

Federal Court



Cour fédérale

Date: 20191113

Docket: IMM-3642-18

Citation: 2019 FC 1420

Ottawa, Ontario, November 13, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

IRENE ISTRATI JACOBUS

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Ms. Jacobus, is a citizen of Indonesia. She seeks judicial review of a decision by the Refugee Protection Division [RPD] made on July 17, 2018 [Decision] at the conclusion of her hearing. The RPD found that Ms. Jacobus was not a convention refugee nor a person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Jacobus, who is a Christian, based her claim for refugee protection on fear of her former partner, Mr. Zulkifli. He had become physically abusive and verbally aggressive toward her after he joined a cell group of Muslims that promoted radical Islam. He pressured her to convert from Christianity to Islam. He also isolated her from her friends and threatened to kill her if she left him or if he saw her with another man.

[3] When the threats escalated during the third year of their relationship, Ms. Jacobus became afraid that Mr. Zulkifli would kill her in her sleep. With the assistance of a friend who purchased her airplane ticket and drove her to the airport, she was able to leave Indonesia and come to Canada in September 2009 on a six month visitor's visa. Ms. Jacobus says that Mr. Zulkifli does not know her whereabouts or that she is in Canada.

[4] In August 2012, Ms. Jacobus was detained by border officials. She says that is when she first learned that she could make a claim for refugee protection and then submitted her claim.

II. **Issue and Standard of Review**

[5] Although the written materials put forward several issues, by the time of the hearing the parties agreed that the only issue to be determined is whether the RPD finding that Ms. Jacobus has a viable Internal Flight Alternative [IFA] in Bali is reasonable. That finding is reviewable on a standard of reasonableness: *Haastrup v Canada (Citizenship and Immigration)*, 2018 FC 711 at para 9.

[6] The reasonableness of a decision is determined by examining whether the decision-making process was justifiable, intelligible and transparent as well as whether it falls within the range of possible, acceptable outcomes defensible on the facts and law. Under the reasonableness standard, this Court owes deference to the expertise of the decision-making tribunal. Deference requires that the Court pay respectful attention to the reasons offered or that could have been offered *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 48 [*Dunsmuir*].

[7] If the decision falls within the range of reasonable outcomes, then the fact that a different outcome is possible does not lead to a finding that a decision is unreasonable. When the reasons allow a reviewing court to understand why the tribunal made its decision and permit the court to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16 and 17 [*Nfld Nurses*].

III. Analysis

[8] The RPD put Ms. Jacobus on notice that one of the issues was the availability of an IFA in Bali. As already noted, the reasonableness of the IFA determination is the sole issue under review in this application.

[9] For reasons set out below, I find that in considering Bali as a viable IFA, the RPD reasonably applied the two-pronged test established by the Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) that:

[I]n order to prove a claim to Convention refugee status... claimants must prove on a balance of probabilities that there is a serious possibility that they will be subject to persecution in their country. If the possibility of an IFA is raised, the claimant must demonstrate on a balance of probabilities that there is a serious possibility of persecution in the area alleged to constitute an IFA.

[10] If there is a serious possibility of persecution to Ms. Jacobus in Bali, or if it is not reasonable for her to move to Bali, then it is not a viable IFA. Whether an IFA is reasonable or not is determined objectively. The threshold for proving objective unreasonableness is very high. Actual and concrete evidence of the existence of conditions that would jeopardize the life and safety of Ms. Jacobus in travelling or temporarily relocating to Bali is required: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15

[11] Ultimately, the RPD found that Ms. Jacobus would face no serious possibility of persecution in Bali either from anti-Christian Muslim extremists or personally from Mr. Zulkifli. The RPD made these findings largely because of an insufficiency of evidence from Ms. Jacobus.

[12] Submissions by Ms. Jacobus to the RPD claimed that her well-founded fear of persecution arose from her gender, her domestic abuse and her Christian religion while living in a predominantly Muslim country.

[13] In this Application, Ms. Jacobus further submits that the RPD failed to consider her claims under Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution, issued November 13, 1996 [the Gender Guidelines].

A. *Gender, Religion and the Gender Guidelines*

[14] Ms. Jacobus submits that the RPD was not alert and sensitive to the Gender Guidelines, and that the Decision should be quashed. She did not specify how the RPD failed to consider the Gender Guidelines. In her written materials, Ms. Jacobus extracted part of the Gender Guidelines and stated that, given her gender, the RPD should have considered her ability to travel safely to the IFA. It also should have taken into account religious, economic, and cultural factors and considered whether and how they would affect her in the IFA.

[15] I disagree that the RPD failed to consider the Gender Guidelines that it referenced early in the Decision. The RPD reasonably considered and then applied the Gender Guidelines to the evidence provided by Ms. Jacobus.

(1) *Christian Religion*

[16] When considering Bali as an IFA, the RPD noted that Ms. Jacobus claimed she could not find a safe haven anywhere in Indonesia because of the Muslim majority. In looking at the demographics of Bali, the RPD considered that the population in Bali was 84% Hindu, 13% Muslim and 3% Christian. Muslims were not a majority.

[17] In questioning by the RPD about why Bali would not be safe, Ms. Jacobus raised the fact that years ago there was a bomb attack by Muslim extremists in Bali. The RPD noted that the bomb targeted a group of visiting Australians. The RPD found that the attack was not evidence that Mr. Zulkifli would target Ms. Jacobus in Bali. In addition, the panel acknowledged that Muslim extremists harass and sometimes violently attack members of religious minority

communities but found that was a generalized risk shared by all such members of minority communities.

(2) Safe Travel to the IFA

[18] Safe travel to the IFA is an important factor when assessing the viability of an IFA: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15.

[19] Contrary to the submissions of Ms. Jacobus, the RPD did consider whether she could travel safely to Bali. It pointed out that Bali was more than 1000 km from Jakarta and Ms. Jacobus could safely travel there directly by air, without passing through Jakarta.

(3) Culture

[20] Ms. Jacobus suggests that the RPD did not discuss cultural factors she would face in Bali as a single woman who was a member of a cultural minority. However, the only reference to a “cultural” aspect in the claim is a brief reference in the personal narrative of Ms. Jacobus. She mentions that she would not be able to relocate to a smaller island outside of Jakarta “without religious and cultural repression”.

[21] Ms. Jacobus did not explain, neither in her claim materials nor when testifying at the RPD, the nature or extent of any possible cultural repression she feared if she had to live in Bali. In essence, all the RPD had before it was the bald assertion made by Ms. Jacobus.

[22] Ms. Jacobus made no submissions to the RPD about any cultural issues in Bali or elsewhere. It is entirely reasonable for the RPD not to consider an issue that Ms. Jacobus did not raise, did not explain, and for which she did not provide any evidence.

(4) Employment and being a Single Woman

[23] The RPD found that Ms. Jacobus is a mature, educated, single woman without children who lived alone in Jakarta. She was able to support herself with office work in both a shipping company and a bank over a 12-year period. Ms. Jacobus put forward no evidence to indicate that she could not live and work in Bali.

[24] The RPD also found that in her narrative, Ms. Jacobus had described herself as an “independent, open-minded person” and she put forward no evidence to show that religion or ethnicity would be issues constraining her resettlement in Bali. Given that Ms. Jacobus also speaks both Indonesian and English the panel found no apparent barriers to her ability to find employment and support herself in Bali.

[25] From my review of the Decision and the transcript of the hearing, I am satisfied as discussed above, that the RPD reasonably considered the Gender Guidelines and the specific issues raised by Ms. Jacobus in relation thereto. The conclusions it drew were reasonable based on the facts and law.

B. *Possible Domestic Abuse*

[26] In terms of possible domestic abuse by Mr. Zulkifli, Ms. Jacobus testified that he did not know that she had fled to Canada. She submitted that even though it had been nine years since she left Indonesia, Mr. Zulkifli could believe that she was still in Indonesia. Her fear of Mr. Zulkifli if she lived in Bali was driven by the fact that he had many friends and her photograph was on his phone. She stated that he or his friends could find her in Bali and, if they did, then Mr. Zulkifli would carry out his threats and harm her.

[27] The RPD found that Ms. Jacobus did not adduce any evidence that the cell group to which Mr. Zulkifli belonged was a violent group or that its members would pursue her to harm her because they were Muslims who were friends of Mr. Zulkifli.

[28] The RPD asked Ms. Jacobus whether she had any evidence that she would be targeted if she lived in Bali. Her answer was that she did not know if she would be targeted or not but she did not want it to happen and wanted to protect herself.

[29] The RPD determined that there was no evidence that Mr. Zulkifli was still searching for Ms. Jacobus or that he had pursued her over the last nine years. The only evidence put forward by Ms. Jacobus was a letter from a church friend who said that he saw Mr. Zulkifli in June 2017. At that time, Mr. Zulkifli asked whether the friend had any news about her whereabouts. The friend said that when he said he did not know of Ms. Jacobus' whereabouts, Mr. Zulkifli passed by, rushing to another place.

[30] I find that considering the foregoing, the RPD reasonably concluded that Ms. Jacobus would not personally be at risk of harm from Mr. Zulkifli or anyone acting on his behalf if she relocated to Bali. It is therefore a viable IFA.

[31] In terms of the second-prong of the test the foregoing facts also apply to the consideration of the reasonableness of Ms. Jacobus relocating to Bali. Ms. Jacobus failed to put forward sufficient evidence to persuade the RPD that it would be unreasonable, as that term is understood in the jurisprudence, for her to relocate to Bali.

IV. **Conclusion**

[32] The onus was on Ms. Jacobus to show the RPD why Bali would not be suitable as an IFA. The RPD made a reasonable finding that she had not met that onus, given the lack of evidence she put forward to support her claims.

[33] Deference is a key component to the review of any decision by an administrative tribunal. In *Nfld Nurses*, Madam Justice Abella instructed a court to approach reviewing a tribunal's decision this way:

When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive.

Nfld Nurses at para 18.

[34] While the analysis by the RPD might have been more extensive, it is reasonable. Judicial review is not a line-by-line treasure hunt for errors: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54.

[35] The *Dunsmuir* criteria have been met. The reasons provided by the RPD enable the Court to understand why it made the decision it did and the underlying record supports that the outcome falls within the range of possible outcomes based on the facts and law.

[36] The application is dismissed. There is no serious question of general importance for certification.

JUDGMENT in IMM-3642-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no serious question of general importance for certification.
3. No costs.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3642-18

STYLE OF CAUSE: IRENE ISTRATI JACOBUS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 26, 2019

JUDGMENT AND REASONS: ELLIOTT J.

DATED: NOVEMBER 13, 2019

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