Federal Court  Cour fédérale

Date: 20100518

Docket: IMM-5800-09

Citation: 2010 FC 545

Ottawa, Ontario, May 18, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

JAMILA SMITH ALLINAGOGO
HARRY SMITH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision rendered on October 13, 2009 by the Refugee Protection Division of the Immigration and Refugee Board (the Board) which found that the Applicants are not Convention refugees or persons in need of protection.

[2] Jamila Smith Allinagogo (the female Applicant) and her husband, Harry Smith (the male Applicant) are both citizens of Nigeria. The male Applicant's claim is based on that of the female

Applicant. The Applicants claim refugee protection on the basis that they fear reprisals from the Applicant's female uncle and a Chief to whom she was sold to by the uncle.

[3] The Board rejected the claim on the basis of lack of credibility of both Applicants.

[4] The application for judicial review will be dismissed for the reasons that follow.

[5] Both parties submit, and I agree, that the standard of review to be applied in this case is that of reasonableness. The jurisprudence has satisfactorily established that the Board's conclusions regarding credibility are reviewable on that standard (*Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, [2008] F.C.J. No. 737 (QL) at paragraph 14; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). The issue of the evaluation of the evidence is also held to the same standard (*Zavalat v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1279, [2009] F.C.J. No. 1639 (QL)).

[6] In evaluating the reasonableness of a decision, the Court must look "into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. (…) But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at paragraph 47).

[7] The Applicants allege that the Board erred in its assessment of credibility and that the reasons show that it is overzealous in its search for contradictions. They also argue that the credibility findings are over-vigilant and microscopic and contrary to the principles set out by the Federal Court of Appeal in *Attakora v. Canada (Minister of Employment and Immigration)* (1999), 99 N.R. 168 (F.C.A.). This argument cannot succeed in my view. The female Applicant advances that the Board should have accepted her explanations with regard to her birthday and the day she went to the village to hide. However, the Board is entitled to reject an explanation if it does not find it to be reasonable (*Mulliqi v. Canada (Minister of Citizenship and Immigration),* 2006 FC 563, 291 F.T.R. 313; *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236 (F.C.A.); *Huang v. Canada (Minister of Citizenship and Immigration)* (2001), 213 F.T.R. 14, 2001 FCT 1239). In the case at bar, the Board provides convincing reasons as to why the explanations are rejected and I am satisfied that the decisions fall within the range of outcomes defensible in light of the facts and the law.

[8] Credibility findings are within the heartland of the Board's discretion and the Board is in the best position to gauge credibility and draw the necessary inferences (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.)). The Applicants focus on two credibility findings despite the fact that numerous others were made and the Board identified many implausibilities and contradictions with regard to important facts in the claims which are not disputed by the Applicants. I am satisfied, overall, that the remaining findings justify a negative disposition on the basis of credibility.

[9] The Applicants contend that the Board disregarded key pieces of evidence supporting their claim. The Board ignored a letter from a doctor which confirms the female Applicant's statement that she was subject to female genital mutilation. They also hold that the Board failed to highlight a letter from a social worker that "acknowledges the fact that [the male Applicant] needed medical attention for the trauma and stress he experienced as he feared of being hurt or killed by his wife's uncle and the Chief" (Applicants' Memorandum at paragraph 34).

[10] In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), it is established that a tribunal is presumed to have considered all of the evidence presented to it and there it is no obligation to mention each piece that it has taken into account in rendering its decision (see for example *Shahid v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 390, [2004] F.C.J. No. 484 (QL) at paragraph 5).

[11] With respect to the pieces of evidence mentioned by the Applicants, although the letter establishes that the female applicant was subject to the practice of female genital mutilation, it does not substantiate her claim that she fears for her life at the hands of her uncle or the Chief. As for the letter from the social worker, it is of a very general nature and simply states that "Mr. Smith is presenting with psycho-social difficulties resulting from an accumulation of stress related to the experiences he had in his home country" (Certified Tribunal Record at page 238).

[12] This is not the same interpretation of the letter presented by the Applicants in their written arguments before this Court and I cannot infer that the Board made a decision without regard to the evidence on the sole basis that this letter is not mentioned. The Board's assessment of both the documentary evidence and the testimony in this case is detailed in cogent reasons and I am satisfied that all of the evidence was considered.

[13] The Applicants point to the *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* (the Gender Guidelines) and allege that the Board should have looked to it for guidance on how to assess the testimony of the female Applicant.

[14] This argument cannot succeed as there is no obligation for the Board to mention the guidelines in its decision and the reasons show that the Board properly considered the female Applicant's claim (*S.I. v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1662, [2004] F.C.J. No. 2015 (QL) at paragraph 7).

[15] After a review of the transcript, I am of the opinion that there is no evidence that the Board lacked sensitivity in the conduct of the hearing or the assessment of the claims. In my view, the reasons disclose the degree of knowledge, understanding, and sensitivity warranted by the Gender Guidelines (*S.I.* at paragraph 7; *Griffith v. Canada (Minister of Citizenship and Immigration)* (1999), 171 F.T.R. 240 (F.C.T.D.) at paragraph 27).

[16] No question for certification was proposed and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-5800-09
STYLE OF CAUSE:	**JAMILA SMITH ALLINAGOGO HARRY SMITH and THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
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