

Federal Court



Cour fédérale

Date: 20101108

Docket: IMM-739-10

Citation: 2010 FC 1101

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**CHANG WOO LIM
KYUNGSUN BAE
HYEOK JUN LIM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Chang Woo Lim, his spouse, Ms. Kyungsun Bae and their son, Hyeok Jun Lim, came to Canada from South Korea in 2005. They applied for refugee protection on the strength of Ms. Bae's allegations of sexual harassment and assault on the part of her employer in South Korea.

[2] A panel of the Immigration and Refugee Board dismissed Ms. Bae's refugee claim, finding that she had not availed herself of state protection in South Korea. Ms. Bae argues that the Board's

analysis of the issue of state protection was deficient. In particular, she submits that the Board only referred to theoretical sources of protection – legislation, programs and the state’s good intentions – and failed to consider whether authorities in South Korea could actually protect her. She maintains that the Board’s conclusion was, therefore, unreasonable and asks me to overturn the decision and order another panel of the Board to reconsider her claim.

[3] I can find no basis on which to overturn the Board’s decision. Its conclusion regarding the availability of state protection was reasonable in light of the evidence before it.

II. Factual Background

[4] Ms. Bae testified that her employer drugged and sexually assaulted her after an office party in 2004. She did not report the attack to anyone because she was ashamed and feared losing her job. In addition, she felt the police would not do anything to protect her. Her employer continued to harass her in the workplace.

[5] After discovering she was pregnant as a consequence of her employer’s sexual assault, she transferred from her position in Seoul to another location within the company in the city of Daegu. Her employer followed her there and, under threat of revealing photos he had previously taken of her, forced her to have sex with him.

[6] Ms. Bae left South Korea in 2005. She claims that if she returns the harassment and assaults will continue.

III. The Board's Analysis of State Protection

[7] The Board found Ms. Bae's account of events to be, in most respects, credible. The sole question was whether state protection was available to her in South Korea.

[8] Ms. Bae testified that it would have been very difficult for her to tell anyone about what had happened to her. She did not even tell her husband until after she became pregnant. She was afraid that if she reported her experiences to police, she would be regarded as sexually promiscuous and would suffer the ensuing stigma; she would lose her friends and sacrifice her social life. Further, she did not trust police. Previously, after the theft of her wallet, she had gone to the police and they were able to catch the thief. However, the suspect's family telephoned her to discuss a possible settlement. Ms. Bae felt that the police had violated her privacy by disclosing her identity and telephone number.

[9] The Board noted the existence of laws prohibiting sexual assaults and sexual harassment in South Korea. The Ministry of Gender Equality has a mandate to combat domestic violence and sexual crimes, which includes establishing counselling centres and shelters. Victims are offered assistance in dealing with psychological trauma and pursuing their legal remedies. Police officers receive ongoing training in responding to sexual and domestic violence; female officers are specially assigned to these cases.

[10] After considering Ms. Bae's explanation for not seeking state protection and reviewing the resources available to persons in her circumstances, the Board concluded that Ms. Bae may have

had personal reasons for not seeking state protection, but her conduct was not objectively reasonable. Her description of her previous experience with police with respect to her stolen wallet did not establish a reasonable basis for failing to seek state protection – the perpetrator’s family could have traced her from the identity documents in her wallet. Her evidence did not show that state protection was unavailable to her.

IV. Was the Board’s Conclusion Reasonable?

[11] Ms. Bae argues, in essence, that the Board’s analysis was superficial in that it failed to consider whether the measures it cited resulted in actual, adequate protection for victims of sexual assault. She referred me to documentary evidence not cited by the Board in support of her position. Those documents show that there may be inadequate medical services available to victims of sexual assault, and that penalties for sexual assault tend to be light.

[12] Ms. Bae placed particular reliance on a report entitled “Intimate Partner Violence and State Protection in South Korea” (2009). The author, Prof. Clifton Emery, concludes that police response to domestic violence is inadequate, and that there is wide gap between the legislation aimed at curtailing domestic violence and the state’s actual response. Overall, “there are numerous ongoing and serious shortcomings in the policing of domestic violence in South Korea”.

[13] Ms. Bae contends that the conclusions of the Emery report, while confined to domestic violence, can readily be extrapolated to sexual assault. I accept that there may be common factors at play. In particular, cultural or societal attitudes toward victims of domestic violence may be similar

to attitudes toward victims of sexual assault. In both cases, those views may discourage victims from seeking state protection. However, if, as Ms. Bae maintains, the treatment of victims of domestic violence in South Korea exemplifies the state's overall failure to protect victims of sexual assault, I would expect to see some documentary evidence to support that contention. Ms. Bae was unable to point me to any.

[14] A refugee is a person with a well-founded fear of persecution who is unable, because of that fear, to access state protection. Here, it was not Ms. Bae's fear of persecution that prevented her from seeking protection. It was her fear of social stigma. While her reluctance is understandable, it is not reasonable in the circumstances. As the Board noted, a "state cannot be considered to have failed to provide state protection when a claimant has failed to approach the state for protection". In other words, if victims do not report crimes, state efforts to protect them can never be more than theoretical.

[15] Ultimately, the question is whether Ms. Bae's fear of persecution was well-founded. In light of the documentary evidence showing the resources available to victims of sexual assault in South Korea, the Board reasonably concluded that her claim was not well-founded.

V. Conclusion and Disposition

[16] The Board's conclusion that Ms. Bae had not supported her refugee claim with evidence showing that her fear of persecution in South Korea was well-founded was reasonable, falling within the range of acceptable outcomes based on the facts and the law. I must, therefore, dismiss this

application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-739-10

STYLE OF CAUSE: LIM, ET AL v. MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: October 18, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 8, 2010

APPEARANCES:

Wennie Lee FOR THE APPLICANTS

Veronica Cham FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEE & COMPANY FOR THE APPLICANTS
Immigration Advocacy, Counsel &
Litigation
North York, ON.

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON.