Federal Court  Cour fédérale

Date: 20131114

Docket: IMM-8-13

Citation: 2013 FC 1156

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 14, 2013

BEFORE: The Honourable Mr. Justice Annis

Docket: IMM-8-13

BETWEEN:

NIDIA ARACELI AREVALO ZALDANA
KATHERINE YAZMIN AREVALO ZALDANA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA], of a decision by the Immigration and

Refugee Board [IRB], Refugee Protection Division [RPD] rendered October 26, 2012, finding that the applicants are neither Convention refugees nor persons in need of protection.

[2] For the following reasons, I dismiss the application for judicial review.

The facts

[3] The main applicant, Arevalo Zaldana, and her minor daughter Katherine, are citizens of Guatemala.

[4] Ms. Arevalo Zaldana explained in her affidavit that in June 2009, she opened a bakery near her house in the city of Villanueva. In January 2010, members of the Mara Salvatrucha began lurking around her neighbourhood and extorted money from shopkeepers. The police did nothing about complaints and to the contrary, spent time drinking with the gang members. She tried to unite the shopkeepers together against these crimes.

[5] On March 14, 2010, the applicant herself became a victim of extortion by the Mara Salvatrucha. After receiving death threats, she paid 150 quetzals per week. She did not report anything to the police and stopped trying to organize the other shopkeepers. In June 2010, she submitted passport applications for herself and her daughter, as a precaution. In October 2010, the amount requested increased to 200 quetzals per week and she refused. On October 28, three members of the Mara Salvatrucha went to the bakery. They caused damages, beat, threatened and raped her. They told her that if she talked about their visit, she and her family would be killed.

[6] She went to a clinic where the doctor advised her to file a complaint. She shared her reluctance, considering the police were in collusion with the Mara Salvatrucha, and he recommended that she go to the government [fiscalia]. She filed a complaint with the fiscalia that evening. She closed the bakery and took refuge at her sister's in the city of Sipacate with her daughter Katherine, sending her two other children to stay with other family members in Pueblo Nueva Vinas, with her sister Patricia. She remained in contact with the fiscalia to follow up on her complaint.

[7] In November 2010, she learned from her neighbours that four members of the Mara Salvatrucha were looking for her at her house. On March 10, 2011, because they had not found her, the Maras attacked her sister Patricia and her brother-in-law and threatened to rape and kill the applicant and her daughter. She left the country on March 29, 2011, with her daughter and came to Canada via the United States. They claimed refugee protection at the border upon arrival on April 12, 2011.

The impugned decision

[8] The RPD heard the application on October 16, 2012. The panel, considering Chairperson Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution* [Guideline 4], and after reviewing the documentary and testimonial evidence, found that the main applicant was not credible. Her daughter's application was based on her mother's and therefore it was also rejected.

[9] The panel noted that the applicant stated she opened her bakery in June 2009, but the registration certificate for the business was dated June 8, 2010. She explained that the registration was not necessary but officers at the Ministry of Health required it following an inspection of the premises, and she did it even though she had already been afraid for her life since March 14, 2010, the date of the first incident with the Mara Salvatrucha. The lack of corroborating documentation about the opening of the bakery raised doubts in the panel's mind.

[10] The applicant did not submit a copy of the complaint filed with the fiscalia in October 2010. She stated that she spoke to a lawyer by the name of Benicio Benitez, had asked for a copy of her complaint, and he said he would get back to her later. Thereafter, she called Mr. Benitez every 15-20 days until January 11, 2011, but she forgot to return to get a copy of the complaint. Once in Canada, she gave her sister a proxy, and she went to the municipal prosecutor's office to obtain a copy of the complaint, but she was told there was no copy in the archives. The applicant did not recall whether she had taken other steps to obtain a copy. To explain why she did not contact Mr. Benitez, she stated she was confused at the beginning of her stay in Canada and then later she learned through the media that he had been suspected of fraternizing with drug dealers and had quit his job. She did not think of submitting these news reports to the panel. The panel rejected these explanations as incoherent and apparently improvised during the hearing.

[11] The panel also noted that the applicant said she did not file a complaint with the police but, when questioned on the difference between the police and the fiscalia, she said that when you are the victim of a crime you go to the fiscalia and to report a theft or street scandal you go to the police. She therefore filed her complaint with the designated authority for such an offence.

The panel felt that if she truly had reported a serious crime such as rape, she would not have indicated to the immigration officer that she had not filed a complaint.

[12] The applicant stated she did not mention the October 28, 2010, rape to the immigration officer because it was hard for her to talk about it. However, she testified that before she arrived in Canada, she spoke about the rape with Mr. Benitez and the doctor who treated her, as well as with her family. The panel commented that if she had already confided in these people outside her family circle that she had been raped, it did not understand why she did not disclose the information in her application for protection if she had truly been raped.

[13] The applicant filed a medical certificate obtained the day of the rape, but said she left this certificate in a box in Guatemala and her sister did not find it until 2012 to send it to her. She said she was afraid her bags would be searched at the airport, that the report would be found and as a result she would be killed. The panel dismissed this explanation as incoherent, unusual and improvised. Questioned about the why she said she was treated by a man when the certificate was signed by a woman, the applicant replied that in her country "*le docteur*" [the doctor] is used for a man or a woman, but the panel also dismissed this as not credible.

[14] The panel took Guideline 4 into consideration, particularly with regard to the memory problems and discrepancies and vague dates, but nevertheless found that this evidence was not credible. It therefore did not grant any probative value to the sworn statement by the applicant's sister, confirming the alleged facts.

[15] With no credible evidence, the panel rejected the refugee claims of Ms. Arevalo Zaldana and her daughter.

Issues

[16] The issues are the following:

a. Did the panel err by finding that the principal applicant lacked credibility?

b. Did the panel err by not taking into consideration Chairperson's Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution*?

Standard of review

[17] Issues of credibility are factual in nature and therefore are entitled to a high level of deference to the panel. The standard of review is reasonableness (*Salazar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 466 at paras 35-36, [2013] FCJ No 527 (QL)):

> [35] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 (*Dunsmuir*) that there are only two standards of review: correctness for questions of law and reasonableness for questions of mixed fact and law and fact. The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated. *Dunsmuir* at paras 50 and 53.
>
> [36] This Court has held that implausibility and credibility determinations are factual in nature. The appropriate standard of review applicable to credibility and plausibility assessments is that of reasonableness with a high level of deference. *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929 at para 17 (*Wu*).

[18] The reasonableness standard also applies to the review of a panel's consideration of Guideline 4 (*Amin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 206 at para 26, [2013] FCJ No 216 (QL)):

> [26] This Court has reviewed the failure to consider the Gender Guidelines on a reasonableness standard (see *MDGD v Canada (Minister of Citizenship and Immigration)*, 2011 FC 855 at paragraph 12, [2011] FCJ No 1050; and *Cornejo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 261, at paragraphs 16 to 18, [2010] FCJ No 295). In reviewing the officer'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 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, [2009] 1 SCR 339). 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 paragraphs 59 and 61).

Analysis

[19] First, I must note that the respondent, relying on subsection 80(2.1) of the *Federal Courts Rules*, SOR/98-106 [the Rules], and subsection 10(1) of the *Immigration and Refugee Protection Rules*, SOR/93-22, argues that no weight should be granted to the applicant's affidavit:

Federal Courts Rules	***Règles des Cours fédérales***
Affidavit Evidence and Examinations	Preuve par affidavit et interrogatoires
Affidavits	Affidavits
Affidavit by deponent who does not understand an official language	Affidavit d'une personne ne comprenant pas une langue officielle handicapé visuel ou d'un analphabète
80. (2.1) Where an affidavit is written in an official language for a deponent who does not understand that official	**80.** (2.1) Lorsqu'un affidavit est rédigé dans une des langues officielles pour un déclarant qui ne comprend pas cette

language, the affidavit shall
(*a*) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and
(*b*) contain a jurat in Form 80C.

langue, l'affidavit doit :
a) être traduit oralement pour le déclarant dans sa langue par un interprète indépendant et compétent qui a prêté le serment, selon la formule 80B, de bien exercer ses fonctions;
b) comporter la formule d'assermentation prévue à la formule 80C.

Immigration and Refugee Protection Rules

Perfecting application for leave

10. (1) The applicant shall perfect an application for leave by complying with subrule (2)

(*a*) where the application sets out that the applicant has received the tribunal's written reasons, within 30 days after filing the application; or

(*b*) where the application sets out that the applicant has not received the tribunal's written reasons, within 30 days after receiving either the written reasons, or the notice under paragraph 9(2)(*b*), as the case may be.

(2) The applicant shall serve on every respondent who has filed and served a notice of appearance, a record containing the following, on consecutively numbered pages, and in the following order

Règles des cours fédérales en matière d'immigration et de protection des réfugiés

Mise en état de la demande d'autorisation

10. (1) Le demandeur met sa demande d'autorisation en état en se conformant au paragraphe (2) :
a) s'il indique dans sa demande qu'il a reçu les motifs écrits du tribunal administratif, dans les 30 jours suivant le dépôt de sa demande;
b) s'il indique dans sa demande qu'il n'a pas reçu les motifs écrits du tribunal administratif, dans les 30 jours suivant la réception soit de ces motifs, soit de l'avis envoyé par le tribunal administratif en application de l'alinéa 9(2)*b*).

(2) Le demandeur signifie à chacun des défendeurs qui a déposé et signifié un avis de comparution un dossier composé des pièces suivantes, disposées dans l'ordre suivant sur des pages numérotées

	consécutivement :
(*a*) the application for leave,	*a*) la demande d'autorisation,
(*b*) the decision or order, if any, in respect of which the application is made,	*b*) la décision, l'ordonnance ou la mesure, s'il y a lieu, visée par la demande,
(*c*) the written reasons given by the tribunal, or the notice under paragraph 9(2)(*b*), as the case may be,	*c*) les motifs écrits donnés par le tribunal administratif ou l'avis prévu à l'alinéa 9(2)(*b*), selon le cas,
(*d*) one or more supporting affidavits verifying the facts relied on by the applicant in support of the application, and	*d*) un ou plusieurs affidavits établissant les faits invoqués à l'appui de sa demande,
(*e*) a memorandum of argument which shall set out concise written submissions of the facts and law relied upon by the applicant for the relief proposed should leave be granted,	*e*) un mémoire énonçant succinctement les faits et les règles de droit invoqués par le demandeur à l'appui du redressement envisagé au cas où l'autorisation serait accordée,
and file it, together with proof of service.	et le dépose avec la preuve de la signification.

[20] In this case, the principal applicant's affidavit was submitted in English, with no jurat of translation, although according to her Personal Information Form (PIF), she does not speak or understand English. Her affidavit would normally carry very little weight as a result. See, for example, *Uwadia v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 576 at para 46, [2010] FCJ no 683 (QL):

> [46] The Applicant submitted an affidavit in the English language without any jurat by an interpreter. When the Applicant indicated her need for an interpreter for cross-examination on her affidavit (a need first raised just a few days before the date originally set for her cross-examination), the issue of the validity of her affidavit was then raised by the Respondents. Indeed, if the Applicant did not understand English, her affidavit, which was not accompanied by a jurat from a translator, would carry little or no weight: *Momcilovic v. Canada (Minister of Citizenship and Immigration*, 2001 FCT 998, [2001] F.C.J. No. 1375 (QL) at para. 6; *Liu v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 375, 231 F.T.R. 148,

> [2003] F.C.J. No. 525 (QL) at para. 13; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 315, [2006] F.C.J. No. 387 (QL) at para. 44; *Tkachenko v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652, [2005] F.C.J. No. 2105 (QL) at para. 8.

[21] However, section 3 of the *Federal Courts Rules* give me the discretion to correct defects when it is in the interest of justice:

General principle	Principe général
3. These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.	**3.** Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

[22] In *Velinova v Canada (Minister of Citizenship and Immigration)*, 2008 FC 268 at paras 10-14, [2008] FCJ No 340 (QL), this Court noted that it is possible to rely on other evidence on record if there is no indication that the applicant understood what was in the affidavit:

> [10] As a preliminary matter, the respondent points out that the applicant's affidavit does not contain a jurat of translation as required by subsection 80(2.1) of the *Federal Courts Rules*, S.O.R./98-106 (the "Rules"), since the applicant had to have her PIF translated and testified at the hearing before the Board through an interpreter. According to the respondent, the application should be dismissed, or the affidavit should at the very least be given no weight. In reply, the applicant submits that this is a technical error, at best, and states that the affidavit was in fact translated.
>
> [11] Subsection 80(2.1) of the Rules provides as follows:
>
> Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall
> (a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and
> (b) contain a jurat in Form 80C.

* *

> Lorsqu'un affidavit est rédigé dans une des langues officielles pour un déclarant qui ne comprend pas cette langue, l'affidavit doit :
> a) être traduit oralement pour le déclarant dans sa langue par un interprète indépendant et compétant qui a prêté le serment, selon la formule 80B, de bien exercer ses fonctions;
> b) comporter la formule d'assermentation prévue à la formule 80C.

> [12] The Federal Court dealt with an application in which the applicant's affidavit did not contain an affidavit of translation in *Liu v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 375, [2003] F.C.J. No. 525 (QL), although it made no reference to subsection 80(2.1). In that case, Justice Judith Snider noted that the "usual practice" in such situations is to include an affidavit of translation, and that "[t]he lack of confirmation of translation might, if the facts were in dispute in a material way, lead me to conclude that this application should be dismissed" (at para. 13). However, since the parties essentially agreed on the facts, Justice Snider decided instead to give the affidavit no weight, as there was no indication that the applicant knew what was being signed when she swore the affidavit.
>
> [13] This decision was followed in *Tkachenko v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652, [2005] F.C.J. No. 2105 (QL) in which Justice Yvon Pinard made specific reference to subsection 80(2.1) but noted that, although the case was highly dependant on the facts, "[t]o dismiss this case on the grounds that an interpreter's oath is lacking would be unjust" (at para. 8). Instead, the weight to be given to the affidavit would be "significantly affected".
>
> [14] In this case, the issues raised by the applicant can be assessed without reference to the applicant's affidavit, since the necessary material can be found in the Certified Tribunal Record. Furthermore, there is essentially no dispute with regard to the facts, the question being whether the Board appropriately addressed the issue of state protection. Therefore, I will not dismiss this case on the basis of subsection 80(2.1), but, since there is no indication that the applicant understood what she was signing, without an affirmed statement that the content of the affidavit had been translated for her, I give no weight to the applicant's affidavit.

1. Did the panel err by finding that the principal applicant lacked credibility?

[23] The applicant claims that there is ample case law indicating that to find a lack of credibility based on contradictions in an applicant's testimony, there must be true discrepancies that are significant or serious, which is not the case here.

[24] First, the panel should have accepted her explanations regarding the contradiction in the dates the bakery opened. She claimed that even in Canada it is possible to operate a business before it is registered. Moreover, she had no reason to extend the operating dates of the bakery, because the assault that led her to close the business took place in October 2010, after the registration date in June 2010. If there was a contradiction, it did not establish that the business did not exist.

[25] Second, the panel criticized the applicant for not submitting a copy of her October 28, 2010, complaint. However, her explanation that the lawyer who received the complaint no longer works for the fiscalia and was suspected of collaborating with drug traffickers shows that the lawyer did not follow up on the complaint. The panel faulted the applicant for not submitting this complaint, but with the medical certificate that she did submit, it complained that she did not bring it with her in her luggage; it seems that any means were sought to lay blame.

[26] The respondent noted that the refugee claim was based on the fact the applicant was the victim of extortion related to her bakery. It was therefore essential to establish that the business operated on the date in question. It was reasonable for the panel to have doubts given the contradictions in the evidence.

[27] Next, a central element of the claim is the applicant's fear after the October 28, 2010, rape. The explanations she provided to justify her failure to submit a copy of her complaint with the fiscalia were not reasonable—that she had forgotten to go back and get her copy, that she did

not think of contacting the lawyer in charge, and then he left his position and was associated with drug dealers. At the point of entry, she simply said she complained to the police; it was only at the hearing that she spoke of the fiscalia. This leads suggests that she did not truly file a complaint. See *Mercado v Canada (Minister of Citizenship and Immigration)*, 2010 FC 289 at para 32, [2010] FCJ No 311 (QL):

> [32] The jurisprudence is clear that failing to file supporting documentation that it is reasonable to expect may have an impact on an applicant's credibility: *A.M. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 579, [2005] F.C.J. No. 709 (QL) at paragraph 20 and *Nechifor v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1004, [2003] F.C.J. No. 1278 (QL) at paragraph 6. Moreover, as Justice Marc Nadon noted in *Hamid v. Canada (Minister of Employment and Immigration)* (1995), 58 A.C.W.S. (3d) 469, [1995] F.C.J. No. 1293 (F.C.) (QL) at paragraph 20:
>
> > Once a Board, as the present Board did, comes to the conclusion that an applicant is not credible, in most cases, it will necessarily follow that the Board will not give that applicant's documents much probative value, unless the applicant has been able to prove satisfactorily that the documents in question are truly genuine. In the present case, the Board was not satisfied with the applicant's proof and refused to give the documents at issue any probative value. Put another way, where the Board is of the view, like here, that the applicant is not credible, it will not be sufficient for the applicant to file a document and affirm that it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to "offset" the Board's negative conclusion on credibility.
>
> See also *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 756, [2006] F.C.J. No. 1054 (QL) at paragraph 17, *Zaloshnja v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 206, [2003] F.C.J. No. 272 at paragraph 9.

[28] Additionally, the applicant testified that she was treated by a man, but the doctor who signed the medical certificate was a woman. All these discrepancies legitimately create doubts

about credibility. See *Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at para 32, [2010] FCJ No 644 (QL):

> [32] It was open to the panel to gauge the principal applicant's credibility and to draw negative inferences about the disparities between her statements in the original PIF, in the interview notes, in the amended narrative of the PIF and in the *viva voce* testimony, for which the principal applicant provided no satisfactory, plausible or credible explanation in the circumstances (*He v. Canada (Minister of Employment and Immigration)*, (1994), 49 A.C.W.S. (3d) 562, [1994] F.C.J. No. 1107). In this case, and the Court agrees with counsel for the respondent, the evidence shows that the applicants' story and narrative changed over the last two years.

[29] The applicant argued that *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ No 732 (QL) should be relied on to decide this case given the similarity of facts. However, the present case can be distinguished by the fact there are contradictions or inconsistencies between the applicant's testimony and many aspects of the evidence.

[30] I agree with the respondent that the discrepancies are serious enough to create doubts in the panel and allow it to come to a negative finding with regard to credibility. The decision fell within the range of possible and acceptable outcomes that are defensible in respect of the facts presented.

2. Did the panel err by not taking into consideration Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution?

[31] Under Guideline 4, a panel must be prepared to show understanding towards a victim of violence, traumatized by rape. The applicant testified from the start of the hearing that she did

not trust the police. When confronted at the hearing, she explained that the rape was a difficult and shameful memory for her. It is understandable that she did not tell the immigration officer about it. Talking about it to the doctor who treated her is not the same thing as talking about it to an officer at the border.

[32] The respondent claims that this explanation is not reasonable and the discrepancy between the statement made at the point of entry, the FIP, and the testimony at the hearing affect the applicant's credibility. Guideline 4 cannot be used to compensate for all credibility issues. See for example *Juarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 890 at para 17-20, [2010] FCJ No 1107 (QL):

> [17] The relationship between the Gender Guidelines and the onus of the applicant to prove her claim with credible evidence is set out in *Karanja v. Canada (MCI)*, 2006 FC 574, per Justice Pinard at paragraphs 5-7 of his decision:
>
> ¶5 The applicant is correct that the Gender Guidelines (issued on March 9, 1993 by the Chairperson of the Immigration and Refugee Board pursuant to paragraph 159(1)(*h*) of the *Immigration Act* and entitled Women Refugee Claimants Fearing Gender-Related Persecution) indicate that in the context of a gender-based claim, the Board should be particularly sensitive to a female applicant's difficulty in testifying. However, the Gender Guidelines, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence. The applicant bears the onus of proving her claim. As Justice Pelletier indicated in *Newton v. Minister of Citizenship and Immigration* (2002), 182 F.T.R. 294, at paragraph 18, "the Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth" and, at paragraph 17:
>
> > The Guidelines are an aid for the CRDD panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The Guidelines do not create new grounds for finding a person to be a victim of persecution. To that extent, the grounds remain the same, but the question becomes whether the panel was sensitive to the

> factors which may influence the testimony of women who have been the victims of persecution...
>
> ¶6 Furthermore, the Board's failure to specifically mention the Gender Guidelines does not mean that they were not considered and is not material or fatal to the Board's decision. The Board is presumed to have taken all of the evidence into account, and there is nothing that suggests that the Board did not consider the Gender Guidelines (see *S.I. v. Canada (M.C.I.)*, [2004] F.C.J. No. 2015 (F.C.) (QL); *Farah v. Canada (M.C.I.)*, [2002] F.C.J. No. 416 (T.D.) (QL); and *Nuray Gunel v. The Minister of Citizenship and Immigration* (October 6, 2004), IMM-8526-03).
>
> ¶7 The Gender Guidelines specifically state that the female refugee claimant must demonstrate that the harm feared is sufficiently serious to amount to persecution. In this case, there were numerous negative credibility findings by the Board and such findings are open to the Board to make.
>
> [Emphasis in original]

[18] The principles in *Karanja, supra* were followed in *Allfazadeh v. Canada (MCI)*, 2006 FC 1173, per Justice Harrington where he held at paragraph 6 that the RPD is presumed to have considered the Gender Guidelines, in my decision in *Cornejo, supra*, where I held at paragraph 27 that the Gender Guidelines are not intended to serve as a cure for deficiencies in a refugee claim, and in *I.M.P.P. v. Canada (MCI)*, 2010 FC 259, per Justice Mosley at paragraph 47.

[19] The RPD briefly mentioned the Gender Guidelines at paragraph 32 of the decision, but elaborated at length at paragraph 25 on the difficulties that face domestically abused women in Mexico:

> ¶25 …The panel bears in mind that abused women are sometimes reluctant to report their abusers to the police. For example, most public officials acknowledge that domestic and sexual violence is underreported and Amnesty International's report explores the obstacles Mexican women face when trying to report cases of domestic violence, including the refusal of officials to accept complaints, deficient investigations and poor enforcement of protection measures…

[20] The above statement in my view demonstrates that the RPD was sensitive to the applicant mother's circumstances as a domestically abused woman. The applicant mother's testimony was tainted by numerous credibility findings which cannot all be excused by the Gender Guidelines. The RPD properly considered the applicant mother's testimony in accordance with her circumstances. The adverse credibility findings, which are reviewed later on in these reasons, are not tainted by a lack of sensitivity. This ground of review must fail.

[33] It is clear that a victim of rape could be reluctant to reveal what happened to an immigration officer. The transcript of the hearing shows, in my opinion, that the panel was sensitive to the applicant's difficulty when testifying. This difficulty cannot explain all the inconsistencies in her evidence and her testimony.

Conclusion

[34] I conclude that the RPD decision that the applicants were not Convention refugees or persons in need of protection is reasonable. I would dismiss the application for judicial review. No question is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Peter Annis"

Judge

Certified true translation
Elizabeth Tan, translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8-13

STYLE OF CAUSE: NIDIA ARACELI AREVALO ZALDANA ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 4, 2013

REASONS FOR JUDGMENT AND JUDGMENT: ANNIS J.

DATE OF REASONS: NOVEMBER 14, 2013

APPEARANCES:

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