at 56). Negative inferences regarding credibility can therefore be drawn from the testimony of a DR.

[14] A review of the transcript from the hearing shows that there was no objection to the DR giving evidence. The DR understood that she would be speaking for her sons and providing the majority of the evidence, given the nature of the proceeding and her childrens' age. She intimated that her older son, Nashon, would want to speak and he was questioned by counsel during the hearing.

[15] Though most of the evidence emanated from the DR and there was a reference to her having not been found credible in her previous refugee claim, the Board was aware that it was assessing the Applicants' narrative and evidence. Indeed, it was noted at paragraph 14 of the decision that the Board "endeavoured to at all times not unfairly prejudice the claimants' claim based on extraneous considerations regarding the DR."

[16] It was reasonable for the Board to rely on the testimony of the DR. She had a recognized role in providing evidence and the Board was cognizant of its primary obligation to assess the credibility of the Applicants' claim.

B. *Did the Board Err in Making Negative Inferences Regarding the Applicants' Credibility?*

[17] Where the Board makes a negative credibility finding, it must provide reasons in "clear and unmistakable terms" (see *Hilo v Canada (Minister of Citizenship and Immigration)* (1991), 15 Imm LR (2d) 199, [1991] FCJ no 228 (FCA)). This requirement was met in the present case.

[18] The negative inferences as to credibility were based on the testimony of the DR and Nashon. The Board referred to specific examples from the evidence provided that raised concerns. There was documentary evidence to contradict the DR's claim that Nathaniel did not assist the children in obtaining passports to come to Canada. She also implied that she went to the police regarding Nathaniel's abuse of her children, but had not mentioned this in the PIF and was unable to document the report. Nashon's testimony suggested that the timeline for the abuse differed from what was stated in the PIF and he confirmed this a second time when asked by his counsel.

[19] The Board is entitled to draw negative inferences from inconsistencies in evidence at different stages of the refugee claim process (*Eustace v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553, [2005] FCJ no 1929 at para 10; *Parnian v Canada (Minister of Citizenship and Immigration)* (1995), 96 FTR 142, [1995] FCJ no 777 at para 10; *Zaloshnja v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 206, [2003] FCJ no 272 at para 6).

C. *Did the Board Err in Ignoring Some of the Applicants' Documentary Evidence?*

[20] The Applicants also dispute the Board's conclusion that they "would have expected the claimant to be able to provide at least some documentary evidence of physical abuse against the children, but there was not." They argue that two letters, from a relative and a neighbour, documenting the abuse were ignored by the Board, despite the obligation to acknowledge and explain any rejection of important contradictory evidence (see *Cepeda- Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ no 1425 at para 17; *Sierra v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1048, [2009] FCJ no 1289 at para 68; *Sekeramayi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 845, [2008] FCJ no 1066 at para 25).

[21] Unlike the situation in *Karayel v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1305, [2010] FCJ no 1624, the Board did refer to documentation on this issue, namely, a letter from Nashon's Principal, but it did not corroborate the DR's claim that her son had been beaten outside of the school. It simply referred to the Applicants as having problems at home.

[22] Moreover, the Board is "assumed to have weighed and considered all the evidence presented to it unless the contrary is shown" (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). It is not required to refer to every piece of evidence (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (FCA)).

[23] The failure of the Board to refer to some portions of the documentary evidence does not amount to an error. It is entitled to prefer certain evidence presented over other evidence (see *Wijekoon v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 758, [2002] FCJ no 1022 at para 49). Since there were already concerns regarding the credibility of the testimony by the DR and one of the Applicants, the Board was able to rely on the failure to corroborate its claims with additional documentary evidence to draw a further negative inference as to the Applicants' credibility.

[24] The Board cannot be said to have erred since it referred to one letter but did not find that this corroborated the specific claims in the DR's testimony. In addition, the Board was not required to refer to every piece of the evidence. While the Applicants insist that the letters should have been specifically referred to by the Board, this does not undermine its overall conclusion (see *Nyathi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1119, [2003] FCJ no 1409 at para 18).

VI. Conclusion

[25] The Board reasonably relied on the DR in giving evidence on behalf of her sons and reaching negative credibility findings as a result. Documentary evidence was not ignored, but simply given limited weight by the Board.

[26] Accordingly, this application for judicial review is dismissed

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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AND JUDGMENT BY:** NEAR J.

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