

Federal Court



Cour fédérale

Date: 20121218

Docket: IMM-3178-12

Citation: 2012 FC 1494

Edmonton, Alberta, December 18, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ILHAM ABDI AHMED
HANAD BADAR ELMİ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Ilham Abdi Ahmed and her son have claimed refugee protection in Canada based on her fear of her husband in Djibouti. She maintains that her husband has abused her over the course of their 10-year marriage.

[2] A panel of the Immigration and Refugee Board considered Ms Ahmed's claim and dismissed it for a lack of credible evidence. The Board noted that Ms Ahmed had travelled outside Djibouti on a number of occasions, in particular when each of her four children were born. In fact, three of her children were born in Canada. Yet, on each of these occasions, she returned to her husband. The Board questioned why she would return if she truly feared her husband.

[3] In addition, the Board concluded that Ms Ahmed and her husband wanted to immigrate to Canada and were using her false refugee claim as a means to do so. Ms Ahmed and her husband had both previously applied for permanent residence in Canada. Further, her husband bought plane tickets for her and her children, and drove them to the airport. The Board concluded that this conduct was consistent with the husband's complicity in her false claim, not evidence supporting an abusive relationship.

[4] The Board also found that Ms Ahmed would do anything for her husband. She agreed to allow her daughters to undergo female genital mutilation (FGM) if her husband let her leave the country, even though she was opposed to FGM.

[5] Ms Ahmed argues that the Board failed to appreciate the circumstances giving rise to her claim. In particular, she notes that the Board failed to consider the Chairperson's Gender Guidelines, which counsel sensitivity on the part of the Board when dealing with gender-based refugee claims. Ms Ahmed also argues that the Board's credibility findings were unreasonable. She asks me to quash the Board's decision and order another panel of the Board to reconsider her claim.

[6] I agree that the Board's assessment of Ms Ahmed's claim was inconsistent with the Gender Guidelines. In addition, I believe the Board's approach affected its evaluation of the credibility of Ms Ahmed's testimony. However, given my conclusion on the first issue, I need not consider the second issue separately.

[7] Therefore, the sole issue is whether the Board assessed Ms Ahmed's claim in a manner that was consistent with the Gender Guidelines.

II. Was the Board's approach consistent with the Gender Guidelines?

[8] While the Board did not mention the Gender Guidelines, that is not enough on its own to overturn its decision (*Ayub v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1411 at para 19). The question is whether it assessed the evidence in a manner that is consistent with the approach laid down in those guidelines.

[9] Here, the Board found that Ms Ahmed could have claimed protection on earlier occasions but, instead, went back to her husband. She also delayed in making a claim. The Board concluded that this behaviour was inconsistent with a subjective fear of abuse.

[10] In my view, the Board had to consider other reasons that might have motivated Ms Ahmed's behaviour.

[11] The Gender Guidelines state:

[W]omen 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 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*.

[12] The footnote to this passage states:

For a discussion of the battered woman syndrome see *R. v. Lavallee*, [1990] 1 S.C.R. 852. In *Lavallee*, Madame Justice Wilson addressed the mythology about domestic violence and phrased the myth as “[e]ither she was not as badly beaten as she claims, or she would have left the man long ago. Or, if she was battered that severely, she must have stayed out of some masochistic enjoyment of it.” The Court further indicated that a manifestation of the victimization of battered women is a “reluctance to disclose to others the fact or extent of the beatings”. In *Lavallee*, the Court indicated that expert evidence can assist in dispelling these myths and be used to explain why a woman would remain in a battering relationship.

[13] In my view, the Board should have considered Ms Ahmed’s testimony about why she stayed with and returned to her husband in light of these guidelines. They help explain the predicament in which some women in abusive relationships find themselves. Ms Ahmed testified that she went back to her husband because she loved him, she hoped his behaviour would improve if she kept providing him with children, she did not want to relinquish custody of the children who were left behind when she travelled outside Djibouti, her relationship with her husband became intolerable after he took a second wife, and her acceptance of FGM was merely a ruse to persuade her husband to allow her to take the children to Canada.

[14] The Board is obviously entitled to make adverse credibility assessments. However, in gender-based claims it must make those findings with an appreciation of the social context within

which the claim arises. In my view, the Board failed to show an appreciation for the circumstances in which Ms Ahmed found herself and, therefore, its summary dismissal of her explanations for her behaviour, and of her claim, was unreasonable.

III. Conclusion and Disposition

[15] The Board failed to take into account Ms Ahmed's personal circumstances, and the Gender Guidelines that apply to those kinds of circumstances, when evaluating her testimony. Accordingly, its rejection of her explanations for her conduct was unreasonable. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider her claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3178-12

STYLE OF CAUSE: ILHAM ABDI AHMED, ET AL
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 13, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: December 18, 2012

APPEARANCES:

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