

Federal Court



Cour fédérale

**Date: 20140603**

**Docket: IMM-12697-12**

**Citation: 2014 FC 535**

**Toronto, Ontario, June 3, 2014**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**MARY GEORGE (A.K.A. MARY HENARY  
GEORGE)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD), dated November 5, 2012, in which it concluded that she was not a Convention refugee, nor a person in need of protection pursuant to sections 96 or 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

## **Background**

[2] The Applicant is a citizen of Egypt and is of the Christian Coptic Orthodox religion. She claimed that because of her religion her neighbours threatened her with death unless she left her home. She came to Canada on August 8, 2010 to visit her children and extended her stay because, she claimed that after the revolution of January 25, 2011, relations between Muslims and Christians worsened. She subsequently applied for refugee status.

## **Decision Under Review**

[3] The RPD found that the Applicant was not a Convention refugee pursuant to section 96 of the IRPA because she did not have a well-founded fear of persecution in Egypt on any of the five Convention grounds. Nor was she a person in need of protection pursuant to section 97 as, on the balance of probabilities, her removal to Egypt would not subject her personally to a risk to life or to a risk of cruel and unusual treatment or punishment or to a danger of torture.

[4] The basis of the RPD's decision was a lack of credibility and the well-foundedness of the Applicant's fear of persecution. Although the Applicant claimed that she attended church twice a week in Egypt and weekly in Canada she could not document her allegation. The RPD found that she was a nominal Christian only.

[5] As to credibility, the RPD noted that the Applicant had made frequent, lengthy trips to Canada during recent years to visit her children, always returning to Egypt. When asked why she had not previously sought refugee status if, as she claimed, Christians were being persecuted

there, she stated that she had not had problems before the revolution. When asked what had changed for her after the revolution, which took place while she was in Canada, she recalled an incident where she was removed from her house and her belongings were taken. The RPD noted that this had occurred six or seven years ago, it was not mentioned in her Personal Information Form (PIF) narrative and that it did not answer why she felt things worsened for her after the revolution. The RPD concluded that it was an embellishment.

[6] The RPD noted that, although the Applicant claimed that she was told not to return to Egypt about a week after the revolution, she did not make her refugee application until at least five months later. It found that the delay indicated that she did not have a subjective fear of return and drew a negative inference as to credibility.

[7] As to the well-foundedness of her claim, the RPD conducted a review of the documentary evidence and concluded that there is discrimination and societal violence including overly harsh governmental response to Christian demonstrations and at Christian places of worship. However, as the Applicant was not an active Christian, she was not likely to be involved in abuses in those venues. Further, as there are approximately ten million Christians in Egypt and an average of two incidents of sectarian violence per month, there was only a mere possibility that the Applicant would be persecuted. Nothing in her profile served to elevate her risk above that of any other Christian in Egypt.

## **Analysis**

[8] The Applicant submits that the RPD erred in finding that she had not extended her visitor status beyond February 2011 as there was evidence before Citizenship and Immigration Canada which indicated she had valid status to July 17, 2011. Therefore, the RPD erred in drawing a negative inference concerning her subjective fear. At the hearing before me it was pointed out that the Field Operational Support System (FOSS) notes and the Visitor Record, which were before the RPD, indicated that she was in status until July 17, 2011. And, while her claim for refugee status is dated August 3, 2011, her Interim Federal Health Certificate of Eligibility is dated July 12, 2011 being the date that she claims to have made her claim.

[9] In my view, the significant point is not so much whether she remained in status in Canada or not, but whether she delayed in making the application for refugee status. As the RPD noted, her evidence was that she was advised not to return to Egypt one week after the revolution. Despite this, she waited five months to claim refugee protection. The comment as to her likely status was made subsequent to these findings. The RPD also found that the Applicant had been to Canada many times in the past and, although she alleged that she was persecuted based on her religion prior to the revolution, she did not seek refugee status during any of those trips.

[10] In my view, the RPD reasonably drew an adverse inference as to credibility based on delay. While delay in making a refugee claim may not be itself decisive, it is a relevant element that the RPD can take into account when assessing the credibility of an applicant and it is reasonable to expect that an applicant would make a claim at the first possible opportunity

(*Garcia v Canada (Minister of Citizenship and Immigration)*, 2012 FC 412 at paras 19-20). The failure to do so has consistently been held to indicate a lack of subjective fear and thus undermine an applicant's credibility (*Chelaru v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1535 at para 30). Here, the Applicant was also unable to satisfactorily explain why she delayed in claiming protection (*Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para 17; *Yurtal v Canada (Minister of Citizenship and Immigration)*, 2013 FC 949 at para 34). This finding was reasonably open to the RPD (*Godfrey v Canada (Minister Citizenship and Immigration)*, 2012 FC 1377 at para 36), given that the Applicant's explanation for the delay was that she was praying that the situation would improve, but her evidence was also that persecution existed prior to the revolution.

[11] Further, the RPD's credibility finding was not based solely on the delay, but also on the fact that the Applicant did not include the incident concerning her removal from her home by her neighbours in her PIF, and only raised it at the hearing without a reasonable explanation for the omission. It is open to the RPD to base credibility findings on omissions and inconsistencies between PIFs and a claimant's testimony at the hearing (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA); *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668 at para 18). The RPD also has the benefit of actually hearing the testimony and observing her demeanour which is to be afforded deference (*Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1867 (TD) at paras 31-32; *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 9).

[12] The Applicant also submits that the RPD erred in finding that she changed her evidence to describe the person who removed her belongings from her home from a Jewish lady to a Muslim lady. The confusion arose from an interpretation error, not the testimony and, therefore, there was no change in her testimony. This should not have negatively affected her credibility. In my view, nothing turns on this error. The Applicant recounted the incident in answer to the question of why her situation had changed post-revolution. As the incident occurred six to seven years before the revolution it did not answer that question. And, regardless of who removed her belongings, she did not mention the incident in her PIF. All of which goes to her credibility and subjective fear.

[13] Finally, the Applicant submits that the RPD erred in finding that she was only a nominal Christian which effected its determination as to whether she would face more than a mere possibility of persecution in Egypt because of her Christian identity. Her evidence was that she attended church regularly and the documentary evidence illustrates widespread violence against Christians being committed with impunity. The RPD found that most of the violence appears to be centered on religious events in locales. She submits that these would attract her and therefore place her at more than a mere possibility of persecution should she return to Egypt.

[14] It must be recalled that in order to make a successful section 96 claim, an applicant must demonstrate a well-founded fear of persecution which has both a subjective and an objective element. The subjective component relates to the existence of the fear of persecution in the mind of the claimant. The objective component requires that the claimant's fear be evaluated objectively to determine if there is a valid basis for that fear (*Li v Canada (Minister of*

*Citizenship and Immigration*), 2005 FCA 1 at para 33; *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120). It is well settled that an adverse credibility finding may be conclusive of a claim made under section 96 of the IRPA.

[15] Here, the RPD found that the Applicant did not credibly demonstrate subjective fear. It also concluded that she is not an active Christian because she only attended church twice a week in Egypt and weekly in Canada and because she was unable to document her attendance at church.

[16] In my view, it would not be reasonable for the RPD to find that the Applicant is not an active, or is a nominal Christian, on the basis that she attended church only once or twice a week. However, the RPD's stated concern was not with how often she attended church, but with the lack of documentation of her attendance at church in Egypt or in Canada. For that reason it found that she was "a nominal Christian only, not a Christian of high profile such as a cleric, community leader, nor an especially devout Christian nor a Christian active in community or outreach work". The RPD's concern with the lack of corroborative documents is warranted given its credibility finding (*Rosales v Canada (Minister of Citizenship and Immigration)*, 2012 FC 323 at para 19; *Vargas v Canada (Minister of Citizenship and Immigration)*, 2014 FC 484 at para 17).

[17] The RPD carried out a detailed review of the documentary evidence and reasonably found that most of the violence against Christians appeared to be centered on religious events and locales which would not affect the Applicant more so than it would most Christians. It

stated that while it is possible that the Applicant could be attacked or even persecuted because she is a Christian, the question before it was whether this possibility rises above a mere possibility to a serious possibility. The RPD noted that there are some ten million Christians in Egypt and that the documentary evidence indicated that there was an average of two incidents of sectarian violence or tension per month in all of Egypt. This had not significantly altered since the revolution. Therefore, it was only a mere possibility that she would be persecuted as there was nothing in her profile that would elevate her risk above that of any other Christian in Egypt.

[18] It is true that the documentary evidence refers to attacks on Christian places of worship as well as demonstrations. However, on balance, the RPD's conclusion is supported by that evidence and the record before it.

[19] Credibility findings are reviewable on the standard of reasonableness (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 619 at para 26; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (CA)), as is the issue of the well-foundedness of a claimant's fear (*Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1055 at paras 25-26; *Gabor v Canada (Minister of Citizenship and Immigration)*, 2012 FC 540 at para 33). In my view, considering the decision in whole and the record before the RPD, its decision was reasonable as it falls within a range of acceptable and possible outcomes which are defensible in respect of the facts and law.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed;
2. No question is certified.

"Cecily Y. Strickland"

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Judge

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

**DOCKET:** IMM-12697-12

**STYLE OF CAUSE:** MARY GEORGE (A.K.A. MARY HENARY GEORGE) v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 2, 2014

**JUDGMENT AND REASONS  
BY:** STRICKLAND J.

**DATED:** JUNE 3, 2014

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