Federal Court  Cour fédérale

Date: 20150917

Docket: IMM-5964-14

Citation: 2015 FC 1087

Ottawa, Ontario, September 17, 2015

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ALVISIA KAHUURE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board, Refugee Protection Division (the Board) dated July 22, 2014 in which it was determined by the Board that the applicant is not a Convention Refugee and is not a person in need of protection (the Decision).

[2] For the reasons which follow, the application is dismissed.

I. **The Decision Under Review**

[3] The applicant arrived in Canada from her home country of Namibia on October 6, 2011. She immediately made a refugee claim at the airport in Toronto. The basis for her claim was that she had a "well-founded fear of persecution in the hands of former common-law spouse" and she was in a particular social group of women forced to stay in an abusive relationship. She also claimed she was in danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment due to her refusal to remain in an abusive relationship.

[4] The Board reviewed the specifics of the applicant's fear as set out in her Personal Information Form (PIF). In summary, the applicant and her former common-law spouse moved in together in July 2004, had a baby in February 2005, and although he promised to marry her he did not. Then in April 2010 she came home and found him in their bedroom with another woman and after she confronted him he beat her up. She claims his behaviour completely changed after that date and he would come home drunk, he would say he owned her and he was abusive. But, her parents and his parents wanted her to stay in the relationship.

[5] In March 2011 the applicant said she was not interested in the relationship. Her former common-law spouse threatened to kill her and he beat her up. The applicant then moved to her parents' home and entered into a relationship with a female friend. One day her former common-law spouse discovered them on the couch kissing whereupon she claims he savagely beat her. She did not report it to the police because being a lesbian is illegal in Namibia. Her family disowned her. She took refuge at her church and her pastor suggested she leave Namibia. Her girlfriend then suggested she come to Canada because there was no visa requirement and she did.

[6] The Board hearing took place on two dates – February 27, 2014 and July 22, 2014. Oral reasons were rendered on July 22, 2014 followed by written reasons on September 9, 2014.

[7] The Board found the applicant was not credible as she had lied about various aspects of her claim on three occasions. She first lied to the immigration officer as shown in the Port of Entry notes, she then lied in her PIF and she lied again at the first stage of the hearing before the Board before it was adjourned.

[8] The Board determined during questioning that despite the Applicant's confirmation that her son was born in Namibia his birth certificate stated he was born in England. The hearing was adjourned to enable the Minister to intervene. During the adjournment period the Minister determined through biometric information that the applicant had arrived in England in 2004 and stayed there for approximately six years. In 2005 she gave birth to her son in England.

[9] The Board found the applicant lied when she did not disclose at any time, in writing or during the hearing, that she had lived in the United Kingdom, specifically England, from May 2004 until sometime in 2010. She also lied about where her son was born and compounded the lie with further denials when challenged with contrary evidence during the hearing.

[10] The Board found as a result of the extent of these lies that the applicant had no credibility. As a result, they doubted her claim that she had been beaten by her former common-law spouse or forced into a marriage with him or pressured into marrying him by her own family or his family or him. In this respect, the Board quoted from the decision of Justice Shore in *Navaratnam v. Canada (Citizenship and Immigration)*, 2015 FC 274 at para. 1:

> An applicant who trifles with the truth in legal proceedings cannot expect to be successful; thus, a Court may discredit even true

> statements, not knowing where the truth begins and ends, and a climate of uncertainty then prevails.

The Board found that if the Minister had not intervened, the applicant would have perpetuated the lie about her son and not told the truth.

[11] Notwithstanding the finding that the applicant lacked credibility, the Board then considered whether the applicant qualified for refugee protection pursuant to Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, (the Act) S.C. 2001, c.27 which states:

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 themself 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.
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

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	habituelle, exposée : 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 themself 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.

[12] The Board reviewed the applicant's claim that state protection was not available to her in Namibia and summarized the various documents they reviewed in that respect. The Board found that "the objective evidence reveals that problems exist in Namibia, but Namibia is a functioning democratic state and there has been no breakdown of the state or its judicial authority."

[13] The applicant had not approached the police and did not avail herself of any of the various agencies established to provide emergency support to victims of domestic abuse. The Board's finding was that the applicant did not demonstrate that she had made meaningful efforts to utilize the available avenues of state protection and could not show that those avenues would not be forthcoming.

[14] The Board then explored whether there was an Internal Flight Alternative available to the applicant if she returned to Namibia. Walvis Bay was suggested by the Board but the applicant testified that her former common-law spouse would find her there and stated that he had influence with the police. While the Board did not find that to be credible they also pointed out that as there was state protection available she could access help in Walvis Bay if that was true.

[15] The Board summarized its findings as follows in the conclusion:

> [41] I found you not credible with respect to an IFA, and I find you not credible with respect to the availability of state protection. You are not credible with respect to fearing for your safety because you did not ask for refugee protection when you were in the United Kingdom, and most importantly, you are not credible when you lied to me about not being in England at all, and that only came to light as I said because of the Minister's intervention.

II. **ISSUES**

[16] The applicant submits there are two issues:

1. Did the Board err in its finding that the applicant's claim lacked credibility?

2. Did the Board err in its finding that there is an availability of State Protection for the applicant in Namibia?

[17] I will also consider a third issue which is whether the Board erred in finding there was an Internal Flight Alternative.

III. **Standard of Review**

[18] It is not in dispute between counsel that the applicable standard of review is reasonableness when dealing with the decision of the Board with respect to credibility, the findings on state protection and that there is an available Internal Flight Alternative.

[19] The Board is dealing with its home statute and has a significant degree of expertise in that respect. Therefore, I will proceed on the basis that reasonableness is the standard of my review.

IV. **Analysis**

A. *Credibility Finding*

[20] It is has been held that significant omissions in a claimant's PIF affect that person's credibility: *Tekin v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357 at para 12.

[21] The applicant acknowledges that jurisprudence of this Court recognizes the Board is a specialized tribunal and is in the best position to gauge the credibility of the applicant. Nonetheless, I am urged to find the explanation offered by the Applicant, that she was afraid, should have been taken into account by the Board but that it was not considered and therefore the finding cannot stand.

[22] The Board did not ignore this explanation it simply did not accept it as valid as can be seen from the following statement in the Decision:

> [18] Your only explanation for not being forthcoming about being in the UK was you were afraid of your ex – common law partner, and that frankly is not a reasonable explanation for not being truthful. I want to remind you that when you signed your Port of Entry notes, you affirmed that everything was complete, true, and correct. You did the same thing when you signed your PIF, and

> you certainly affirmed that at the first session of the hearing, when I swore you in.

[23] The Board was in the best position to assess the applicant's credibility and to make the finding that the applicant's explanation was not believable given the preponderance of evidence before the Board.

[24] The Board was aware of, considered and applied the reasoning from *Navaratnam* (see above) to find that nothing the applicant said could be relied upon after she "willingly lied" to the Board.

[25] I am satisfied that the credibility findings of the Board were properly made and should not be set aside.

B. *State Protection*

[26] Although the applicant lied throughout the immigration process from the date of her arrival until the date of her hearing the Board still considered her claim that she was a Convention Refugee although it correctly noted her claim could have been dismissed for lying in her documents.

[27] The Board considered the applicant's claim that Namibia could not provide state protection and that she feared for her life because her former common-law partner was actively looking to harm or kill her if she returned. Other than this baldly-asserted claim by the applicant there was no evidence before the Board substantiating the applicant's story.

[28] The Board noted the applicant never approached the police with respect to her allegations of abuse. This cast further doubt on her claim.

[29] The applicant has been found to be not credible. That finding taints her evidence and rightly causes the Board to be sceptical of her claims. She needs more than bald assertions and her existing paperwork. In *Hamid v. Canada (MEI)* (1995), F.C.J. No. 1293 at para 21 after concluding the refugee applicant had fabricated his story and was not credible, Justice Nadon said:

> 21. . . 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.

This passage was cited with approval by Hughes, J. in *Giron v. Canada (Citizenship and Immigration)*, 2008 FC 1377 at para. 11.

[30] There is no corroboration of the fear of harm which her former common-law spouse might cause her.

[31] In addition, counsel for the applicant urged me to find the Board ignored the sexual orientation of the applicant and that in Namibia this would have resulted in her persecution. However, before the Board the applicant stated when questioned that she was only afraid of her former common-law partner and she was *not* afraid of living her life as a lesbian in Namibia. There was therefore no reason for the Board to consider the applicant's sexual orientation with respect to its analysis of State Protection.

[32] The Board reviewed various documents from reputable third parties dealing with the government of Namibia and the rule of law. The conclusion drawn by the Board based on that evidence was that although problems exist in Namibia and there is police corruption "it is a

functioning democratic state and there has been no breakdown of the state or its judicial authority."

[33] The examination of a claim under subsection 97(1) of the Act requires an inquiry that is particular to the applicant and proceeds on the basis of the evidence adduced by them "in the context of a present or prospective risk" to the Applicant. (*Sanchez v. Canada (Minister of Citizenship and Immigration*), 2007 FCA 99 at para. 15) (Emphasis in the original).

[34] The Board found the applicant was unable either to displace the presumption of state protection or show any specific harm would occur to her. I am satisfied the Board carefully analysed the documentary and other evidence and made a sound decision in this case with respect to the availability of state protection and the lack of a specific prospective harm to the applicant.

C. *Internal Flight Alternative*

[35] The Board also found there was a reasonable Internal Flight Alternative available to the applicant by her returning to Walvis Bay. This was disputed by the applicant, who had no specific examples but rather a generalized fear that somehow her former common-law spouse would want to find her, and could find her, and that he "has influence with the police".

[36] The Board noted Walvis Bay has a large international community and is a thriving tourist resort. They determined that if the applicant did not tell her former common-law spouse she was there he would not know she was, but even if he did learn of her presence and he wanted to harm her there was state protection available. The Board also considered information with respect to

various organizations in Namibia which provide services to victims of domestic violence and sexual abuse. It found the applicant could avail herself of their services if necessary.

[37] In their analysis of an available internal flight alternative the Board considered the evidence before it and the applicant's submissions, but the Applicant's lack of credibility coupled with only a generalized "fear" of personal harm could not persuade the Board that Walvis Bay was not an available Internal Flight Alternative. This finding by the Board was fully supported by the evidence before it.

V. **Finding**

[38] The Board conducted a thorough review of the claims of the applicant and provided detailed reasons for rejecting them primarily based upon the lack of credibility of the Applicant but supplemented with an analysis of various documents attesting to the country conditions in Namibia.

[39] The applicant could point to no reviewable error by the Board. Any one of the three distinct findings made by the Board was determinative of the issue before it. All three were properly considered and each was reasonably resolved against the applicant.

[40] The reasons provided by the Board were transparent, understandable and justified. I see no basis upon which I should intervene. The Decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The Decision is well supported by the evidence and is entirely reasonable.

[41] The application for judicial review is therefore dismissed.

[42] Neither counsel suggested there was a question to be certified nor would there seem to be any issue of general importance in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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