

Federal Court



Cour fédérale

Date: 20120530

Docket: IMM-4804-11

Citation: 2012 FC 659

Ottawa, Ontario, May 30, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**LANA KHOURI, LEILA FAWAZ (BY HER
LITIGATION GUARDIAN LANA KHOURI)
AND NADINE FAWAZ (BY HER LITIGATION
GUARDIAN LANA KHOURI)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Lana Khouri arrived in Canada in 2009 after living in the United States for eight years. She is originally from Palestine. She claimed refugee protection here based on her fear of her own family and that of her ex-husband. Both families were angry because she had left her allegedly

abusive husband back in Palestine and began a relationship with another man in the United States, with whom she had two children.

[2] A panel of the Immigration and Refugee Board heard Ms. Khouri's claim and rejected it for a lack of credible evidence. Ms. Khouri argues that the Board made unreasonable credibility findings and failed to conduct a complete analysis of her claim. She asks me to quash the decision and order a different panel of the Board to reconsider her case.

[3] I can find no grounds for overturning the Board's decision. Its credibility findings were not unreasonable given the evidence before it. Further, in the circumstances, it was unnecessary to consider aspects of Ms. Khouri's claim that depended on the discredited evidence. Accordingly, I must dismiss this application for judicial review.

[4] There are two issues:

- a. Were the Board's credibility findings unreasonable?
- b. Did the Board fail to consider all of Ms. Khouri's claim?

i. The Board's Decision

[5] The Board's principal concern was Ms. Khouri's credibility. There were three problem areas in her evidence.

[6] First, in her written narrative, Ms. Khouri said it was her family who pursued her while she was in the USA. She said her ex-husband's family had called her residence, but she did not mention that he had family members in the USA. However, at the hearing, Ms. Khouri testified that her ex-husband had family members in Kentucky who sent a private investigator to locate her. When asked why she did not mention this important allegation in her narrative, Ms. Khouri had no explanation.

[7] Second, in her written narrative, Ms. Khouri said her ex-husband had called her while she was in the USA. However, when asked about this at the hearing, she said her ex-husband had never called her. When asked to explain the inconsistency, she said that he had only called once, for two minutes, and that it slipped her mind due to stress. Given that she had specifically mentioned this significant event in her narrative, the Board could not accept that it would simply slip her mind.

[8] Third, the Board found that Ms. Khouri's Port of Entry [POE] summary was fundamentally inconsistent with her later refugee claim. In her POE notes, Ms. Khouri stated that she was afraid of "Jordanian authorities and USA immigration". However, her subsequent written narrative did not allege any fear of American or Jordanian authorities. Furthermore, her POE notes made no mention of her fear of family. When asked to explain this inconsistency, Ms. Khouri stated that her immigration consultant had prepared the POE form on her behalf. She simply signed the form when she entered Canada. She also stated that she had problems with her consultant. For example, he assumed that she was Jordanian because she possessed a Jordanian passport. However, this was only a travel document and did not reflect her citizenship. She told him that the form was wrong, but he told her not to worry about it. The Board accepted this part of her explanation because the consultant was known to have a poor reputation.

[9] However, the Board could not accept Ms. Khouri's explanation for the inconsistency between the fear described in the POE notes, and the fear that formed the basis of her refugee claim. Ms. Khouri said that she knew the form was incorrect and incomplete. However, she was frightened and stressed and had two cranky and crying young children with her when she entered Canada. She chose not to correct the form; she just signed what the consultant had written.

[10] The Board noted that Ms. Khouri is an educated, accomplished woman who is fluent in English. She would have known of the importance of full and accurate disclosure to immigration authorities. The Board did not accept that she failed to take a few minutes to correct the form.

[11] Overall, the Board found Ms. Khouri not to be credible, and concluded that her claim for refugee protection could not be sustained on her testimony.

III. Issue One – Were the Board's credibility findings unreasonable?

[12] Ms. Khouri submits that the Board unreasonably rejected her explanation of the discrepancy between her POE form and her subsequent evidence. She placed her trust in her consultant and was under severe stress at the time she entered Canada. As soon as she had an opportunity to do so, she gave a full explanation of her claim in her written narrative.

[13] Further, Ms. Khouri maintains that the Board unreasonably rejected her testimony that her ex-husband's telephone call had slipped her mind during the hearing. The Board's approach amounted to a microscopic examination of her evidence.

[14] I can only overturn the Board's findings if I conclude that they were unreasonable. Here, I am satisfied that the Board's adverse credibility findings were open to it on the evidence and, therefore, were not unreasonable.

[15] In particular, the Board took into account that Ms. Khouri was an educated English-speaking woman, who knew in advance what the POE form would say and was aware of its importance to her refugee claim. Even under stress, it is unlikely she would have signed an incorrect form. This finding supported the Board's conclusion that her fear of family members, raised later in her written narrative, was not genuine. The fact that there was some documentary evidence supporting her allegations did not make up for her lack of credibility regarding the source of her alleged fear.

[16] Further, Ms. Khouri could not provide a credible explanation for her failure to recall that her husband had phoned her when she was in the USA. This was a key element of her claim. In her narrative, she said that when she thought her marriage was over, she "was surprised that one day a phone call came and it was my ex asking me to see him otherwise he will tell my parents who decided that I should die that he will tell them where I lived. . . This is where everything escalated". Yet, when questioned about this at the hearing, Ms. Khouri denied that he had ever called her in the USA.

[17] Finally, Ms. Khouri testified at the hearing that her ex-husband had family in Kentucky who sent a private investigator after her. However, there is no mention of this fact in her narrative and she could not explain the omission.

[18] Overall, therefore, I find that the Board's adverse credibility findings were supported by the evidence before it and were not unreasonable.

IV. Issue Two – Did the Board fail to consider all of Ms. Khouri's claim?

[19] Ms. Khouri maintains that the Board is generally under a duty to consider all grounds of a refugee claim arising from the evidence. The Board did not specifically reject the evidence of Ms. Khouri's identity as a stateless Christian Palestinian woman who had endured an abusive marriage and formed a subsequent relationship in the USA. It therefore had an obligation to consider whether she risked gender-based persecution in Palestine, even though it found her testimony lacked credibility.

[20] Ms. Khouri also submits that the Board erred in failing to consider the Chairperson's Guidelines with regard to women refugee claimants fearing gender-related persecution. She testified that her father and her ex-husband's family had threatened to harm her for breaching the family's values, religion and traditions. These fears meet the definition of gender-related persecution according to the Guidelines.

[21] In my view, the Board decided that Ms. Khouri's claim fell on the basis of its credibility findings. It found that Ms. Khouri's fear of family was not credible, so there was nothing left to analyze.

[22] In some cases, even after making an adverse credibility finding, the Board will have to assess the remainder of the evidence, especially documentary evidence, to determine whether an applicant is at risk of persecution. For example, where the Board finds that an applicant has exaggerated his or her experiences, this "does not detract from its responsibility to weigh the evidence, despite the exaggerations, and decide whether the claim of persecution is justified" (*Ozer v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1257).

[23] Here, the Board did not reject Ms Khouri's identity as a stateless Christian Palestinian who had entered an arranged marriage, divorced her husband, and then began a relationship with another man with whom she had two children. However, the Board reasonably concluded that Ms. Khouri's testimony about her fear of family was not credible. Therefore, there was no residual area of her claim that remained unanalyzed.

V. Conclusion and Disposition

[24] The Board's findings in respect of Ms. Khouri's credibility were based on the evidence before it and, therefore, were not unreasonable. That being the case, there was no residual aspect of her claim that the Board failed to address. Accordingly, I must dismiss this application for judicial

review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4804-11

STYLE OF CAUSE: LANA KHOURI, ET AL
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 15, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 30, 2012

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