

Federal Court



Cour fédérale

**Date: 20110307**

**Docket: IMM-3702-10**

**Citation: 2011 FC 264**

**Ottawa, Ontario, March 7, 2011**

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

**BETWEEN:**

**LYDIA DENYS, LE SHAWN DENYS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants seek an order setting aside the June 8, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board (the Board), which found the applicants to be neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow this application for judicial review is dismissed.

***Background***

[2] The applicant, Ms. Lydia Denys, and her minor son, Le Shawn Denys (the minor applicant) fear persecution in the form of domestic abuse from the applicant's former partner. The Board rejected their Convention and protection claims mainly on the grounds that the applicant's story was, due to inconsistencies in her testimony, not credible.

[3] The applicants are both citizens of St. Lucia. Ms. Denys began dating her former common-law partner in 2001. She had a daughter with him in 2003. The daughter is currently still in St. Lucia. Around the time her daughter was born, Ms. Denys and Le Shawn (her son from a previous relationship) moved in with him. The relationship with her former common-law partner apparently became abusive in 2006, when he began beating her, as well as mentally and sexually abusing her. In one incident, he allegedly broke her hand and she had to be hospitalized. The applicant's ex-partner also allegedly abused the minor applicant.

[4] The applicant made several reports to the police, but claims that no action was taken against her ex-partner because he had friends and connections in the police force. The applicant tried to leave her partner several times, and at one time left St. Lucia for Barbados, but subsequently returned to St. Lucia. The applicant departed for Canada on December 23, 2007, and filed for refugee protection on January 15, 2008. The minor applicant joined his mother in Canada on December 23, 2008, and filed for refugee protection on August 5, 2009.

***Decision Under Review***

[5] In the decision dated June 8, 2010, the Board found that the applicants were neither Convention refugees nor were they persons in need of protection. The main issue for the Board was the credibility of the applicant. The Board took issue with inconsistencies and problems in Ms. Denys' testimony. In particular, the Board found that the applicant's allegations that she had tried to make reports to the police with no success to be fabrications. The Board also found that the claim that the minor applicant had been abused was also fabricated.

[6] The Board also found that state protection was available to the applicant but that she did not access it. As a result of the Board's findings that the incidents alleged by the applicant did not occur, and given Ms. Denys' delay in making a claim, the Board found that there was neither an objective nor a subjective basis for her claims. As such, the Board rejected the claims of both Ms. Denys and Le Shawn.

***Submissions of the Parties***

[7] The applicants take issue with the manner in which the Board interpreted the evidence before it, submitting that the Board misunderstood and misconstrued the evidence while failing to consider other vital evidence, and therefore based its decision not on the totality of the evidence but on speculation and unwarranted inferences.

[8] The applicants rely on *Attakora v Canada (Minister of Employment and Immigration)*, [1989] 99 NR 168 where the Court stated that the Board:

...should not be over-vigilant in its microscopic examination of the evidence of persons who, like the present application, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.

[9] This case also stands for the proposition that whether or not the claimant is a credible witness, she could still be found a refugee if her activities were likely to lead to her arrest and punishment. In other words, credibility findings resulting in a negative decision must be centered on issues that are germane or at the heart of the applicants' claim: *R.K.L. v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 9-11.

[10] Concerning the Board's reliance on the applicants' delay in making a claim, the applicants submit that the Board did not give adequate reasons for rejecting Ms. Denys' explanation for her delay in making a refugee claim. The applicants submit that while this delay may be an important factor in assessing credibility, the Board must also consider any reasonable explanation offered for the failure to claim a refugee status at an earlier date, particularly when they have a valid temporary status: *Gyawali v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1122 at para 18.

[11] The respondent argues that the Board did not believe that Ms. Denys was the victim of domestic abuse. Rather, the Board concluded that the applicant's allegations of domestic abuse and violence were exaggerations and embellishments that she provided to bolster her claim for refugee status. The respondent further argues that the Board's rejection of the explanation for delay was reasonable, and ought not be disturbed.

*Analysis*

[12] Credibility findings of the Board are factual findings and are to be reviewed on a standard of reasonableness: *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1266 at paras 8-10. This means that deference must be given to the Board on its findings.

[13] The applicant was inconsistent in her testimony to the Board. In her Personal Information Form (PIF), Ms. Denys stated that the first incident of abuse occurred when her ex-partner thought she had talked to her ex-boyfriend. However, in her oral testimony, the applicant stated that this incident was actually the second episode of abuse. When asked to explain this discrepancy the applicant stated that she got a little mixed up with dates:

**Refugee Protection Officer:** Okay. So I was asking you, you told us you went to the police on two occasions, once with your mother and once with your sister. And you told us that on the occasion that you went to the police to report [...] with your sister, that that was as a result of a beating that occurred after [...] had been told that someone saw you talking to your ex-boyfriend.

**Principal Claimant:** Okay.

**Refugee Protection Officer:** Okay. That's what's you've told me. That's my understanding, is that right?

**Principal Claimant:** Yeah.

**Refugee Protection Officer:** So, you told us that was the second time you went to the police.

**Principal Claimant:** With my sister?

**Refugee Protection Officer:** With your sister. However, it seems you're also telling us that on the occasion that [...] beat you because

he was told that someone saw you talking to your ex-boyfriend, you've told us, in your previous testimony and in your personal information form, that that was the first time that [...] (inaudible) –

**Refugee Protection Officer:** But you're telling me that when you went to report this incident to the police with your sister, that was the second time you'd been to the police about the abuse. See hat I am saying?

**Principal Claimant:** Yeah.

**Refugee Protection Officer:** So, this doesn't really make sense.

**Principal Claimant:** Well, I got a little mix up, yeah.

[14] The Board concluded that although normally this evidence would not be determinative of and by itself, because it described the circumstances under which the applicant went to the police for the first time that it took on added meaning. This conclusion was not unreasonable.

[15] In April 2006, Ms. Denys was beaten, and in consequence, hospitalized. While recuperating in the hospital the applicant was interviewed by the local police, who were called in by the hospital staff. When the police questioned Ms. Denys on how she sustained her injuries she told them that she had fallen. When asked by the Board why she would lie to the police Ms. Denys stated that her ex-partner threatened to kill her if she did otherwise:

**Refugee Protection Officer:** I'm trying to understand why you would have reported to the police on two occasions, the first, when you were beaten and in May of 2006, and yet, when you were questioned in the hospital with serious injuries, the most serious injuries you had suffered –

**Principal Claimant:** Because that's when I –

**Refugee Protection Officer:** - you didn't tell you didn't tell the police on that occasion that you had, in fact been beaten by [...]. I'm wondering why that is.

**Principal Claimant:** Because that's when he really threatened me. He came over to the hospital and threatened me if I say anything, when I come out, wherever I go, he will get me to kill me.

**Refugee Protection Officer:** But you, you reported him to the police after that in May, you reported him to the police.

[16] Despite testifying that she was scared to report her ex-partner to the police, the applicant also stated that she went to the police on two separate occasions, once before and once after her hospitalization, to file a report against her ex-partner:

**Refugee Protection Officer:** When was it that your hand was fractured –

**Principal Claimant:** My hand –

**Refugee Protection Officer:** - as a result of a beating from [...]?

**Principal Claimant:** In April 2006.

**Refugee Protection Officer:** So, was it between the two times that you reported? You told us that you reported to the police the first time he beat you. And then you told us that you reported to the police in May. Your hand was fractured and you received serious injury sometime in April of 2006.

**Principal Claimant:** M'hm

**Refugee Protection Officer:** Right? So, that was in between the two times you reported to the police? Is that right?

**Principal Claimant:** Yeah.

[17] The Board found this to be contradictory testimony and noted that the applicant also failed to mention in her PIF that she was hospitalized for several days after this incident, or that police were called in to question her. The Board noted that the same police force that offered assistance to

the applicant while she was in the hospital would also assist her when she went to the station directly to file a police report. This observation was germane to its finding on state protection.

[18] When asked why she felt comfortable reporting to the police the less serious assaults but not the April 2006 assault, the applicant stated that at the time her hand was broken her ex-partner threatened her. The Board found this response to be vague and confusing and on that basis rejected the applicant's allegation that she was fearful of her ex-partner.

[19] Although the applicant testified that her ex-partner beat her son Le Shawn almost everyday, this point was not included in her PIF. When asked why this omission was made the applicant testified that her son was beaten as often as every other week and that she was sorry that she did not include this information in her PIF:

**Refugee Protection Officer:** And why did your mother go to the police to report [...] in July of 2007?

**Principal Claimant:** Because of the – I think this time he was beating my son and I in –

**Refugee Protection Officer:** So, your mother went to the police to report that [...] –

**Principal Claimant:** - and I intervene and then he was knocking on me too.

**Refugee Protection Officer:** Was your mother present during those beatings?

**Principal Claimant:** My son went and tell her.

**Refugee Protection Officer:** Did she go the same day that it happened?

**Principal Claimant:** When my – yeah.



**Refugee Protection Officer:** Perhaps Counsel can help us out here, but I don't see any references to that in your personal information form. I don't see any reference to you and your son both being beaten in July of 2007 and as a result, your mother went to the police.

**Principal Claimant:** Well, you asked me to explain why did my mom go to the police I did not

**Refugee Protection Officer:** Yes.

**Principal Claimant:** I did not like put all this information in, I'm sorry about that.

[20] It was not unreasonable for the Board to question why these repeated beatings were not in Le Shawn's original PIF. In the Board's view the late introduction of the story of abuse of Le Shawn further undermined the applicant's credibility. The Board also drew a negative inference from the eight month delay it took Le Shawn to make a claim for refugee protection.

[21] Counsel conceded and the Court finds that the Board did err in stating that there were at least two police reports after the applicant had been threatened by her former partner. This was an error, as only one report was made after she was threatened. However, it is the reasonableness of the Board's credibility findings based on the evidence as a whole which is assessed: *Huang v Canada*, 2008 FC 1266 at para 11-17. This minor error by the Board does not detract from the overall credibility finding by the Board that based on what it found to be multiple inconsistencies in Ms. Denys' testimony. The finding of the Board is not with respect to marginal or tangential events rather the Board found that the application was generally lacking in credibility and none of the significant events alleged to have happened actually happened. Moreover, there was no reasonable compelling explanation for the very lengthy delay in advancing a claim. This credibility finding was supported by the evidence available to the Board and was reasonable.

[22] Accordingly, the application for judicial review is dismissed.

[23] No question for certification has been proposed and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

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Judge

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

**DOCKET:** IMM-3702-10

**STYLE OF CAUSE:** LYDIA DENYS, LE SHAWN DENYS v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** February 16, 2011

**REASONS FOR JUDGMENT:** RENNIE J.

**DATED:** March 7, 2011

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