

Federal Court



Cour fédérale

Date: 20120731

Docket: IMM-8879-11

Citation: 2012 FC 947

Ottawa, Ontario, July 31, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DIANA PAPLEKAJ,
LEONARDO ANDREW PAPLEKAJ,
AURORA PAPLEKAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The refugee protection claims of Diana Papekaj and her Albanian born daughter were rejected by the Refugee Protection Division of the Immigration and Refugee Board because the Board found that Ms. Papekaj was not credible. It held that “lacking independent documents supportive of the claims, the two Albania claims fail.” The claim of Ms. Papekaj’s son, Leonardo

Paplekaj, a one-year old citizen of the United States of America failed because it was not established that he could not access state protection.

[2] The applicants submit that the Board relied on minor and trivial differences between Ms. Paplekaj's Personal Information Form (PIF) and her oral testimony.

[3] It was alleged that Ms. Paplekaj had been sexually assaulted by Nikoll, a powerful politician in Albania. who stalked her and assaulted her on three occasions. As a consequence of its credibility findings. the first two of these incidents were found by the Board not to have occurred; however, the applicants note that no negative credibility findings were made regarding the third incident. They rely on Justice Campbell's decision in *Isakova v Canada (Minister of Citizenship and Immigration)*, 2008 FC 149 at para 17 [*Isakova*], which held that "[i]f the RPD properly makes a credibility or implausibility finding with respect to one aspect of an applicant's evidence, this will not necessarily provide a basis for rejecting the entirety of the applicant's claim." They also rely on Justice Campbell's decision in *RER v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1339 at para 9 [*RER*], which held that all evidence with respect to an applicant's claim must be considered before a global credibility finding is made.

[4] The applicants further emphasize the evidence by way of a psychological report that spoke to Ms. Paplekaj's traumatic experiences and how they could influence her memory. They submit that because there is no mention of the psychological report in the reasons, the Board failed to consider it and accordingly, the decision is unreasonable: *Yilmaz v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1498, *Khawaja v Canada (Minister of Citizenship and Immigration)*,

[1999] FCJ No 1213 and *CA v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1082.

[5] I accept none of these submissions.

[6] First, the differences between the PIF and the oral testimony on which the Board relied were neither minor nor trivial; they went to the heart of the allegations of stalking and assault, as detailed below.

[7] The Board noted that Ms. Papekaj's PIF indicates that on her first encounter she was stopped and confronted by Nikoll and one other person who said he was a bodyguard. She wrote that "[t]he two men tried to get me into Nikoll's car, parked on the street next to the sidewalk, but I refused to comply." Inconsistently, at the hearing she testified that Nikoll and two of his bodyguards got out of a car and called her by her name; she kept walking and that was the end of the encounter.

[8] The Board asked Ms. Papekaj why she did not testify that the men tried to get her in the car, rather than the encounter ending when she continued walking. In response, she explained that it was because she was not forced into the car. This was not accepted by the Board which was of the view that it was unreasonable to omit the most threatening action.

[9] The Board further noted that the PIF only mentions one bodyguard during the encounter, rather than the two she mentioned at the hearing. Ms. Papekaj was confronted with this

inconsistency and responded that the PIF only mentions one bodyguard because only one of them spoke to her. This explanation was not accepted by the Board which cited a passage in the PIF relating to the second incident. This portion of the PIF states that “one of the bodyguards, not the same one as the first time [emphasis by the Board].” In the Board’s view, if the explanation was true, Ms. Paplekaj would have written that the bodyguard at the second incident was “not the same as either guard at the previous incident [emphasis by the Board].”

[10] Furthermore, the Board found inconsistencies with the events that allegedly took place during the second incident. Ms. Paplekaj testified that Nikoll rolled down his window and reached out in an attempt to grab her off the street, whereas in her PIF she stated that he opened the door of his car and tried to grab her. Counsel before the Board said that it was a translation error, but that explanation was not accepted. The Board wrote that “[t]here was no suggestion she had said ‘door’ and it was interpreted as ‘window’. Further, the interpreter translated the Albanian as ‘rolled down the window’ which could not apply if in fact the door was opened.”

[11] The Board was additionally at odds with the plausibility of certain facts pertaining to that event. It noted that in the PIF she states that Nikoll approached her in his speeding car. In the Board’s view, “[i]t is simply implausible that a man in a moving car could get close enough to somehow reach out and grab a woman off the street while she was walking in a plaza.”

[12] Those findings led the Board to give none of the applicants’ evidence sufficient weight to support the claim. The Board found that although there are documents supporting the fact that

Nikoll is now a member of the government and has been found guilty of poor judgment concerning women, there is no independent or credible evidence that he is interested in Ms. Papekaj.

[13] In my view, these findings are reasonable and supported by the evidence of discrepancies between Ms. Papekaj's statements in her PIF and her oral testimony.

[14] Second, it is true that the Board makes no assessment of Ms. Papekaj's evidence regarding the third incident with Nikoll; however, in my view, it was not required to do so before making its finding that she was not credible.

[15] The decision of the Court in *RER* does not, as was submitted, stand for the proposition that the Board cannot make a general credibility finding prior to examining all of the evidence. The ratio of that decision is found in paragraph 10 wherein Justice Campbell writes that the error is in rejecting independent evidence simply on the basis that the applicant is not believed:

... I find that the RPD was in error by rejecting evidence which comes from sources other than the testimony of the principal Applicant simply on the basis that the principal Applicant is not believed. In my opinion, each independent source of evidence requires independent evaluation. This is so because the independent sources might act to substantiate an Applicant's position on a given issue, even if his or her own evidence is not accepted with respect to that issue.

[16] The decision in *Isakova* is fundamentally much the same. There the Court relied on an earlier decision by Justice Martineau in *RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, wherein it was stated that "minor or peripheral inconsistencies in the applicant's

evidence should not lead to finding of a general lack of credibility where documentary evidence supports the plausibility of the applicant's story [emphasis added].”

[17] In this case, unlike *RER* and *Isakova*, there was no independent evidence to support the claim of Ms. Papekaj that Nikoll had done these things, let alone any evidence that he had an interest in her at all. Accordingly, having found that she fabricated two of the three events relied upon, there was no impediment to rejecting all of her testimony, without examining the third incident which was supported only by her testimony.

[18] Third, although the psychological report says that Ms. Papekaj may have difficulties understanding questions, request that questions be repeated or rephrased, have an inability to retrieve specific details of the past, and have an inability to formulate specific sentences, none of those were relevant to the inconsistencies noted by the board or was evident on a reading of her testimony.

[19] The Board questioned Ms. Papekaj on the inconsistencies in her evidence for a significant period of time; this discussion spans for over six pages in the transcript. Ms. Papekaj never claimed that she forgot evidence or was confused; neither did her counsel for that matter. Instead, the explanations involved discounting the relevance of the inconsistencies. These explanations were considered and, in my view, reasonably rejected.

[20] For these reasons, the application is dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8879-11

STYLE OF CAUSE: DIANA PAPLEKAJ ET AL v. THE MINISTER OF
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**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

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