

Date: 20020409

Docket: IMM-1110-01

Neutral citation: 2002 FCT 390

Ottawa, Ontario, this 9th day of April, 2002

PRESENT: THE HONOURABLE MR. JUSTICE BLANCHARD

BETWEEN:

LILIANA CAZAK AND ANGELA MARIAN

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of the decision of the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board, dated February 12, 2001, wherein the CRDD determined that Angela Marian (the "principal applicant") and Liliana Cazak (the "second applicant") were not Convention refugees.

Facts

[2] The applicants are sisters who were born in Moldova and are presently citizens of Romania. Their Convention refugee application is based on a well-founded fear of persecution due to membership in a particular social group, specifically gender, arising from domestic abuse from the principal applicant's husband.

[3] When the applicants moved to Romania, they joined a police rowing club where the principal applicant met a police officer, Marius Marian. In October, 1998, she married Mr. Marian. After the wedding, the principal applicant discovered she was pregnant. Her husband did not share her excitement regarding the pregnancy and forced the principal applicant to have an abortion.

[4] Following this incident, the principal applicant alleged that her husband subjected her to sexual, physical and psychological abuse. Her husband issued death threats to both the principal applicant and her sister, the second applicant, when she attempted to intervene. The principal applicant stated that given the fact that her husband is a police officer, coupled with the attitudes towards domestic violence in Romania, it would have been futile for her to seek police protection.

[5] The principal applicant alleged that her husband's primary concern was with her rowing career. His abuse was directed at forcing her to continue competing and winning in international competitions. The applicants came to Canada in August, 1999, to participate in the World Rowing Championships. After a poor showing, the husband again issued threats regarding what would happen to the applicants upon returning to Romania.

[6] The applicants did not return to Romania. Subsequently, the husband issued threats through the applicants' mother and directly by phone to the principal applicant. He specifically threatened that if they did not return to Romania, he would hire someone in Canada to kill them.

[7] The applicants did not return and the husband filed for divorce. The divorce was final on January 21, 2000. The principal applicant alleges that the threats have continued and that she and her sister fear for their lives if they return to Romania.

The CRDD Decision

[8] The CRDD determined that the applicants were not Convention refugees because there was insufficient credible or trustworthy evidence that the applicants would be persecuted. The Supreme Court of Canada in *R. V. Lavallée*, [1990] 1 S.C.R. 852, dealt with the so-called "battered wife syndrome". Madam Justice Wilson, writing for the Court, at page 873, shared the view expressed by the New Jersey Supreme Court in *State v. Kelly*, 478 A.2d 364 (1984), at p. 378, and recognized "... that the battering relationship is 'subject to a large group of myths and stereotypes'. As such, it is beyond the ken of the average juror and thus is suitable for explanation through expert testimony...."

[9] At page 872 of her reasons, she stated:

The gravity, indeed, the tragedy of domestic violence can hardly be overstated. Greater media attention to this phenomenon in recent years has revealed both its prevalence and its horrific impact on women from all walks of life. Far from protecting women from it the law historically sanctioned the abuse of women within marriage as an aspect of the husband's ownership of his wife and his "right" to chastise her. One need only recall the centuries old law that a man is entitle to beat his wife with a stick "no thicker than his thumb". (My emphasis)

[10] In assessing the applicants' credibility, the CRDD drew a number of negative inferences and concluded as follows at page 2 of its reasons:

... in our opinion, these claimants who are world class athletes, have competed in the former Soviet Union's, Moldova's and Romania's national teams, and most recently were part of a police rowing team in Romania, do not fall into the category of those oppressed women who fear persecution and cannot seek protection in their own country. The panel arrives at such decision in view of the implausibility of the principal claimant's testimony. In our opinion, the principal claimant's profile as a world class champion who won Gold Medals at various world championships, enjoyed a level of recognition and fame, and had access to numerous coaches, and athletic officials. Moreover, her ability to travel freely in and out of the country does not match with the profiles of the oppressed women who are isolated and physically and psychologically feel trapped in the cycle of abuse and violence.

[11] During the proceedings, the principal applicant was asked whether or not she had approached any authorities for protection from her abusive husband. She stated that she had once spoken to her coach about the problems she was having with her husband and he advised her that she should resolve it with her husband. The panel made a negative plausibility finding on this issue because they did not believe that the coach, who was also a police officer, would be indifferent to the problems of one of his star athletes. In addition, the incident was not included in the applicant's Personal Information Form (PIF) which specifically asks claimants to set out what measures they have taken to seek protection from authorities.

[12] The panel made a negative inference from the fact that when the claimant travelled to different countries in order to participate in international competitions, she did not explore the possibility of seeking protection in those countries. Although she was not accompanied by her husband on those trips, she did not take steps to seek protection because it never came to her mind to do so. The panel found that her response indicated a lack of subjective fear, and, therefore was "inconsistent with the action of someone who genuinely fears persecution".

[13] The CRDD also found that the principal applicant always had the opportunity to go to Moldova, her country of birth, to escape her husband. The principal applicant testified that she feared that it would be simple for her ex-husband to cross the border from Romania and seek her out in Moldova. The CRDD disagreed. The CRDD found that a Romanian police officer would not have the same power and authority in another country. The principal applicant's failure to move to Moldova reinforced the CRDD's finding "that her alleged fear of persecution is not well-founded".

[14] The CRDD also briefly raised the issue of availability of state protection, incorrectly stating that the applicants were police officers.

Submissions

[15] The applicants submit that the CRDD found the principal applicant's testimony to be implausible because the applicants' profiles as world class athletes did not fit the profile of oppressed and abused women. The applicants submit that the CRDD assumed that only poor or economically disadvantaged women can be abused spouses and that this assumption is an inappropriate stereotyped misconception which taints the decision as a whole.

[16] In addition, the CRDD made negative inferences from the principal applicant's failure to leave her husband when various opportunities arose during her travels. The principal applicant submits that these inferences also reveal the CRDD's fundamental misconception of "battered spouse syndrome", which has been recognized by the Supreme Court of Canada in *Lavalee, supra*. In drawing these inferences, the CRDD failed to consider the information contained in the psychological report which explained the principal applicant's behaviour in the context of the syndrome.

[17] The respondent's submissions speak to the fact that the CRDD is entitled to make findings based on implausibilities, common sense and rationality. However, the issue of the basis of the CRDD's specific findings in this case are not addressed.

[18] The applicants also submit that additional errors occurred in the CRDD's analysis, specifically that the CRDD erred in fact in referring to the applicants as police officers and erred in law in its assessment of the relevance of Moldova as an internal flight alternative.

Standard of Review

[19] In *Aguebor v. Minister of Employment and Immigration*, (1993) 160 N.R. 315 at page 316, Mr. Justice Décaré set the standard of review for credibility and plausibility findings of the CRDD as follows:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

[20] In *Arumugam v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 122 (F.C.T.D.) online: QL, at para. 5, Madame Justice Reed stated that implausibilities must be founded in the evidence and cannot be highly speculative. (see also *Bastos v. Canada (MCI)*, (2001) 15 Imm. L.R.(3d) 167; and *Huang v. Canada (MCI)*, [2001] F.C.J. No. 1712 (F.C.T.D.) online: QL.

Analysis

[21] In reviewing the record, an error of fact seems to have arisen from confusion surrounding the fact that since the applicants rowed for the police club, they were considered police employees. This error does not appear to form a significant portion of the CRDD's analysis. As such, I conclude that this is not a reviewable error.

[22] As well, the CRDD's reference to Moldova was not in the context of an external flight alternative as suggested by the applicants, but rather was used as an example to support its finding that the principal applicant did not genuinely fear her husband because she did not flee to Moldova. I also determine this not to be a reviewable error. I am of the view that the central issue in this judicial review is the reasonableness of the CRDD's plausibility findings.

[23] The CRDD's decision is based primarily on its finding that the principal applicant does not have a real fear of persecution from her husband. It is clear from the CRDD's reasons, and in particular, the above cited excerpt at page 2 of the decision, that stereotypes regarding profiles of abused women and appropriate behaviours of abused women were the foundation of its decision. These findings were made despite the sworn testimony of the principal applicant outlining the abuse she suffered during her marriage and the threats that her husband made against her and her sister. The principal applicant's allegations were supported by the psychological report which confirmed that she fit the profile of an individual caught in a cycle of abuse which began when she was a child and witnessed her father's abuse of her mother. Notably, the CRDD did not reject this evidence, but rather chose to dismiss its relevance and rely on its own beliefs and speculations that world-class athletes do not fit the profile of abused women and that women who do not flee their husbands do not have a

subjective fear of abuse. In doing so, I am of the view that the CRDD made unreasonable inferences that were based on speculation, stereotypes and misconceptions and were not supported by the evidence before them.

[24] The CRDD repeatedly made reference to the fact that the principal applicant did not take measures to leave her husband while she had ample opportunity to do so while travelling abroad. It should be born in mind that the principal applicant married in October 1998 and was separated in August 1999, less than one year later. I think it not unreasonable, given the obvious feelings of love and affection the principal applicant expressed, at least in the early stages of their marriage, that she would allow some time to try to make things work in their relationship. A review of the Supreme Court decision in *Lavallee, supra*, and the psychiatric report tendered in the within proceeding would lead me to conclude that such behaviour is certainly not inconsistent with the behaviour of a victim of "battered wife syndrome".

Conclusion

[25] The CRDD's conclusions and negative inferences indicate that it fundamentally misunderstood the nature of domestic violence and how it affects its victims. The inferences drawn and the plausibility findings made were highly speculative and not reasonably open to the CRDD. As such, there is a reviewable error in the CRDD's decision and this matter should be sent back to a different panel for redetermination.

[26] For the above reasons, this application for judicial review will be allowed.

[27] The parties, having had the opportunity, have not requested that I certify a serious question of general importance as contemplated by section 83 of the *Immigration Act*. Therefore, I do not propose to certify a serious question of general importance.

ORDER

THIS COURT ORDERS that:

1. This application for judicial review of the decision of the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board dated February 12, 2001, is allowed.
2. This matter is referred back for a rehearing by a differently constituted panel of the Immigration and Refugee Board (Convention Refugee Determination Division).

_____ "Edmond P. Blanchard"

Judge

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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January, 24, 2002

REASONS FOR ORDER AND ORDER BY:

The Honourable Mr. Justice Blanchard

DATED:

April 9, 2002

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for the Applicants

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