Federal Court  Cour fédérale

Date: 20070305

Docket: IMM-3777-06

Citation: 2007 FC 249

[ENGLISH TRANSLATION]

Montréal, Quebec, March 5, 2007

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ELANGE BULLY SAINNÉUS

VICKIE SAINNÉUS

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants are challenging the legality of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (the Board) on June 21, 2006, that determined that they do not have refugee status and are not persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S. C. 2001, c. 27 (the Act).

[2] The principal applicant is a citizen of Haiti. Her daughter (the minor applicant) is a citizen of the United States and is now five years old. The principal applicant, owner of a food store in Port-au-Prince, claims that she was persecuted by Lavalas Chimères. Her allegations can be summarized as follows.

[3] On February 24, 2001, the applicant's family was robbed at their home. The applicant, who was five months' pregnant, and her husband were beaten during the robbery. Following this incident, the principal applicant travelled to the United States on March 6, 2001. Following her return to Haiti in August 27, 2001, the harassment continued until July 2002. The applicant then sent her son to the United States to protect him from the threats.

[4] Nearly three years later, in March 2004, pro-Aristide slogans and death threats were scribbled on the walls of her family home and business. On April 3, 2004, her husband was kidnapped. She managed to raise a portion of the ransom, and her husband was released. The next year, on May 28, 2005, their home was riddled with bullets. Although the respondent and her husband were absent, their children, the principal applicant's sister and her husband's brother were home during the incident. The principal applicant and her husband subsequently decided to stop spending nights at the house. Then on June 29, 2005, the brother of the principal applicant's husband, who was looking after the house, was shot dead outside of the residence.

[5] The principal applicant then decided to stay with her cousin in Delmas. She left Haiti and arrived in Canada on August 16, 2005. She claimed refugee status nearly two months later, on

October 4, 2005. That same day, the minor applicant arrived in Canada. A refugee claim was filed on her behalf on October 14, 2005.

[6] The Board first found there was no connection between the principal applicant's alleged fear and one of the five Convention grounds. Second, in the Board's view, the principal applicant lacks credibility. More specifically, the Board considered that her behaviour, as well as that of her family, was inconsistent with that of someone who fears for their life. It noted that between 2001 and 2004, the principal applicant travelled to the United States five times, and her husband also visited that country once in 2004. Despite the threats uttered against them, neither made a refugee claim during their trips to the United States and, on every occasion, they willingly returned to the Haiti. The Board was of the opinion that such behaviour was inconsistent with someone who feared for their life. Furthermore, it found it implausible that the principal applicant and her family did not permanently move after the incidents that occurred on February 24, 2001, April 3, 2004, and May 28, 2005. Moreover, even today, even after the death of her brother, the principal applicant's husband goes to their house [TRANSLATION] "to bathe or to get clothes." On the other hand, the Board noted that once in Canada the principal applicant waited almost two months before claiming refugee status. The Board also questioned the authenticity of some of the documents submitted in evidence. In particular, it noted, that some of the documents drafted in French, one of Haiti's official languages, do not contain any accents and that the police complaint submitted in evidence contained a [TRANSLATION] "major typing error" in the heading of the document, which read "Service d'ivestigation" instead of "Service d'investigation." Finally, the Board dismissed the minor

applicant's claim on the basis that she did not submit any evidence that she would be at risk of persecution or would be mistreated in the United States, her country of citizenship.

[7] First, the principal applicant argues that the Board erred in finding that there was no connection between the fear alleged by the principal applicant and one of the five Convention grounds. Her counsel submits that the applicant satisfied section 96 of the Act by alleging and proving that she was persecuted for activities amounting to political activities and by proving that she could not be protected by the authorities in her own country because the government in place was linked to the Chimères, her assailants.

[8] In my opinion, it is not necessary to rule on this first argument. Whether it is a question of section 96 or 97 of the Act, refugee claimants must be believed by the Board, which is not the case in this case for the specific reasons that were provided in the Board's decisions and which are summarized above. Furthermore, the Board also assessed the risk to life under section 97 of the Act and found that the applicants were not persons in need of protection.

[9] Second, as a second ground for review, the principal applicant submits that the Board's adverse credibility findings are patently unreasonable and that they are based on findings of fact that were erroneous or reached without consideration for the evidence before it. In particular, she submits that the Board should not have relied on the period preceding her refugee claim. She also argues that the Board should not have drawn adverse findings from the fact that she did not claim refugee status during her various trips to the United States. It was only after the incidents in May

and June 2005 that the principal applicant concluded that her life was in danger if she remained in Haiti. Despite this, the principal applicant explains that once she was in Canada, she waited almost two months to file her refugee claim because she was in a state of shock and did not know the process for claiming refugee status. She also argues that the negative determination is based on peripheral facts and details that do not really matter. Thus, the Board also acted capriciously and arbitrarily by questioning the authenticity of the police report submitted by the principal applicant.

[10] It is settled law that the standard of review applicable to credibility issues is the patent unreasonableness standard (*Umba v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 25). The Board has well-established expertise in the determination of questions of fact, particularly in assessing credibility and subjective fear of persecution (*RKL v. Canada (Minister of Citizenship and Immigration)*, 2003 F.C.T.D. 116 at paragraph 7; *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1800 at paragraph 38 (F.C.T.D.) and *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at paragraph 14). It also has complete jurisdiction to determine the plausibility of testimony (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315.

[11] In this case, the principal applicant is essentially asking the Court to reassess the evidence that was before the Board. However, the Court will only intervene when it has been established that the Board's decision is based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (paragraph 18.1(4)(d) of the Act. See also *Akinlolu v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 296 at paragraph

14 (F.C.T.D.); *Kanyai v. Canada (Minister of Citizenship and Immigration)*, 2002 F.C.T.D. 850 at paragraph 9 (F.C.T.D.).

[12] Subjective fear, one of the essential elements of the burden of proof placed on refugee claimants, is first and foremost a question of credibility. Assessing subjective fear may be based on the principal applicant's behaviour, such as the delay in leaving the country of persecution or torture, the voluntary return to the country of persecution, failure to seek protection in a country that is signatory to the Convention and the delay in seeking protection in Canada. The delay in making a claim to refugee status is also a relevant factor that the tribunal may take into account in assessing both the statements and actions and deeds of a claimant (*Huerta v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 271 (F.C.A.) (QL), *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 62).

[13] I am not satisfied that the Board's findings are patently unreasonable. On the contrary, they appear to me to be amply justified based on the evidence in the record. The fact that the Board did not mention each document entered in evidence does not indicate that it did not consider them. It is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v. Canada (Minister of Employment and Immigration)*, [1993 F.C.J. No. 598 (F.C.A)). Given that the principal applicant was found not to be credible, I do not think that the Board can be faulted here for not commenting on all the material that she filed (*Ozdemir v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331). Furthermore, the Board could give no probative value to Exhibit P-1 (police complaint) and P-2 (justice of the peace's report) filed by the

applicant when, as in this case, the evidence was sufficient to question her authenticity (*Chaudry v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1068; *Dzey v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 167). Finally, the Board could also make a negative finding from the fact that the principal applicant waited almost two months before claiming refugee status in Canada.

[14] For the reasons, the application for judicial review must fail. No question of general importance was raised in this proceeding.

ORDER

THE COURT ORDERS:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Luc Martineau"
Judge

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

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