Federal Court  Cour fédérale

Date: 20111027

Docket: IMM-7586-10

Citation: 2011 FC 1189

Ottawa, Ontario, this 27th day of October 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

Kimbeca Vethtic KYDD
and
Jason Romell KYDD

Applicants

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 a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, (the "Act") by Kimbeca Vethtic Kydd (the "applicant"). The other applicant is Jason Romell Kydd, the applicant's 3-year-

old son. The Board held the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[2] The applicants are citizens of St. Vincent and the Grenadines. The applicant is a 25-year-old female of limited education who lived with a man by the name of Mello Brown since she was roughly 13 years of age. Mr. Brown is the father of three of her children. He is not Jason's father. The applicant alleges that she was in an abusive relationship with Mr. Brown. However, this application for refugee status under sections 96 and 97 of the Act is based on a specific incident of aggression that would have occurred in 2008.

[3] On September 28, 2008, Mr. Brown saw the applicant talking to one of his friends and got very jealous. When the applicant returned home that day, Mr. Brown physically and verbally abused her - striking her to the head with a machete. The applicant was hospitalized for a week. Once released from the hospital, she returned to Mr. Brown's home. That same night, she was sexually and physically abused. Finally, having had enough, on November 1, 2008, while Mr. Brown was at work, she grabbed her things from his home and moved in with her aunt. Two days later, Mr. Brown went to the applicant's aunt's house where he threatened to shoot them and burn the house down if the applicant did not return to him. The aunt called the police, but no action was taken.

[4] Afterwards, the applicant's mother contacted a friend in Canada, to arrange for the applicant to stay with her. On December 21, 2008, the applicant left St. Vincent and arrived in Canada. She

claimed refugee protection on January 13, 2009 because of her fear of Mr. Brown. Her son, the other applicant, arrived in Canada on June 3, 2010 and claimed refugee protection on June 7, 2010.

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[5] The Board's decision was largely based on the applicant's lack of credibility. There were numerous problems with the applicant's testimony with regards to the timeline of the main events. The applicant claimed her confusion was due to her limited education. The Board did not accept this excuse: the applicant was able to fluidly read her Personal Information Form ("PIF") and did easily recall certain dates such as birthdays.

[6] Despite the Board's attempts at aiding the applicant recall dates by making associations to the various events she did easily recall, the applicant was unable to establish a timeline of her relationship with Mr. Brown or the incidents of abuse. The sequence of events did not make sense.

[7] Moreover, there were numerous contradictions in her testimony with the information contained in her PIF and the information she provided at her interview with Citizenship and Immigration Canada as to the dates of main events, namely:

- different years were used in describing the beginning and end of her relationship with Mr. Brown;
- she claimed her worse case of abuse was when she was cut once with cutlass in 2001, but there was a hospital report with such an incident occurring in 2008;
- the dates she was hospitalized;
- when she went to live with her aunt. In her PIF she said she moved out on November 1, 2010. However, in her testimony she went to her aunt's the day she was released from the hospital.

[8] The applicant could not provide any explanation for these discrepancies. Therefore, the Board did not find her testimony credible. In addition, when asked why she came to Canada, the applicant did not mention fear: she said it was to help her mother and obtain an education. When asked why she left her three other children with Mr. Brown, she responded that it was more comfortable at his home than at her mother's.

[9] Consequently, based on these discrepancies and her responses, the Board found a lack of subjective fear on the part of the applicant. The Board thought she was attempting to modify her story to make her fear "more current". The Board dismissed the applicants' claim because the applicant failed to establish a well-founded fear of persecution: the applicants were not facing a serious possibility of persecution based on a Convention ground under section 96 of the Act. Moreover, since the applicant had not seen Mr. Brown the weeks prior to her departure to Canada, the Board concluded the applicants would not face a risk to their lives or cruel and unusual treatment under section 97 of the Act: if Mr. Brown was really after her, he would have came for her then.

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[10] The applicable standard of review to the Board's findings of credibility is reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). The Board's findings must only be disturbed if its reasoning process was flawed and the resulting decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). Although there may be more than one possible outcome, as long as the Board's decision-making

process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para 59).

[11] The applicant claims the Board committed a reviewing error by not considering the evidence before it, specifically three letters. First, the Board would have ignored the discharge letter from the hospital which clarifies the dates. The Board would have also failed to consider two other letters, one dated October 18, 2009, from the applicant's aunt which describes the events of November 1, 2008 when Mr. Brown came to her house and threatened them; and another undated letter from the applicant's mother which states that the applicant was in an abusive relationship with Mr. Brown, and that the applicant was hospitalized and threatened at the aunt's house. It is the applicant's view that these letters should have been analyzed and addressed by the Board because they are evidence contrary to the Board's findings.

[12] Inversely, the respondent takes the position that the Board is under no obligation to mention every piece of documentary evidence on which it relies or rejects (*Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.) at para 1). The respondent adds that the Board is in no way obligated to give weight to documentary evidence that substantiates allegations that are not considered credible (*Ahmad v. Minister of Citizenship and Immigration*, 2003 FCT 471 at para 26; *Hamid v. Canada (Minister of Employment and Immigration*), [1995] F.C.J. No. 1293 (F.C.T.D.) at para 18). Finally, the respondent submits that the applicant's lack of credibility regarding the main elements of her story constitutes a finding by the Board that there was

no credible evidence to substantiate her claim (*Obeng v. Minister of Citizenship and Immigration*, 2004 FC 636).

[13] Although in *Mladenov v. Minister of Employment and Immigration* (1994), 74 F.T.R. 161, the Board's failure to consider letters warranted the intervention of this Court in allowing an application for judicial review, these letters were the latest evidence relating to events since the applicant's departure, thereby going to the issue of fear of persecution, contrary to the letters now before the Court. While, like in *Mladenov*, there is no way of knowing whether or not the Board considered the letters, in the case before me, the letters do not disclose any new facts. The Board does not doubt that the applicant was hospitalized, in an abusive relationship and threatened.

[14] The case at hand can also be distinguished from the other authorities relied on by the applicant where adverse findings of credibility by the Board led to judicial review: in the case before the Court today, the Board did provide reasons as to why it did not consider the applicant's testimony credible (*contra* to *Armson v. Minister of Employment and Immigration* (1989), 101 N.R. 372).

[15] In my view, although the Board did not even include in its decision a boilerplate sentence that it considered all of the evidence before it (*Cepeda-Gutierrez et al. v. Canada (Minister of Citizenship and Immigration*) (1998), 157 F.T.R. 35 at para 16), it did not commit a reviewable error by not explicitly addressing the aforementioned letters in its decision. The Board did provide reasons as to why it found the applicant's testimony lacked credibility and it did consider documentary evidence. The Board does not negate any of the facts summarized in the letters. The

letters do not establish anything new and the Court should not infer from the Board's silence that it made an erroneous finding of fact without regard to the evidence before it (*Cepeda-Gutierrez,* above, at para 16). Ultimately, the Board was not required to refer to every piece of evidence that was contrary to its findings (*Cepeda-Gutierrez* at para 16) and great deference is owed to its findings of fact.

[16] Accordingly, the standard of review being reasonableness, the Board did not commit a reviewable error in not explicitly addressing the letters submitted by the applicant.

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[17] For the above-mentioned reasons, the application for judicial review is dismissed.

[18] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, determining that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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