

Federal Court



Cour fédérale

**Date: 20131028**

**Docket: IMM-11045-12**

**Citation: 2013 FC 1080**

**Toronto, Ontario, October 28, 2013**

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

**BETWEEN:**

**MING TRANG TRAN  
VICKY TRAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a challenge by a mother (Applicant) and her 12 year-old daughter who claim refugee protection based on a well-founded fear of persecution in Vietnam as Catholic Christians. In a decision dated September 21, 2012 the Refugee Protection Division of the Immigration and Refugee Board (the RPD) rejected the Applicants' claims and found that there is no credible basis for the claims.

[2] At the outset of the decision under review, the RPD states the key elements of the Applicants' claim, identifies the focus of the determination of the claim, and provides the ultimate conclusion resulting in rejection of the claim:

[1] Ming Trang Tran, and her minor daughter, Vicky Tran allege that they are citizens of Vietnam, and claim refugee protection pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (IRPA). Ming Trang Tran (the principal claimant) acted as the Designated Representative of her minor daughter.

#### ALLEGATIONS

[2] The principal claimant alleges that she travelled illegally from her home in Southern Vietnam to Taiwan. The claimant alleges that she eventually obtained a one year temporary work permit to remain in Vietnam [sic]. The claimant worked as a housekeeper for a man and became pregnant with his child. The claimant alleged that she was physically abused by her employer and that he kicked her and her daughter out of the house just two months after the claimant gave birth to her daughter. While in Taiwan the claimant turned to Catholicism for support.

[3] The claimant returned to Vietnam with her daughter in December of 2000. The claimant alleges that she and her daughter suffered verbal abuse from members of the community because she did not have a husband. The claimant alleged that her daughter was taunted at school. The claimant indicated that she and her daughter were discriminated against because they were Catholic.

[4] The claimants came to Canada through the assistance of a smuggler on July 1, 2009. The claimants made their claims for protection on September 1, 2009.

#### ANALYSIS [sic]

[5] The panel focused its analysis on the personal identities and nationalities of the claimants as well as the overall credibility as a witness of the principal claimant.

#### CLAIMANTS' IDENTITIES AND NATIONALITIES

[6] Upon review of all of the identity documents presented, the principal claimant's oral testimony, and counsel's submissions, the panel finds that the claimants have failed to provide sufficient credible or trustworthy evidence to establish their personal identities

and nationalities. Identity most commonly refers to the name that a claimant uses or has used to identify himself.

[3] In my opinion reading the decision as a whole it is readily apparent that the RPD Member was preoccupied with the expectation that an applicant for refugee protection must present “acceptable” documentation to prove his or her identity (Decision, para. 7). Indeed, the RPD rejected the Applicants’ identity documents on the basis that they were copies, have no security features other than stamps, are faxes with no evidence as to when and how they were faxed, and “were old” (Decision, para. 12). It is also readily apparent that, based on the RPD’s documentation expectations which were not met, the Applicant’s sworn evidence was rejected as unbelievable on virtually every critical factual issue of the claim:

The panel assigned a significant negative inference to the claimants' failure to provide sufficient credible or trustworthy documents in support of their identities and nationalities, and to her provision of a Family Register and Birth Certificate whose authenticity was questionable at best. [Emphasis added] (Decision, para.14)

[4] In my opinion the process of decision-making engaged by the RPD Member concerned is fundamentally flawed and contrary to law. In reaching a conclusion on the identity of an applicant who claims refugee protection, the Applicant’s sworn evidence is presumed to be true unless there are reasons to doubt its truthfulness (*Maldonado v. M.E.I.*, [1980] 2 F.C. 302 (C.A.), p. 305) and the quality of the decision-making in reaching a credibility finding must be high:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms (*Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 at para.6) (C.A.).

[5] Except in the case of a clear and substantiated finding of fraud that casts a shadow over the entirety of an applicant's evidence, the rejection of irregular identity documentation, nevertheless, leaves sworn testimony on the issue of identity un-assailed. In the decision under review there are no clear reasons provided for not accepting the Applicant's sworn evidence in support of the claim, including a finding that the Applicants tendered a fraudulent claim, which in my opinion is apparently what was in the RPD Member's mind throughout.

[6] An example of this mindset on the part of the RPD Member is with respect to the fact that the Applicant's daughter speaks Mandarin. The Applicant explained that she speaks Mandarin because she attended a Chinese language school in Vietnam and produced a Chinese School Certificate to substantiate her evidence. The RPD dismissed the certificate on the basis of a 2-year attendance discrepancy between the Certificate and the Applicant's amended PIF. However, the following passage from the decision also discloses that impermissible suspicion, innuendo, and unwarranted speculation were also applied in reaching the dismissal:

The panel noted that Mandarin is spoken in many areas outside of China, including Taiwan, Malaysia, Singapore, and Toronto for that matter. Given the minor claimant's inability to speak Vietnamese and her ability to speak Mandarin fluently, the panel finds that it is more likely than not that the claimant's daughter had lived in a Mandarin speaking place before she came to Canada, and not Vietnam as the claimant explained. This further undermined the claim to Vietnamese citizenship for the minor claimant, as well as the country of reference for both claimants. (Decision, para. 19)

[7] The statements made in paragraphs 23 and 24 of the decision raise an important and unattended issue:

The claimants provided evidence that they were practicing Christians in Canada; however, given that the claimants' country of nationality and reference has not been established, the panel finds that it does

not need to address the risk of persecution for the claimants as practicing Catholics in Vietnam.

Given the totality of the evidence, the panel finds that the claimants have not established their personal identities or nationalities. The jurisprudence sets out that where identity is not established, it is unnecessary to further analyze the evidence and the claim.

[8] Consistent with the Applicant's claim that she is Vietnamese and fears return to Vietnam as a Christian, the Applicant testified before the RPD in Vietnamese and, most importantly, the RPD found that the Applicant is a native speaker of Vietnamese (Decision, para. 18). This important fact was not taken into consideration in resolving the Applicant's nationality, and, thus, her claim for protection *vis a vis* Vietnam. In my opinion, the fact should have given the RPD Member pause for thought before reaching a conclusion on both issues. An open mind could easily conclude that the Applicant's native language is strong evidence that she is who she says she is: Vietnamese. I find that the RPD's failure to reasonably consider this single fact as critical in determining the Applicant's identity renders the RPD's decision as unreasonable.

**ORDER**

**THIS COURT ORDERS that** the Decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel. There is no question to certify.

“Douglas R. Campbell”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

Docket: **imm-11045-12**

**STYLE OF CAUSE:** MING TRANG TRAN, VICKY TRAN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 24, 2013

**REASONS FOR ORDER  
AND ORDER:** CAMPBELL J.

**DATED:** OCTOBER 28, 2013

**APPEARANCES:**

Jayson Thomas FOR THE APPLICANTS

Teresa Ramnarine FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Levine Associates FOR THE APPLICANTS  
Barrister & Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada