

Federal Court



Cour fédérale

Date: 20121220

Docket: IMM-2114-11

Citation: 2012 FC 1535

Ottawa, Ontario, December 20, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

**RAMONA-MARICELA CHELARU (A.K.A.
RAMONA MARICELA CHELARU)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA) for judicial review of the decision of a Panel (RPD) of the Refugee Protection Division of the Immigration and Refugee Board, dated March 2, 2011. The RPD refused the Applicant's claims for refugee protection pursuant to section 96 and

subsection 97(1) of the IRPA. The RPD determined that the Applicant is not a Convention refugee and is not a person in need of protection. I have determined that there is no reason for this court to disturb the RPD's decision. My reasons follow.

Background

[2] The Applicant, Ramona-Maricela Chelaru, is a citizen of Romania. The Applicant alleges the following.

[3] She fled Romania to escape her former common-law husband, Christian Birzu (Birzu). She moved in with Birzu when she was seventeen, and he began physically and mentally abusing her soon after. He frequently beat her, and he was in complete control of her life. When she tried to escape him, he would threaten to kill himself to get her to come back.

[4] The Applicant states that the police knew of Birzu's violent nature, and were afraid of him. She states that he was mentally unstable, and had been institutionalized multiple times.

[5] In order to get away from Birzu, the Applicant traveled to Japan to work four times between 1999 and 2002, for six months at a time. She states that she felt free when she would go to Japan, but she always had to return to Romania to renew her work permit, where Birzu would be waiting for her.

[6] A friend from Japan told the Applicant about Canada. She obtained a work permit in 2003. Two days before she left for Canada, Birzu beat her so badly she lost consciousness.

[7] Even after she came to Canada, Birzu would call the club where she worked to threaten her, and he also harassed her parents, forcing them to move to another city.

[8] The Applicant filed her refugee claim on November 14, 2008.

[9] By decision dated February 24, 2011, the RPD rejected the Applicant's claims under section 96 and subsection 97(1) of the IRPA. The RPD determined that the Applicant was not a Convention refugee or a person in need of protection.

Decision Under Review

[10] For the RPD, the determinative issue was credibility. It based its negative credibility findings on her failure to claim refugee status elsewhere and re-availment; her delay in claiming refugee status in Canada; and her lack of corroborative evidence.

Failure to Claim in Japan and re-availment

[11] The RPD noted that the Applicant traveled to Japan four times on work permits between 1999 and 2002. The RPD reproduced the Applicant's oral testimony, in which she stated that

while she feared Birzu at the time, she did not inquire into refugee protection in Japan. Her reason was that she was only 19, and she “just did not know”.

[12] The RPD found that, if the Applicant had only traveled to Japan once or twice when she was only 19, it might have been able to give her the benefit of the doubt regarding her failure to inquire into the possibility of protection. However, the RPD did not find it believable that the Applicant would return to Romania from Japan four times, without ever inquiring into ways to escape her fear of physical abuse. The RPD drew a negative inference against the Applicant.

Delay

[13] The RPD noted that the Applicant arrived in Canada on January 16, 2003, but did not file her refugee claim until November 14, 2008. The RPD reproduced part of the Applicant’s oral testimony, and summarized her explanation for her delay in claiming.

[14] The Applicant stated, after arriving in Canada, she lived with a man from 2003-2006. She later met Ms. Vasilica David in 2006, who lived in the same building. She told Ms. David about her fear of Birzu in 2007, by which point her work permit had expired. At that time, Ms. David told her to file a refugee claim. The Applicant stated that she was afraid to make the claim because she had been living illegally for a year and a half, and was worried she would just be deported. She stated that she considered consulting a lawyer or consultant but could not afford it. She stated that she did call a lawyer at one point but did not disclose her fear of Birzu. She testified that she finally sought immigration advice when she became pregnant with her daughter.

[15] The RPD noted that delay is not an automatic bar to a refugee claim, but it may be evidence of a lack of subjective fear. The RPD stated that delay can also be relevant to a claimant's credibility. The RPD found a lack of subjective fear because the Applicant waited five years to make her claim, and only did so after her work permit expired. The RPD reiterated that the Applicant's failure to seek protection in Japan also showed a lack of subjective fear. Finally, the RPD found that the Applicant's statement that her daughter made her file a claim belied her personal fear of returning to Romania. The RPD therefore drew a negative inference.

Lack of corroborating evidence

[16] The RPD stated that the Applicant claimed she required medical attention and hospitalization from her abuse. When asked if she had records to support those allegations, the Applicant stated that she had them but they were in Romania. She stated she had asked her sister and mother to obtain them, but they had not done so because there was not enough time and they had moved. However, the RPD noted, the Applicant's sister had been able to send her an article about the arrest of Birzu in Germany.

[17] The RPD found that, because there were valid reasons to doubt the Applicant's credibility, the onus was on her to support her claim with credible evidence. Her failure to make reasonable efforts to obtain supporting evidence undermined the credibility of her testimony.

[18] The RPD found that there was no credible evidence to support the well-foundedness of the Applicant's fear. The RPD therefore concluded that the Applicant was not a Convention

refugee or a person in need of protection. The RPD also found there was no evidence that the Applicant faced a danger of torture.

Legislation

[19] *Immigration and Refugee Protection Act*, SC 2001, c 27.

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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.

...

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

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) 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) 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 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

habitual residence, would subject them Personally

elle avait sa résidence habituelle, exposée :

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

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 themselves 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.

Issues

[20] Did the RPD err by cutting off the Applicant's testimony, and not complying with section 162(2) of the IRPA?

[21] Did the RPD err in assessing the issue of delay in claiming refugee status?

Standard of Review

[22] The question of whether the RPD erred in cutting off the Applicant's testimony is one related to procedural fairness. The procedural fairness issue that arises in this case is to be assessed on a standard of correctness. *Kamtasingh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 45, 87 Imm LR (3d) 118 at para 8 (*Kamtasingh*)

[23] The question of whether the Applicant's delay in claiming undermines her subjective fear is a question of fact, to be reviewed on a standard of reasonableness. *Rengifo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1177 at para 7 (*Rengifo*)

Did the RPD err by cutting off the testimony, and not complying with s 162(2) of the IRPA?

[24] The Applicant submits that the RPD cut off questioning of the Applicant throughout the hearing, indicating that it had heard all it needed to hear. The Applicant submits that she was not able to fully present her case because of the time constraints placed on her testimony. She also argues that sacrificing procedural fairness for administrative efficiency is not a permissible trade-off, and therefore the RPD erred by not discharging its statutory obligation under s 162(2) of the IRPA to "deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit."

[25] This argument has no merit. In the portion of the transcript relied upon by the Applicant, the RPD advises counsel of the issues it considers relevant to the claim. The RPD cautioned counsel against spending time on the issue of the Applicant's Roma heritage, because according to the Applicant's own testimony, her only fear was of her former common-law husband.

[26] The RPD asked the Applicant, "Who do you fear if you were to return to Romania today?" The Applicant answered, "My ex." The RPD then asked, "Do you fear anybody else?" The Applicant's answer was, "no." The RPD concluded on this point with, "The main issue here is domestic abuse by her ex-husband, who she said... is her only fear if she were to return to Romania."

[27] The Applicant was nonetheless entitled to adduce whatever evidence she wished. Counsel for the Applicant during the hearing in front of the RPD emphasized that the Applicant's Roma heritage was relevant to the issue of state protection, stating, "She is not claiming that because she is gypsy she is afraid of going back." The RPD stated, "Okay, whatever you do counsel, go ahead. Let's move on."

[28] After that statement, the Applicant's counsel carried on with her questioning, but chose not to question the Applicant on the issue of her Roma heritage. Thus, the RPD did not prevent the Applicant from adducing evidence.

[29] The Applicant relies on *Kamtasingh*. It is of no assistance. In *Kamtasingh*, the application was granted because the IAD actively discouraged the appellant from calling witnesses that could have offered corroborating testimony to support the appellant's credibility. Justice Barnes acknowledged that a decision-maker is entitled to limit repetitive testimony, and to stipulate issues that are not in dispute in order to promote efficiency. Here, the RPD identified the issues that were central to the claim, indicated which ones were not central to the claim, and allowed the Applicant to present evidence on those issues central to the claim.

Did the RPD err in assessing the issue of delay in claiming refugee status?

[30] The failure to seek refugee protection at the first opportunity has been consistently held to indicate a lack of subjective fear, and thus undermine the claimant's credibility. *Rengifo, supra*

[31] The Applicant's explanation for not making a claim sooner was that no one told her how the refugee protection system worked; she was afraid that she would be removed because she had been living in Canada illegally; and she could not afford a lawyer or consultant. The RPD rejected these explanations, and there is nothing in the *Guidelines on Women Refugee Claimants Fearing Gender Related Persecution* to render that conclusion unreasonable.

[32] The Applicant has not specified any way in which the *Gender Guidelines* were not followed. There is no evidence that the RPD ignored the Gender Guidelines, and the RPD's conclusions were reasonably open to it based on the facts and the law. Thus, there is no basis for the Court to intervene.

[33] It was thus reasonable for the RPD to find that, because the Applicant did not seek refugee protection on any of her four six-month trips to Japan, or during five years in Canada, the Applicant lacked subjective fear.

Conclusion

[34] I am satisfied that the RPD did not breach the Applicant's right to procedural fairness, and that its decision was a reasonable one. The application does not succeed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2114-11

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THE MINISTER OF CITIZENSHIP AND
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