Federal Court  Cour fédérale

**Date: 20130801**

**Docket: IMM-4590-12**

**Citation: 2013 FC 844**

**Ottawa, Ontario, August 1, 2013**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**DENISE LAURALEE ALEXANDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated April 23, 2012, wherein the applicant was determined to be neither a Convention refugee within the meaning of section 96 of the Act nor a person in need of protection as defined in subsection 97(1) of the Act.

[2] The applicant requests that the Board's decision be set aside and the application be referred back to the Board for redetermination by a different panel.

**Background**

[3] The applicant is a citizen of St. Lucia fleeing abuse at the hands of her ex-partner.

[4] She moved in with her partner in St. Lucia in November 2009. After she objected to his selling drugs, he subjected her to abuse including being beaten, punched, kicked and threatened. She lost a pregnancy due to one of these incidents. She made several police reports but the police did not protect her.

[5] She arrived in Canada on November 28, 2010 on a visitor's visa and claimed protection in June 2011.

**Board's Decision**

[6] The Board's decision dated April 23, 2012, sent to the applicant on May 2, 2012, indicated the Gender Guidelines had been considered. The Board held that the applicant had not established that she had the experience, risk or fear alleged and the evidence lacked credibility.

[7] The Board indicated it would not accept two letters submitted by the applicant due to their late disclosure. The Board found that the applicant's explanation for the lateness, that her mother

and sister had delayed in sending them to her, to be inadequate. Counsel made no submissions on this issue and declined to take up the Board's offer of addressing this evidence later in the hearing.

[8] With these documents ruled inadmissible, the Board found there was no independent corroborating evidence to support the applicant's claim. The applicant and her family were not able to get medical or police documents. No explanation was supplied for why neither the applicant nor her counsel contacted the hospital where the applicant was allegedly treated in order to obtain the documents.

[9] The Board concluded that if the applicant had the experience, fear and risk alleged, she would more likely than not have obtained and supplied independent corroboration.

[10] The Board also noted the applicant's six month delay in claiming protection and rejected counsel's submission that since she had a visitor's visa during those six months, she did not need to claim protection. If she had the fear alleged, she would have acted on regularizing her status in Canada.

[11] The Board noted that counsel was asked to refer to any country conditions evidence indicating difficulty in obtaining corroborating documentation and counsel had conceded there were no such references in the country conditions material.

[12] The Board concluded that if police documentation existed, then the relocation of one officer from one station to another would have no bearing on the police's ability to respond to a request

from the applicant for material. Similarly, it had not been established why medical documentation could not be obtained.

[13] The Board noted the applicant claimed she had moved from her partner's house to her grandmother's house, but no change of address had been noted on her Personal Information Form (PIF) address history. This is something the applicant would have done, given her experienced counsel, if she had indeed moved.

[14] The Board concluded with the alternative finding that if the applicant faced a risk, it was a generalized risk.

**Issues**

[15] The applicant submits the following points at issue:

1. Is the Board's decision unreasonable with regard to the finding that domestic violence is a generalized risk?

2. Was it unreasonable for the Board to impugn the applicant's credibility solely on the basis of the absence of corroborative evidence while discounting her corroborative evidence?

[16] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the Board err in rejecting the applicant's claim?

**Applicant's Written Submissions**

[17] The applicant argues that it is a serious error for the Board to conclude that victims of domestic violence faced a generalized risk. The Board failed to consider the gender-related risk. The applicant was the victim of serious domestic abuse. Domestic violence is prevalent in St. Lucia.

[18] The applicant further argues that the Board cannot impugn an applicant's testimony solely based on the absence of corroborative evidence. The applicant's testimony was not lacking in credibility and the Board provided no reasons for rejecting it. The Board is entitled to ask for corroboration where it had credibility concerns, but it must be put to the applicant, which did not happen here. It is capricious for the Board to make a credibility finding based on the lack of evidence when it rejected the relevant corroborative evidence submitted by the applicant. A short delay in making a refugee claim, with a reasonable explanation for the delay, cannot be determinative of a negative decision.

**Respondent's Written Submissions**

[19] The respondent argues the applicant provided inconsistent evidence. Her move from her partner's house to her grandmother's was not reflected in her PIF. Comparing the PIF to oral testimony is one of the Board's primary ways of testing credibility.

[20] Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, requires a claimant to provide documentary evidence or explain why they were not provided. The Board may take into

account a claimant's lack of effort to obtain corroborative evidence and draw a negative inference as to credibility. Here, the applicant acknowledged that documentation existed, yet she did not provide it. The Board reasonably found she had failed to explain why she did not approach the hospital directly.

[21] The respondent agrees that corroborative evidence is not always required, but here the Board made a finding of fact that the documentation is readily available to the applicant, allowing a reasonable negative inference for it not being provided. When there is no reasonable explanation for material omissions, they may impugn an applicant's credibility, even in the face of the presumption of truthfulness.

[22] This Court has affirmed that a delay in seeking protection points to a lack of subjective fear. The Board considered the applicant's explanation that she thought she had no legal status in Canada and was vulnerable to arrest and reasonably concluded if she had the alleged fear, she would act to regularize this status.

## Analysis and Decision

[23] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[24] It is established jurisprudence that credibility findings, described as the "heartland of the Board's jurisdiction", are essentially pure findings of fact that are reviewable on a reasonableness standard (see *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 7, [2003] FCJ No 162; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 46, [2009] 1 SCR 339; *Demirtas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 584 at paragraph 23, [2011] FCJ No 786). Similarly, the weighing of evidence and the interpretation and assessment of evidence are reviewable on a standard of reasonableness (see *Oluwafemi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045 at paragraph 38, [2009] FCJ No 1286).

[25] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; *Khosa* above, at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraph 59).

[26] **Issue 2**

Did the Board err in rejecting the applicant's claim?

The decision relied on by the applicant discusses how it is unreasonable for the Board to require corroborative evidence when there are no independent credibility concerns (see *Byaje v Canada (Minister of Citizenship and Immigration)*, 2010 FC 90 at paragraphs 26 and 27, [2010]

FCJ No 103. As Mr. Justice Richard Mosley wrote at paragraph 26, "… the Board will not err when it requires corroborating documents in circumstances in which it had credibility concerns …".

[27] In this case, however, it is not fair to say there were no other credibility concerns. The Board was concerned with an inconsistency between the applicant's PIF and her oral testimony concerning where she lived in St. Lucia, as well as her delay in making a claim for protection. The Board put questions on these subjects to the applicant during her hearing. While the applicant may disagree with these concerns, she cannot argue that the Board never expressed any doubt in her credibility, or that either of these well-worn credibility-testing techniques is unreasonable.

[28] Given that the Board did not admit letters from the applicant's family, there was no such corroborative evidence.

[29] As it was reasonable for the Board to require such evidence and the applicant has not challenged the credibility finding on any other basis, I must conclude that the decision was transparent, justifiable and intelligible, as well as within the range of acceptable outcomes. The applicant gave conflicting evidence, delayed in making her claim and had taken few steps to secure documentary evidence. It was therefore reasonable for the Board to find she lacked subjective fear.

[30] I agree with the applicant that the Board's one sentence determination of a generalized risk was unreasonable and if that finding were determinative, I would question whether the Board had fulfilled its duty to give reasons. However, given that the Board's credibility finding was reasonable, this alternative finding is irrelevant.

[31] The application for judicial review is therefore dismissed.

[32] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

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

"John A. O'Keefe"

Judge

## ANNEX

**Relevant Statutory Provisions**

***Immigration and Refugee Protection Act*, SC 2001, c 27**

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| 72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court. | 72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation. |
| 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, | 96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : |
| (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or | a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; |
| (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. | b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner. |
| 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally | 97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : |
| (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or | a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; |
| (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if | b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : |

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| (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, |
| (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, | (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. |

***Refugee Protection Division Rules*, SOR/2012-256**

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| 11. The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them | 11. Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents. |

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4590-12 |
| **STYLE OF CAUSE:** | DENISE LAURALEE ALEXANDER<br><br>- and -<br><br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | February 13, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT OF:** | O'KEEFE J. |
| **DATED:** | August 1, 2013 |

**APPEARANCES:**

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| Bola Adetunji | FOR THE APPLICANT |
| Veronica Cham | FOR THE RESPONDENT |

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