

Federal Court



Cour fédérale

Date: 20130502

Docket: IMM-6541-12

Citation: 2013 FC 459

Ottawa, Ontario, May 2, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

JOZIKEE NDJIZERA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) is granted. The decision is set aside for breach of procedural fairness and, secondly, unreasonable findings of fact.

[2] The applicant is a woman from Namibia who sought refugee protection on the basis that she had been physically and sexually abused by her husband.

[3] The Board breached procedural fairness by denying a request from the applicant's counsel to reverse the ordinary order of questioning. The Board rejected the request that the applicant's counsel question her first, stating that he had extensive experience in handling sensitive cases and would not require the claimant to go into detail regarding incidents that could cause a re-emergence of serious symptoms.

[4] Generally speaking, the presiding Board member questions a refugee claimant first. However, in certain circumstances fairness requires that a claimant's lawyer begin the questioning: *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, para 51. The Chairperson's Guidelines Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division provides that the Board may vary the order of questioning in order to accommodate a vulnerable person. While this will not be required in every case, here the applicant provided a psychologist report demonstrating post-traumatic stress disorder and a pattern of symptoms known as battered women syndrome.

[5] Reversing the order of questioning is not intended to remedy a deficiency in the Board's experience or expertise. Rather, as the Gender Guidelines state, women who have been subject to domestic violence may be reluctant to testify and face special problems making their case to authorities. Regardless of the questions asked, the hearing process itself may be expected to trigger the symptoms of post-traumatic stress disorder. It is to be recalled the applicant provided evidence that she experiences disorganized mental functioning and "inner turmoil" which she "makes a valiant effort to conceal."

[6] In this case, the order of questioning was detrimental to the applicant. She provided greater details in response to questions from her counsel. The Board commented on this negatively in the reasons for decision, faulted her for not providing this evidence in response to his original questioning, and drew unreasonable inferences as to her credibility.

[7] Second, the Board's assessment of the evidence demonstrated a reliance on stereotypes regarding gender-related persecution. On the issue of credibility, the Board noted that, "[u]nlike many claimants who claim refugee status relating to gender based mistreatment" the applicant speaks English, graduated from high school and made her own decisions regarding her flight to Canada. The Board erred in considering these factors relevant to assessing the applicant's credibility, wrongly indicating that only less educated and meek women may be subject to intimate partner violence.

[8] There were also errors in the Board's plausibility findings. The Board faulted the applicant for not seeking medical attention in Namibia with the statement that that she could have done so without naming her assailant. The applicant had testified that her husband followed her and retaliated against her when she sought the assistance of elders in their community. The Board disregarded this evidence.

[9] It was also unreasonable for the Board to expect independent corroboration of the applicant's testimony that her husband was a wealthy business person. There was no basis in the evidence to expect that this individual has, for example, a publicly traded company or some level of

fame. It is difficult to understand what type of independent corroboration the Board expected; the applicant certainly cannot obtain her assailant's financial records. The Board may not draw a negative inference from the lack of corroborating evidence unless that documentation would reasonably be expected: *Rojas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 849, para 6.

[10] The Board also faulted the applicant for failing to corroborate her testimony that she is on a waiting list for therapy in Canada. The applicant provided a psychologist report to corroborate her condition. The Board improperly discounted this report on the basis that it had been prepared at the request of applicant's counsel and was therefore self-serving.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6541-12

STYLE OF CAUSE: **JOZIKEE NDJIZERA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 8, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: May 2, 2013

APPEARANCES:

Mr. Raoul Boulakia FOR THE APPLICANT

Ms. Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raoul Boulakia FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

William F. Pentney, FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario