

Federal Court



Cour fédérale

Date: 20141022

Docket: IMM-2596-13

Citation: 2014 FC 1003

Ottawa, Ontario, October 22, 2014

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

NELLI AVAGYAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant (or Ms. Avagyan) seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD), dated March 6, 2013, which held that she had not established that she was either a Convention refugee or a person in need of protection within the meaning sections 96 and 97 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) (the Act).

[2] For the reasons that follow, Ms. Avagyan's judicial review application is dismissed.

I. Background

A. *Ms. Avagyan's Refugee Protection Claim*

[3] Ms. Avagyan is a citizen of Armenia. She left Armenia for Canada on September 12, 2011 and advanced a refugee protection claim shortly thereafter. Her claim has two aspects which involve two former partners.

[4] First, she states that she fears a former partner, a policeman (first former partner), with whom she had a relationship between September 2008 and October 2009. She alleges that she put an end to the relationship on October 21, 2009 after having discovered he had mistresses. Ms. Avagyan claims that instead of letting her go when she told him she was ending the relationship he locked her in their residence until she was "freed", three days later, by her mother and brother who, having had no contact with her during those three days, decided to go and enquire at her residence.

[5] Although he then allowed her to leave, taking with her only a suitcase and a few belongings he threatened her should she ever speak of the matter to anyone. In fear of these threats, Ms. Avagyan rented an apartment located approximately 30 minutes away from her former residence.

[6] Ms. Avagyan states that she did not hear from the first former partner again until a few weeks after she filed a complaint with the Prosecutor's Office about the incident of October 21, 2009 (the October incident). She alleges that, on November 18, 2009, he located her and assaulted her to a degree requiring medical attention. Approximately one month later, she filed a complaint with the Prosecutor's Office in relation to the November 18, 2009 incident (the November incident).

[7] The Applicant testifies that, following the November incident, she had no contact with the first former partner until March 2011 when she was visiting her then new partner (second former partner) who was at a police station following his arrest during a political demonstration. Following that encounter, according to Ms. Avagyan, there were two further incidents with the first former partner. In June 2011, she received a phone call from him wherein he threatened reprisal if she did not return to him. Second, in August 2011, he tried to force her into his vehicle.

[8] The second aspect of Ms. Avagyan's refugee protection claim is related to the problems her second former partner, Mr. Sargis Avagyan, was facing in Armenia before they both left for Canada in order to seek refugee protection. Mr. Avagyan, who had met the Applicant in February 2010, was a doctor involved in exposing corruption in the government's health ministry and whose life, as a result, was allegedly threatened by people who wanted him to stop that activity. Ms. Avagyan claims that she fears for her safety, if she were to return to Armenia, from the enemies of her second former partner. She also fears for the safety of her child, born to her and Mr. Avagyan shortly after their arrival in Canada.

[9] The Applicant and Mr. Avagyan parted ways a few weeks before their arrival in Canada.

[10] Mr. Avagyan also sought judicial review of a decision by the RPD, dated March 6, 2013, rejecting his own refugee claim, which judicial review was heard together with the present matter. For the reasons outlined in file IMM-2232-13, released simultaneously with these reasons, I have also dismissed Mr. Avagyan's judicial review application.

B. *The Decision Under Review*

[11] Ms. Avagyan's refugee protection claim was dismissed by the RPD on the basis, mainly, that it was not credible based on the evidence adduced.

(1) *The Fear of Abuse by the First Former Partner*

[12] The RPD made adverse credibility findings regarding Ms. Avagyan's testimony. The RPD found that the time gap between the alleged incidents made her story unlikely to be true. That is mainly considering that the first former partner, allegedly abusive and controlling, would have had the resources, as a police officer, to contact or locate her, when she left him in October 2009.

[13] The RPD also found that Ms. Avagyan had not provided sufficient evidence regarding her complaints to the Prosecutor's Office in 2009. First, she could not provide documentary proof of the complaint allegedly made following the October incident. As for the complaint related to the November incident, the RPD denoted that it would not have been unreasonable for

Ms. Avagyan to follow-up with the authorities considering there was no evidence showing that the state was unwilling or unable to provide her with adequate state protection and the fact that she remained in Armenia until September 2011.

[14] With respect to the medical certificate adduced to corroborate the injuries Ms. Avagyan suffered in the November incident, the RPD noted that the certificate, which was dated December 18, 2009, did not correspond with the date of the incident. Further, the certificate did not indicate the source of the injuries.

[15] The RPD found that there was little or no credible evidence that the first former partner still had any interest in Ms. Avagyan, considering the passage of time. The January 2013 emails adduced by Ms. Avagyan as evidence that her first former partner was inquiring about her whereabouts were given no weight by the RPD. Finally, the RPD noted that no evidence had been adduced by family members, who, according to Ms. Avagyan's testimony, freed her after having been locked-up in her residence by her first former partner in October 2009. According to the RPD, it would have been reasonable to expect something from them attesting to the Applicant's problems with that former partner.

(2) The Fear Related to the Activities of the Second Former Partner, Mr. Avagyan

[16] As indicated previously, Ms. Avagyan fears the enemies of her second former partner, Mr. Avagyan. In the interview with the RPD, Ms. Avagyan admitted that she was not targeted

by Mr. Avagyan's alleged persecutors but claimed that these people would be aware of their relationship and of the existence of their child.

[17] The RPD rejected that claim. It found the evidence unsatisfactory as the Applicant was not a target of Mr. Avagyan's enemies and that there was, as a result, no reason to conclude that her life was at risk. In particular, it found no evidence that Ms. Avagyan was involved in any way in collecting information for or with Mr. Avagyan in exposing corruption or that she was remotely "on the radar" of Mr. Avagyan's enemies because of her relationship with him.

[18] Also, the RPD gave no weight to a psychiatric evaluation report filed by Ms. Avagyan stating she was suffering from Post Partum Depression with psychotic features. This report recounted Ms. Avagyan's situation in Armenia but stated that she was targeted by Mr. Avagyan's persecutors. The RPD made a negative credibility finding as a consequence of the contradiction between this statement in the report and Ms Avagyan's oral evidence that she was not targeted.

[19] Finally, the RPD considered the *Gender Guidelines* and found that although they applied to some degree to Ms. Avagyan's claim they did not counterbalance the deficiencies in the evidence and the previously drawn conclusion of adverse credibility.

II. Issue and Standard of Review

[20] The issue to be decided in this case is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[21] Generally speaking, determining whether a foreign national is a Convention refugee within the meaning of section 96 of the Act or a person in need of protection under section 97 of the Act is a matter of mixed facts and law for which the RPD has expertise. As a result, it is well settled that such determinations are to be reviewed through the lens of the reasonableness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 53; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 89).

[22] It is also well settled that when it comes to the credibility or plausibility of a refugee claimant's story, the RPD's findings are factual in nature and, given its role as a trier of fact, are owed a significant amount of deference (*Khosa* at para 89; *Camara v Canada (Minister of Citizenship and Immigration)*, 2008 FC 362, at para 12; *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, at para 13; *Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7, at para 14; *Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55, at para 17, *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, at para 11; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 491, at para 12).

[23] What this means is that my role is not to reweigh the evidence that was before the RPD and substitute my findings to those of the RPD. My role is limited to the review of the RPD's decision and interfere with it only if it lacks justification, transparency and intelligibility and if it falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir*, at para 47).

III. The Applicable Statutory Framework

[24] In order to qualify as a Convention refugee within the meaning of section 96 of the Act, the Applicant had to establish that she was a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, was outside her country of nationality and was unable or, owing to such fear, unwilling to avail herself of the protection in that country.

[25] With respect to her claim that she was also a person in need of protection within the meaning of section 97 of the Act, she had to establish that her removal to Armenia would subject her either to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture, or to a risk to her life or to a risk of cruel and unusual treatment or punishment. In the latter case, she also had to establish, *inter alia*, that she was unable or, because of that risk, unwilling to avail herself of protection in Armenia, that she would face that risk in every part of Armenia and that this risk is not one that is faced generally by other individuals in or from that country.

[26] Sections 96 and 97 of the Act are reproduced in the Annex to this judgement.

IV. Analysis

A. *Ms. Avagyan's Position*

[27] Ms. Avagyan claims that the RPD decision is vitiated by a number of unreasonable findings.

[28] With respect to the first aspect of her refugee protection claim, the fear of abuse by the first former partner, she contends it was unreasonable on the part of the RPD:

- a. To discount her fear of her alleged former abusive partner on the assumption that if he was as abusive and controlling as she claims, he would have searched for her after she left him and done whatever possible to get her back into his life;
- b. To discount the medical report related to the November incident because it did not state the cause of the injuries and to draw an adverse inference from the fact she did not follow-up with the authorities in relation to her complaints to the Prosecutor's Office;
- c. To reject her story regarding the first former partner based on the lack of corroborative evidence from her mother and brother on the existence and nature of that relationship; and
- d. To give no weight to the January 2013 emails showing that the first former partner was making inquiries as to her whereabouts.

[29] Ms. Avagyan also claims that the RPD, by stating that it was not “convinced” that the alleged abusive former partner “did and would put her life at risk in a forward looking analysis”, imposed on her a higher burden of proof than that required by sections 96 and 97 of the Act.

[30] With respect to the second aspect of her refugee protection claim, the fear related to the activities of Mr. Avagyan, Ms. Avagyan contends it was unreasonable for the RPD to draw a negative credibility finding on the basis of a single contradiction in her evidence. She also claims that it was unreasonable for the RPD not to consider the diagnosis in the psychiatric evaluation report in the assessment of her overall credibility.

[31] She also contends that the RPD applied the wrong legal test in its analysis of her section 97 claim in requiring proof that she would be tortured if she were to return to Armenia whereas what needs to be proven is the danger of torture or the risk of mistreatment.

B. *Ms. Avagyan’s Fear of Abuse by the First Former Partner*

(1) The Lack of Credibility of Ms. Avagyan’s Allegations

[32] As the Federal Court of Appeal stated in *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, an adverse credibility finding will normally be dispositive of a refugee protection claim unless the record contains reliable and independent documentary evidence to rebut it (*Sellan*, at para 3).

[33] This rule stems from the fact that assessing the credibility of a refugee claimant is a question of fact that lies at the very heart of the RPD's jurisdiction and expertise. Indeed, as a specialized tribunal, the RPD has complete jurisdiction to determine the plausibility of testimony and in so doing, to gauge the credibility of an account and draw the necessary inferences. This means that it is entitled to make credibility findings based on implausibility, common sense and rationality and, as long as the inferences drawn are not so unreasonable as to warrant the intervention of the Court, the RPD's findings in this regard are not open to judicial review (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315, [1993] FCJ No. 732 (QL) (FCA), at para 4; *Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653, [2002] FCJ No. 875 (QL) at para 22; *Dzey v Canada (Minister of Citizenship and Immigration)*, 2004 FC 167, at para 19; *Abdul v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 260, [2003] FCJ No. 352 (QL) at para 15).

[34] Here, the RPD found that the determinative issue with Ms. Avagyan's refugee protection claim was one of credibility: it did not believe that she had a former abusive partner who put her life at risk or who would present such a risk in a forward looking analysis, and found that the documentary evidence submitted by Ms. Avagyan to corroborate her allegations was unreliable and insufficient.

[35] It is clear, when the decision is read as a whole, as it is bound to be (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at paras 14-15; *Pena v Canada (Minister of Citizenship and Immigration)*, 2009 FC 616, 352 FTR 11 at para 70; *Shire v Canada (Minister of Citizenship and Immigration)*, 2012 FC

97, at para 54; *Stuart v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1139, at para 28), that the RPD was largely influenced by the fact Ms. Avagyan allegedly had only two encounters with the first former partner between the moment she left him in October 2009 and her departure from Armenia in September 2011 and, no contact whatsoever for a period of sixteen months. This, the RPD inferred, did not match the first former partner's profile of an abusive, controlling man, as claimed by Ms. Avagyan.

[36] Ms. Avagyan contends that this finding is pure speculation, and therefore unreasonable. The Respondent says it is based on common sense and, therefore, reasonable. The burden is on Ms. Avagyan to show that the inference drawn by the RPD could not reasonably have been drawn (*Aguebor*, at para 4).

[37] Much has been said and written about inferences and the distinction to be drawn between a permissible inference and impermissible speculation. In a recent decision, Justice Peter Annis provided a useful reminder of the general principles governing inferences (*K.K. v Canada (Minister of Citizenship and Immigration)*, 2014 FC 78). He summarized these principles as follows at paragraph 61 of his judgement :

- An inference is a conclusion that follows logically and reasonably to a sufficient degree of probability from accepted facts by the application of an inductive reasoning process that utilizes the uniformity of prior human experience as his benchmark.
- The facts that are said to provide the basis for the inference must be established by the evidence and cannot be substituted for by speculation.
- Because there is no bright line, drawing a distinction in degrees of probability between permissible reasonable

inferences and impermissible speculation is often a very difficult task.

- Drawing inferences is not about possibilities, nor is it a process of creating a hypothetical narrative, or applying subjective imagination even where the circumstances permit an educated guess.
- Inferences need not be obvious or the most easily drawn; all that is required is that they be reasonable and logical.

[38] In *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155, 419 FTR 135 Justice Mary J. L. Gleason concluded, after reviewing this Court's jurisprudence on the issue, that it is open to the RPD to find a refugee claimant's story not plausible when it does not make sense in light of the evidence before it or when it is outside the realm of what could be reasonably expected (*Zacarias*, at para 11).

[39] Applying these principles to the case at hand, I am not persuaded that it was unreasonable on the part of the RPD to discount Ms. Avagyan's story as one could reasonably conclude that the central elements of that story fell "outside the realm of what could be reasonable expected". These central elements, measured against Ms. Avagyan's allegation of the former partner being abusive and controlling, are:

- a. Ms. Avagyan was not upset when her mother and brother came to "free" her from her three day lock-up and only told them about the first former partner's alleged abusive behaviour about a week later although they had apparently been in a relationship for a year;

- b. She did not hear from that partner again until a month later, after she had filed a complain with the Prosecutor's Office for which she had no documentary proof
- c. She then had no contact with the first former partner until March 2011, that is sixteen months later, when she visited her second former partner, Mr. Avagyan, at a police station, and there is no indication on record that this encounter was anything other than purely coincidental.
- d. The last encounter with the first former partner before Ms. Avagyan left for Canada occurred in early August 2011, four months later, when he allegedly tried to force her into his car; this was at a time where the two were living in different regions of Armenia and nearly two years after their separation.

[40] Based on that evidence, the RPD was entitled, in my view, to make negative inferences as to the credibility of Ms. Avagyan's allegation that she had a former abusive partner who would seek to put her life at risk if she were to return to Armenia. I agree with the Respondent that the RPD's credibility finding in this regard was properly based on implausibility, common sense and rationality. In other words, it was based on permissible inferences reasonably and logically drawn from a group of facts established by the evidence, not from some process applying subjective imagination.

[41] Thus, prior human experience will suffice to logically draw reasonable inference and it would be wrong to assert that supporting scientific evidence is needed when assessing human behaviour. In my view, it was reasonably open to the RPD to find that Ms. Avagyan's story did

not match the alleged profile of the first former partner, or in other words, it was reasonable for the RPD to conclude that this story defied common sense and rationality.

(2) The Weight Ascribed to the Supporting Documentary Evidence

[42] It was reasonably open to the RPD, in such context, to ascribe little weight to the documentary corroborating evidence filed by Ms. Avagyan; the medical report allegedly related to the November incident, the complaint filed with the Prosecutor's Office in relation to that incident, and the January 2013 emails indicating that the first former partner was making inquiries as to her whereabouts.

[43] As for the medical report, I agree that expecting a statement as to the cause and the author of the injuries was too much to ask on the part of the RPD. However, the RPD did note that the report, which is dated thirty days following the alleged assault and indicates Ms. Avagyan was discharged from hospital on December 3, 2009, some fifteen days following the said assault, made no mention of the date Ms. Avagyan was admitted into the hospital.

[44] The onus was on Ms. Avagyan to establish, on a balance of probabilities, the facts underlying her refugee protection claim and the RPD's factual findings in this regard, as indicated previously, are to be owed a significant amount of deference (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FC 635, at para 8; *Delisa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 8, 362 FTR 268, at para 33. As a result, in light of the discrepancies between the dates in the report and the date the November

incident allegedly occurred, and the general lack of credibility of Ms. Avagyan's story as a whole, it was, in my view, reasonably open to the RPD to give this report little weight.

[45] The RPD did not give much weight either to the complaint filed with the Prosecutor's Office in relation to the November incident as there was no evidence of any kind of follow-up with the authorities on the part of Ms. Avagyan in the nearly two-year span between the filing of the complaint and her departure from Armenia, despite the Prosecutor's Office response that it had commissioned the government's Special Investigation Service to verify the authenticity of the facts alleged in the complaint. The RPD found, as a result, that Ms. Avagyan had failed to show that the Armenian authorities were not interested or able to provide her with adequate state protection.

[46] This, in my view, is a sound finding given the current state of the law on state protection. As the Supreme Court of Canada stated in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, refugee protection is meant to be a form a surrogate protection, invoked only in situations where a refugee claimant has unsuccessfully sought the protection of his home state (*Ward*, at para 18). This means that, absent a complete breakdown of the state apparatus, it is presumed that state protection is available for a refugee claimant and that to rebut this presumption, the claimant must provide clear and convincing evidence of the state's inability or willingness to provide adequate – not perfect - protection (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 43 and 44; *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636 at para 19; *Ruzso v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, at para 29; *Ward*, above at para 52).

[47] What is required at this stage of the analysis is evidence that all objectively reasonable efforts, though unsuccessful, were made by the claimant to exhaust all courses of action reasonably available to him or her before seeking refugee protection (*Ruzso*, above at para 32). This was not done in the case at hand and it was therefore open to the RPD to give little weight to the fact Ms. Avagyan had filed a complaint following the November incident. Her evidence was simply insufficient.

[48] Ms. Avagyan contends that there was no point in following up with her complaint given evidence that domestic violence in Armenia is a problem for which police authorities in that country do not always assist victims adequately. However, it bears noting that Ms. Avagyan allegedly filed two complaints with the Prosecutor's office. It cannot be alleged that she was reluctant to avail herself of state protection by reason of her fear. Furthermore, given the Prosecutor's office response to her complaint concerning the November incident, it cannot be said that the state was unable or unwilling to provide adequate protection. Therefore, the RPD was entitled to expect some evidence of follow-up from Ms Avagyan and, in the absence of such evidence, it was open to the RPD to conclude as it did.

[49] I find that it was open to the RPD to give no weight to the January 2013 emails indicating that Ms. Avagyan's first former partner was making inquiries as to her whereabouts given its finding that she had not established that that partner was an abusive partner who would seek to put her life at risk. In any event, when one looks at the content of the said emails, one can reasonably find that they hardly pose a threat in a forward-looking analysis.

[50] Finally, Ms. Avagyan takes exception with the fact that the RPD found it would have been reasonable to expect some evidence from her mother and brother, who came to “free” her in October 2009 to establish the existence and nature of her relationship with the first former partner. It is well-established that a refugee claimant's own assertions may be insufficient to satisfy, on a balance of probabilities, the legal burden he or she faces (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067, at para 23). This is especially the case when there are doubts about the credibility of the claimant's allegations (*Adu v Canada (Employment and Immigration)*, [1995] FCJ No. 114 (QL) (FCA); *Khan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 400 at para 17; *Bhagat v Canada (Citizenship and Immigration)*, 2009 FC 1088, at para 9; *Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 244, at para 28). Therefore, sometimes, it is open to the RPD to expect some corroborative evidence to assess whether that burden has been met. Here, I find it was reasonably open to the RPD to have expected evidence from these relatives of Ms. Avagyan as they appear to have been very close to her at the time she was in a relationship with the first former partner. The RPD cannot be faulted for saying that such evidence could have been helpful in establishing Ms. Avagyan's fear of that former partner.

(3) The Alleged Excessive Burden of Proof

[51] Ms. Avagyan claims that the RPD, by stating it was not “convinced” that her alleged abusive former partner did and would put her life at risk in a forward looking analysis, applied the wrong test in placing on her a higher burden of proof than the one required by sections 96 and 97 of the Act.

[52] I disagree. As contended by the Respondent, Ms. Avagyan has failed to establish the existence of her alleged risks. The RPD disbelieved her evidence that she had a former abusive partner who had put her life at risk and would do so in the future as well. There was therefore no factual basis for her refugee claim under sections 96 and 97 of the Act.

[53] In any event, even assuming the RPD placed on her an excessive burden of proof in this regard, Ms. Avagyan failed, as indicated previously, to rebut the presumption that the state would be able and willing to protect her. As a result, this argument, even if well-founded, is of no assistance to Ms. Avagyan.

[54] Finally, it bears noting that Ms Avagyan has not raised any issue with the RPD's application of the Gender Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

C. *The Second Aspect of Ms. Avagyan's Refugee Claim: The Fear Related to the Activities of Mr. Avagyan*

[55] Ms. Avagyan contends that it was unreasonable for the RPD to draw a negative credibility finding on the basis of a single contradiction between her evidence and the psychiatric evaluation report on the issue of whether she was targeted by Mr. Avagyan's alleged persecutors.

[56] Given the importance of that issue in this aspect of Ms. Avagyan's refugee claim, it was reasonably open to the RPD, in my view, to draw a negative credibility inference from that contradiction. This is especially so in light of the RPD's finding that there was no evidence of

Ms. Avagyan being involved in any way in exposing corruption practices in the Armenian health ministry or being “on the radar” of Mr. Avagyan’s alleged enemies because of her relationship with him.

[57] I can find no reason to interfere with the RPD’s finding that Ms. Avagyan did not establish she was facing one of the risks contemplated by sections 96 or 97 of the Act as a result of her being in a relationship with Mr. Avagyan. Again, this is a question of fact over which a significant amount of deference is owed to the RPD.

[58] Finally, Ms. Avagyan claims that the RPD failed to consider the diagnosis in the psychiatric evaluation report of post-partum depression with psychotic features in its assessment of her overall credibility.

[59] I agree with the Respondent that the RPD made no reviewable error in not using this report to evaluate the Applicant’s credibility. As Justice Michael Phelan said in *Saha v Canada (Minister of Citizenship and Immigration)*, 2009 FC 304, at paragraph 16:

It is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons. This is particularly the case where the RPD rejects the underlying facts of the diagnosis. In this case, there were no independent clinical studies performed to support the psychological assessment and no other medical basis for the diagnosis.

[60] In *Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1379, [2014] 2 FCR 3, Chief Justice Paul S. Crampton cautioned against the use of this type of report in

assessing credibility, unless there is something in the report that “strongly suggests” that an adverse credibility finding made by the RPD was unreasonable (*Kaur*, at para 38). Such reports, in any event, cannot possibly serve “as a cure-all for any and all deficiencies” in a RPD decision (*Khatun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 159, at para 94; *Mahari v Canada (Minister of Citizenship and Immigration)*, 2012 FC 999 at para 25; *Rokni v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No. 182 (QL)).

[61] Here, Ms. Avagyan is said to suffer from post-partum depression with psychotic features, a condition which does not impact on the assessment of her testimony and credibility, and which is also the result of events that occurred in Canada rather than in Armenia, where her claimed fear rests. As stated in *Kaur*, above, the Supreme Court of Canada taught us, in recent decisions, that the reviewing court must not intervene when there is a reasonable basis for the decision-maker to conclude as it did (see *Newfoundland Nurses*, above, *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654 and *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364). Therefore, it would be inconsistent with these decisions to overrule the RPD’s credibility findings on the basis of the psychiatric report given the need for reviewing courts to give respectful deference to the RPD’s finding on matters of credibility, which are at the heart of its mandate (*Kaur*, at para 38).

[62] In any event, Ms. Avagyan has not established, with clear and convincing evidence, that adequate state protection would not be available to her in Armenia. Therefore, even assuming she was at risk because of her relationship with Mr. Avagyan before she left Armenia, this would

be insufficient to successfully avail herself of Canada's protection under sections 96 and 97 of the Act.

[63] No question of general importance has been proposed by the parties. None will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"René LeBlanc"

Judge

ANNEX

Immigration and Refugee Protection Act (SC 2001, c 27) *Loi sur l'immigration et la protection des réfugiés (LC 2001, ch 27)*

Convention refugee

Définition de « réfugié »

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 himself 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.

Person in need of protection

Personne à protéger

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 : |
| (i) the person is unable or, because of that risk, unwilling to avail themselves 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. |

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

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