

Date: 20020219

Docket: IMM-2992-00

Neutral citation: 2002 FCT 182

Montreal, Quebec, February 19, 2002

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

JOYCE RUTH MAQDASSY

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Convention Refugee Determination Division (the "Board") wherein the applicant was found not to be a Convention refugee.

[2] The applicant is a citizen of Iraq and also a British Overseas Citizen, such status having been derived from her late father who held British nationality. British Overseas Citizens do not have right of abode in Britain. The applicant claims Convention refugee status because of her British nationality, and her membership in a particular social group, namely, her family.

[3] According to the applicant, a wave of discrimination started in 1973 against people with "foreign roots" in Iraq. Her husband was harassed by government officials, and one of her sons was deprived of a scholarship to specialize as a surgeon. Another son was deprived of his teaching position after a resolution was passed stipulating that in order to be able to teach, a person would have to be born to Iraqi parents.

[4] Although she was never taken away by the authorities, the applicant decided to leave Iraq for Jordan with her son Osama in June 1998 after four of her sons had already left Iraq for other countries. Osama was accepted as a refugee in Jordan. However, the applicant did not make a claim in Jordan; instead she obtained her British Overseas passport and, four months after having arrived in Jordan, returned to Iraq to sell her house.

[5] Before coming to Canada, the applicant went to Germany for 25 days to visit one of her sons, who had been granted refugee status in Germany.

[6] The applicant came to Canada on September 16, 1998, upon the invitation of her son to attend his daughter's baptism. After a few months, when her visitor's visa was about to expire, the applicant made a claim for refugee status on January 21, 1999.

[7] The Board found that the applicant's actions were not consistent with a subjective fear of persecution.

[8] Relying on *Yusuf v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 629 (C.A.), the applicant submits that it may not be necessary to establish a subjective fear of persecution where it has been clearly shown that an objective fear exists.

[9] I disagree. I note that *Yusuf, supra*, was decided prior to *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 723, where the Supreme Court of Canada outlined what a claimant must do to establish fear of persecution, making it clear that both components of the test are required:

[...] the test is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense. This test was articulated and applied by Heald J.A. in *Rajudeen [v. Minister of Employment and Immigration]* (1984), 55 N.R. 129] at p. 134:

The subjective component relates to the existence of the fear of persecution in the mind of the refugee. The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis for that fear.

[10] As I pointed out more recently in *Tabet-Zatla v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1778 at para. 6, the lack of evidence going to the subjective element of the claim is in itself sufficient for the applicant's claim to fail:

The lack of evidence going to the subjective element of the claim is a fatal flaw which in and of itself warrants dismissal of the claim, since both elements of the refugee definition - subjective and objective - must be met.

[11] These comments were cited with approval in *Vallipuram v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1519, and *Fernandov v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1129.

[12] In the present case, the Board found that the applicant's testimony with respect to her subjective fear of persecution was implausible because she re-availed herself of the protection of the very country where she feared being arrested and physically abused.

[13] Further, the Board found that the failure to claim refugee status in other countries and the delay in claiming in Canada reflected negatively on her credibility.

[14] The Board also drew a negative inference from the applicant's omissions from her Personal Information Form (PIF). In *Basseghi v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867, Teitelbaum J. held that all relevant and important facts should be included in one's PIF and that the oral evidence should go on to explain the information contained in the PIF:

It is not incorrect to say that answers given in a PIF should be brief but it is incorrect to say that the answers should not be complete with all of the relevant facts. It is not enough for an applicant to say that what he said in oral testimony was an elaboration. All relevant and important facts should be included in one's PIF. The oral evidence should go on to explain the information contained in the PIF.

[15] I find that the implausibility findings made by the Board were not so unreasonable as to warrant the intervention of this Court (*Aguebor v. Minister of Employment and Immigration*) (1993), 160 N.R. 315 (F.C.A.).

[16] It was reasonable for the Board to infer that the applicant would not have returned to Iraq if she had a well-founded fear of persecution. In some cases, claimants have been found not to have re-availed themselves of state protection. For example, in *Shanmugarajah v. (Minister of Employment and Immigration)*, [1992] F.C.J. No. 583, the claimant, who had returned to his country of origin to take care of his ill mother, was found not to have re-availed himself of state protection. However, in the case at bar, there was no such pressing reason for the applicant to return to Iraq (See *Ali v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 558).

[17] For these reasons, I find that the Board could reasonably conclude that the applicant's behaviour was inconsistent with the existence of a subjective fear of persecution.

[18] Consequently, this application for judicial review is dismissed.

JUDGE

FEDERAL COURT OF CANADA

TRIAL DIVISION

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NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2992-00

STYLE OF CAUSE: JOYCE RUTH MAQDASSY

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PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 14, 2002

REASONS FOR ORDER AND ORDER OF

THE HONOURABLE MADAM JUSTICE TREMBLAY-LAMER

DATED: February 19, 2002

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