

Federal Court



Cour fédérale

**Date: 20140221**

**Docket: IMM-1263-13**

**Citation: 2014 FC 167**

**Toronto, Ontario, February 21, 2014**

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

**BETWEEN:**

**MAHNAZ GUL DURRANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Notwithstanding counsel's submission, I remain unconvinced that *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [NL Nurses] permits the Court to scour the record for evidence, not otherwise referenced by the Member, to support the end result that was reached. Such an approach, in my view, is inappropriate where the result reached was based on material and significant errors of fact and law. The Minister, is asking this Court to uphold the decision based on an entire rewriting of the Board's reasons. That approach, in my view usurps and conflates the roles of the Board and of this Court as directed by

Parliament in the relevant legislation. Moreover, it is expressly stated by the Supreme Court in *NL Nurses* at paragraph 15 to be inappropriate:

In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome. (emphasis added)

[2] Ms. Mahnaz Gul Durrani is a citizen of Pakistan. She is educated and works as an IT consultant. When she was a child, her family arranged her engagement to marry one of her distant cousins, Sirdar Ali Khan. When she became an adult, she refused to marry him because he was vulgar and uneducated, already had three wives, and she did not want to be confined to the small village where he lived, unable to work. When her father and uncle passed away, Mr. Khan began threatening her and as her refusal was seen as a personal slight, he refused to allow her to marry anyone else.

[3] She moved to a town just outside of Atlanta, Georgia, to escape the harassment. There, she encountered relatives and friends of Mr. Khan's family who harassed and mistreated her. She moved to Stockton, California at some point, although it is not clear whether it was for work, to escape Mr. Khan's relatives, or for some other reason. She fled to Calgary in May 2011 on a visitor's visa, staying with her brother until his wife pressured him to make her leave. She ultimately traveled to Mississauga. Her work visa for the U.S. expired in September 2011. She made her claim for refugee protection on November 15, 2011. Her visitor's visa for Canada expired on November 27, 2011.

[4] The Board Member states that the “determinative issues in this case are credibility, including subjective fear and whether her fear of persecution has objective basis in Pakistan” (emphasis added). I emphasize the word “including” in the statement quoted because it is clear on reading the decision that the fundamental finding was the finding of Ms. Durrani’s lack of credibility from which the other findings flowed.

[5] The Member’s determination that Ms. Durrani lacked credibility rests entirely on the fact that the Member was not convinced that Sirdar Ali Khan existed, notwithstanding Ms. Durrani’s sworn evidence that he was the agent of persecution. The Member writes that he “expected to see documentary evidence about the existence of Sirdar Ali Khan” and that without such, he “is not persuaded to believe that a person called Sirdar Ali Khan exists in Pakistan and, as a result, the panel disbelieves that the claimant was engaged to him as alleged.”

[6] By insisting that the Applicant produce documentary evidence to support her sworn testimony in the absence of any finding that her evidence was contradictory, inconsistent, or implausible, the Member breached the long-standing principle that a claimant’s evidence is presumed to be true unless there is a valid reason to doubt its truthfulness and that no corroboration is required absent such valid reason: See, among many other authorities, *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, *Ahortar v Canada (Minister of Employment and Immigration)* (1993), 65 FTR 137, *King v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1120, *Miral v Canada (Minister of Citizenship and Immigration)* (1999), 161 FTR 2013, *Chekroun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 738.

[7] Furthermore, the Member discounted affidavits provided by family members in Pakistan because “they have an interest in the outcome of the claimant’s refugee claim in Canada.” The Member also noted that none of these three affidavits stated the name of the Applicant’s fiancé; although the Court notes that they were in full accord with the Applicant’s testimony about being engaged and refusing to marry the man for the reasons expressed by the Applicant. They also supported her evidence about the treatment the jilted man imposed on her. In so doing, the Member breached the well-established principles that evidence is not to be rejected merely because it comes from a family member and it is not to be rejected for what it does not say but considered for what it does say: See among many others, *Pantas v Canada (Minister of Citizenship and Immigration)*, 2005 FC 64, *Aslan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 252, *Ndjizera v Canada (Minister of Citizenship and Immigration)*, 2013 FC 601, *Coitinho v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1037, *Kosta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 994.

[8] Given that: (1) the Applicant’s testimony is presumed to be true; (2) she provided documents which corroborated (and did not contradict) her own testimony; and (3) corroborative documentary evidence cannot be discounted simply because it comes from interested parties, it was an error for the Member to draw a negative inference as to the Applicant’s credibility because she did not provide documentary evidence specifically naming her fiancé.

[9] For these reasons the decision is set aside. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision is quashed and the Applicant's claim for refugee protection is remitted back to the Board to be determined by a different Member.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-1263-13

**STYLE OF CAUSE:** MAHNAZ GUL DURRANI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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AND JUDGMENT:** ZINN J.

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