

Federal Court



Cour fédérale

**Date: 20130125**

**Docket: IMM-2644-12**

**Citation: 2013 FC 63**

**Ottawa, Ontario, January 25, 2013**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**FATIMA KANIZ, MAKKI AMNA,  
MAKKI MAMOONA, MUHAMMAD OMER**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] The applicants comprise a family who arrived in Canada from Pakistan in 2006. Ms Fatima Kaniz is the mother of two daughters, Amna and Mamoona Makki, and a son, Muhammad Omer. When they travelled from Pakistan, the family included Ms Kaniz's husband, Mr Raja Ali Muhammad, who is the father of Amna, Mamoona and Muhammad Omer.

[2] The family claimed refugee protection based on their fear of religious persecution in Pakistan. Their claim was dismissed by a panel of the Immigration and Refugee Board, but a rehearing was ordered by this Court on judicial review.

[3] In April 2009, before the rehearing, the police were called to the family home in response to a domestic dispute. Mr Muhammad was charged with assault, but those charges were later withdrawn. Ms Kaniz and Mr Muhammad subsequently separated.

[4] In 2010, Mr Muhammad informed the Board that the family's refugee claim was bogus. As a result, the Board separated Mr Muhammad's claim from the rest of the family's. Ms Kaniz amended her personal information form (PIF) to include a fear of abuse from Mr Muhammad. Therefore, at the second hearing, the Board had to consider the original claim based on fear of religious persecution, as well as the fresh allegations of domestic violence.

[5] The Board found, based on omissions and inconsistencies in her testimony, that Ms Kaniz lacked credibility in all areas of her evidence. It found that she was neither a refugee nor a person in need of protection. Since the three children relied on Ms Kaniz's evidence, the Board found that their claims failed as well.

[6] The applicants submit that the Board erred in its credibility findings, failed to consider the evidence in light of the Gender Guidelines, and wrongly dismissed the claims of the children, whose applications were based on independent evidence. They argue that the Board's decision was unreasonable, and ask me to quash that decision and order another hearing.

[7] I agree that the Board failed to give adequate attention to the claims of the children. To that extent, I will allow this application for judicial review. I am not persuaded, however, that the Board's credibility findings were otherwise unreasonable or that it failed to apply the Gender Guidelines.

[8] The issues are:

1. Were the Board's credibility findings unreasonable?
2. Did the Board fail to apply the Gender Guidelines?
3. Did the Board fail to consider the claims of Amna, Mamoonah and Muhammad?

## II. The Board's Decision

[9] Most of the Board's 25-page decision is devoted to an assessment of Ms Kaniz's evidence. It found more than a dozen areas where her evidence was incomplete or contradictory. Most significantly, she failed to mention in her PIF that Mr Muhammad was physically abusive toward her. She only mentioned verbal abuse. She did mention physical assaults on her son, but said that her PIF would have been too long if she had included information about her own experiences of physical abuse.

[10] The Board cited many other examples of omissions and discrepancies. It also referred to the Gender Guidelines, but still found that Ms Kaniz's evidence was not credible. Since the children's claims were based mainly on Ms Kaniz's evidence, the Board rejected those, too.

III. First Issue – Were the Board’s credibility findings unreasonable?

[11] Ms Kaniz argues that the Board unreasonably concluded that the family’s claim was unsupported by credible evidence.

[12] For example, the Board discounted the evidence contained in the police report which contained corroborating evidence of assaults by Mr Muhammad. It mentioned that she had visible signs of bite marks. It also indicated that the Crown prosecutor approved charges against Mr Muhammad of assault causing bodily harm, that Muhammad Omer was hospitalized for his injuries, and that the Children’s Aid Society had been notified. The Board also gave little weight to a report from Sick Kids Hospital in which the author noted the abuse that Muhammad Omer had received from his father.

[13] In my view, the Board’s credibility findings were not unreasonable. The police and hospital reports simply recorded what the authors had been told; they did not contain independent corroborative evidence. Further, those reports were contradicted by Ms Kaniz’s testimony which, in itself, was internally inconsistent.

IV. Second Issue – Did the Board fail to apply the Gender Guidelines?

[14] The Board made a number of references to the Gender Guidelines and explained how they had influenced its conduct. Ms Kaniz submits that the Board failed to apply the Guidelines in that it

neglected to appreciate that her husband had withheld information about some of his actions, and that her husband's abuse affected her testimony.

[15] I can see no error in the Board's treatment of the Gender Guidelines. It took into account Ms Kaniz's cultural background, treated her with sensitivity during the hearing, and relieved her from having to provide precise details of her experiences. The Board did not fault Ms Kaniz for her lack of knowledge; rather, it found that her testimony was simply inconsistent in a number of areas. The Gender Guidelines do not oblige the Board to overlook inconsistent evidence.

V. Third Issue – Did the Board fail to consider the claims of Amna, Mamoona and Muhammad Omer?

[16] Ms Kaniz points out that the Board did not consider the separate evidence supporting her children's claims.

[17] I agree. Muhammad Omer testified that he fears his father and had attempted suicide as a response to the family's troubles at home. Mamoona and Amna claimed that they feared being forced into arranged marriages with their Sunni cousins in Pakistan.

[18] The Board made no reference to Muhammad Omer's testimony. Nor did it refer to the independent observations of the police who noted that Muhammad Omer had scratches and bruises, and had to be taken to hospital after his father had assaulted him.

[19] The Board did refer to Mamoonah's evidence about a fear of forced marriage, but discounted this assertion because it was made only after the applicants' claims had been separated from Mr Muhammad's. However, this was true of all of the fresh allegations made by the applicants about their fear of Mr Muhammad. There was no reasonable basis to dismiss Mamoonah's and Amna's claims of fear simply because of their timing. It was clear that new grounds for the applicants' refugee claims could only have been raised after those claims had been separated from Mr Muhammad's.

#### VI. Conclusion and Disposition

[20] The Board's credibility findings and treatment of the Gender Guidelines were not unreasonable on the evidence. However, the Board failed to consider separately the claims of Muhammad Omer, Mamoonah, and Amna. To that extent, I will allow 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 allowed in respect of the applicants Muhammad Omer, Mamoona Makki and Amna Makki.
2. No question of general importance arises.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-2644-12

**STYLE OF CAUSE:** FATIMA KANIZ, ET AL  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 20, 2012

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

**DATED:** January 25, 2013

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