

**Date: 20080221**

**Docket: IMM-1556-07**

**Citation: 2008 FC 224**

**Ottawa, Ontario, February 21, 2008**

**PRESENT: The Honourable Mr. Justice Kelen**

**BETWEEN:**

**KRISTINA MIKE**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated March 22, 2007 that the applicant is not a Convention refugee or a person in need of protection due to the abuse by her former fiancé in Albania.

## **FACTS**

[2] The applicant, an Albanian citizen, arrived in Canada on November 21, 2003 at the age of 19 years. She claimed refugee protection on December 10, 2003. Her claim is founded on a fear of abuse by her former fiancé.

[3] The applicant and her fiancé became engaged in December 2002, nine months after they met. The applicant states their engagement was arranged by traditional Albanian methods, and that her father approved of the relationship.

[4] The applicant states that the relationship deteriorated when her fiancé began using drugs and alcohol. During the relationship the fiancé wanted the applicant to become a prostitute in Italy. The applicant states that after attempting to sever the relationship, her fiancé became abusive and beat her, sometimes in public.

[5] The applicant remained in the relationship until September 2003 when she claims to have been beaten so badly that she required hospitalization for three days. The applicant states she went to the police, but was told that there was nothing they could do to help her, and that she should “work it out” with her fiancé. The applicant alleges that her fiancé threatened to kill her if she ever tried to leave him. In response, the applicant’s parents became afraid for her life and sent her into hiding with cousins. The applicant remained in hiding until leaving for Canada.

**Decision under review**

[6] On March 22, 2007, the Board concluded that the applicant was not a Convention refugee or a person in need of protection. Central to the Board's conclusion was the applicant's credibility, which the Board addressed at page 2 of its decision:

On considering the claimant's evidence in its entirety, the panel found certain instances that caused it to doubt its truthfulness with respect to the material aspects of the claim.

[7] Of concern to the Board was the impact of two police reports filed in support of the applicant's claim. An authenticity check of the first report (which required a two-year adjournment of the Board hearing) found it to be a false document. A second report was then secured from the Albanian police. Its authenticity was not verified. The Board found that regardless of the second report's authenticity, the content of the reports contradicted the applicant's assertion that the police failed to provide her with any assistance. The Board stated at page 5 of its decision:

With respect to the police reports, ... the panel finds that both police reports contradict the claimant's assertion that the police did nothing but told her to resolve the matter between the families, as both reports purport to attest to the police taking action. When she was asked, the appellant could not provide an explanation why the original police report would state that the case was still under investigation. Even if this certificate is to be discounted because false, the fact remains that the replacement certificate makes a similar assertion....

Based on this information, the Board concluded:

... Accordingly, the panel would give little weight to both police reports, finding them to be of little assistance in establishing the claimant as a credible and trustworthy witness.

[8] In addition to concern over the police reports proffered by the applicant, the Board also based its decision on other inconsistencies in the applicant's testimony. These included:

1. the applicant failed to present "objective evidence" of her engagement when it was reasonable to expect such evidence;
2. the applicant's evidence regarding her courtship was "qualitatively different" from that in her Personal Information Form (PIF);
3. the medical report allegedly confirming her injuries and length of stay in the hospital predated her release and was, accordingly, not credible;
4. the applicant failed to report her fiancé's planned trafficking of her person to the police, which undermined her overall credibility; and
5. the applicant failed to mention in her PIF that her fiancé threatened revenge if she left him.

Accordingly, the Board concluded that the applicant lacked credibility.

[9] The Board found that since the applicant was not credible with respect to the central issue of her claim – *i.e.*, that she was an abused woman being denied state protection – it also concluded that she did not fall within a category of persons contemplated by the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

## **ISSUE**

[10] The issue in this application is whether the Board erred in concluding the applicant was not credible in her evidence.

## STANDARD OF REVIEW

[11] No pragmatic and functional analysis is required with respect to the issue of the standard of review of the Board's credibility findings because the standard of review is well settled in the jurisprudence as "patent unreasonableness." In *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1194, [2002] F.C.J. No. 1611 (QL), I held at paragraphs 4-5:

¶ 4 ... Before a credibility finding of the Board is set aside ... one of the following criteria must be established ... :

1. the Board did not provide valid reasons for finding that an applicant lacked credibility;
2. the inferences drawn by the Board are based on implausibility findings that in the view of the Court are simply not plausible;
3. the decision was based on inferences that were not supported by the evidence; or,
4. the credibility finding was based on a finding of fact that was perverse, capricious, or without regard to the evidence.

See *Bains v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1144 at para. 11 per Madam Justice Reed.

¶ 5 Credibility findings of the Board are entitled to the highest degree of curial deference, and the Court will only set aside credibility decisions ... in accordance with the criteria outlined above. The Court should not substitute its opinion for that of the Board with respect to credibility or plausibility except in the clearest of cases. For this reason, applications seeking to set aside credibility findings have a very heavy onus to discharge....

## ANALYSIS

**Issue: Did the Board err in concluding the applicant was not credible in her evidence?**

### **Police reports**

[12] The applicant argues the Board erred in its treatment of the two police reports proffered in support of her claim. The first report, which had been acquired by the applicant's father and was submitted when the hearing first began on November 23, 2004, was found to be false by authorities from the Albanian Interior Ministry. Once the first report was determined to be false, the applicant obtained a second report, which was also procured by her father. The applicant argues the Board, in reaching its decision, unreasonably inferred that because the first report was false, then so too must be the second. In support, the applicant points to page 3 of the Board's decision, where it states:

The primary concern remains the police certificate. Despite her counsel's submissions, objecting to the verification, the fact is that the original police certificate is false has not been seriously challenged. Instead, the claimant's father has simply gone out and procured another. So that in the end, we have a second police certificate obtained in the identical manner and by the same person as the first false certificate. ...

[13] The applicant submits the Board was patently unreasonable in finding the second police report to be false because it was obtained by the same person and in the same manner as the first. To that end, the applicant states there are key differences between the two reports, thereby making such a conclusion unfounded. The applicant also states that if the Board had concerns about the second report's authenticity, it was free to conduct an investigation into that authenticity.

[14] However, the Board's decision does not explicitly conclude that the second report was not genuine. The Board found that regardless of either report's authenticity, little weight should be accorded since both reports contradicted the applicant's claim that her overtures to the Albanian police were met with indifference.

[15] The Board adjourned the hearing on November 23, 2004 to verify the authenticity of the first police report from the police chief in Albania and to ascertain whether this police report is in the usual format of such documents issued by them, *i.e.* no formal letterhead and hand-printed. This verification process took one-and-a-half years. The first secretary for immigration at the Canadian Embassy in Rome (which is responsible for Albania), met with the Albanian Ministry of Interior in Albania, which confirmed that the police report is false for the following reasons:

1. there is no protocol number, which there would be if it was issued by any police station in Albania;
2. the person who signed the police report did not occupy that position when the document was dated; and
3. the seal contains irregularities and is quite easy to falsify.

The Court commends the Board for having adjourned the hearing to verify this document in an objective and definitive manner. The hearing then resumed whereupon the applicant produced a second police report, which did have a protocol number, was on letterhead (unlike the first report), and was typed (also unlike the first report).

[16] The Court finds that the Board did have valid reasons for finding that the applicant lacked credibility when she submitted a police report that was objectively determined to be false.

**The Board's other credibility findings**

[17] As noted above, the Board's conclusion that the applicant lacked credibility was premised on a number of other findings. With respect to the Board's finding that there was an absence of objective evidence establishing the engagement, the Board relied upon a patently unreasonable finding of fact that the applicant said that she did not obtain the photographs because she did not want her parents to see them. In fact, the applicant testified that she did not ask for the photographs because she herself did not want to see them. With respect to why the applicant did not produce the ring as evidence of the engagement the Board dismissed the explanation of the applicant without giving any reasons. In the Court's view, the explanation was plausible. With respect to the applicant's testimony concerning her relationship with her fiancé, the Board found an inconsistency between her PIF and her *vive voce* evidence. Upon close examination, the Court finds that the Board's finding in this regard was patently unreasonable. There is no inconsistency.

[18] With respect to the hospital report which is dated a day before the applicant's discharge, the Board did provide valid reasons for finding that this report was not credible. It is unusual for a hospital report in any country to refer to the applicant's date of discharge but be dated before the applicant is discharged. This is a valid reason for finding that the report lacked credibility and the Court should not substitute its opinion for that of the Board. In any event, the Court found the medical report unusual in that it was signed by three people at the hospital including the



“Chairman” of the hospital. I would not think that hospital reports in any country would need to be signed by three people, and would not need to be signed by the Chairman of the hospital. It is more appropriate for a hospital report to be signed by a doctor or a nurse.

[19] With respect to the threats against the applicant and against the applicant’s father by her former fiancé, the Board found that these threats were not contained in the applicant’s PIF. On close examination, the Court finds that these threats were set out in the PIF and that the Board made a patently unreasonable finding of fact in this regard.

[20] Counsel for the applicant Mr. J. Norris Ormston, showed the Court that some of the Board’s findings were patently unreasonable, and made a persuasive argument about the police reports and the hospital report. However, the Court cannot set aside the credibility findings of the Board with respect to the police reports and the hospital report. These credibility findings were supported with valid reasons and inferences that were plausible. Such credibility findings are entitled to the highest degree of curial deference and the Court cannot substitute its opinion for that of the Board on these material credibility findings. For that reason, the Court must dismiss this application for judicial review.

## **CONCLUSION**

[21] This application turns on the Board’s credibility findings. While the Board did make some patently unreasonable findings of fact, these findings of fact do not offset the valid reasons the Board provided for finding that the applicant lacked credibility, namely the first police report and

the hospital report. Moreover, the Board found that both police reports contradict the applicant's assertion that the police did nothing but told her to resolve the matter between the families. The

Board states at page 5 of its decision:

... both reports purport to attest to the police taking action. ... [This] is contradictory to the claimant's allegations that the police rebuffed rather than helped her.

[22] For these reasons, the Court must dismiss this application for judicial review.

[23] Neither party proposed a question for certification. Since this case turns on the facts and the credibility findings, the Court is of the opinion that this case does not raise any serious issue of general importance that ought to be certified for an appeal.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

This application for judicial review is dismissed.

“Michael A. Kelen”

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Judge

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

**DOCKET:** IMM-1556-07

**STYLE OF CAUSE:** KRISTINA MIKE v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 12, 2008

**REASONS FOR JUDGMENT:** KELEN J.

**DATED:** February 21, 2008

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