

Federal Court



Cour fédérale

Date: 20130423

Docket: IMM-6607-12

Citation: 2013 FC 417

Ottawa, Ontario, April 23, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

HOURYAH ELAKELE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Houryah Elakele [the Applicant] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated June 7, 2012, wherein the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection [the Decision].

[2] For the following reasons, the application will be allowed.

The Facts

[3] The Applicant is a 33 year-old female, a citizen of Israel and a member of a Bedouin tribe. She fears that if returned to Israel, she will be targeted by her brothers for “honour crimes” associated with her marriage to a Canadian man.

[4] In her Personal Information Form [PIF], dated October 21, 2011, the Applicant described her family as conservative and traditional. During her life in Israel, the Applicant’s oldest brother exerted total control over the women in the household and she was punished, sometimes physically, anytime she did not follow his strict rules or acted in a way that flouted traditional gender roles. Despite these circumstances, the Applicant managed to attend university and become a teacher. In 2010, while online, she met a Canadian man named Mohamed with whom she developed a relationship. Eventually, in June 2010, she came to visit him in Canada using the pretence of a business trip. She married Mohamed in Canada in July 2010 without her family’s knowledge. Since she had to return to Israel for work, she and Mohamed decided to hide their marriage from her family. Accordingly, in March 2011, Mohamed came to Israel and pretended to meet the Applicant. In due course, he obtained her family’s approval and they married again in Israel seemingly for the first time.

[5] The Applicant arrived in Canada on June 30, 2011 to live with her husband. However, she quickly learned that Mohamed expected her to abide by the conservative religious norms which she

thought she had left behind in Israel. He was also verbally abusive. In September 2011, the Applicant left her husband and moved to a women's shelter.

[6] While at the shelter, the Applicant heard that her brothers had discovered that her marriage had failed and that she was being accused by her husband of being a poor wife. They also learned about her first marriage in Canada and from their traditional perspective, because the Canadian wedding had taken place without their permission, they believed that the Applicant had engaged in pre-marital sex. There was contradictory evidence about how the brothers learned about the events in Canada, but it was clear that rumors about Mohamed's accusations were circulating in the Applicant's Bedouin community in Israel. She speculated in her PIF that the source of the gossip was likely a friend of hers who was also her husband's "friend" on Facebook. According to the Applicant, the allegations leveled against her shame her family and require that she be punished. Her elder sister has signed an affidavit saying that her brothers have threatened to "slaughter" her should she return to Israel. For these reasons, she made her refugee claim on September 7, 2011.

The Decision

[7] The Board found that the Applicant lacked credibility because the evidence she offered was inconsistent and contradictory. The Board also concluded that she had not demonstrated that Israel could not provide adequate state protection. Further, the Board found that she had a viable internal flight alternative [IFA] in Jerusalem.

Discussion

[8] In my view the Decision was unreasonable for two reasons. First, the principal credibility finding was based on a misapprehension of the contents of the Applicant's PIF. Second, the Decision shows that the Board failed to adequately consider documents which corroborated the Applicant's testimony both in relation to state protection and in relation to the IFA. I will deal with each matter in turn.

Credibility

[9] One of the principal reasons the Board doubted the Applicant's credibility was its belief that her PIF did not state that her alleged transgressions were revealed to members of her community in Israel via Facebook and that it was the source of the rumours heard by her brothers. At paragraph 25 of the Decision, the Board said:

The claimant's complete silence on the rumours from Facebook in the narrative causes me to draw a negative inference on the credibility of her allegations.

[10] However, the Board was mistaken. Paragraph 34 of the PIF narrative clearly states that the Applicant suspected that someone in the community had learned of her circumstances via Facebook. The relevant portion reads:

However, Mohamed must have contacted someone else within the village because the whole community knew about Mohamed's allegations against me. Mohamed and I had one common friend on Facebook who lived back home in my village. I believe he told her and she must have informed other people. They like to talk a lot in my village, especially when it's about someone's honour.

[11] Although the Board's incorrect belief that the PIF didn't mention Facebook [the Omission] was not the only reason for the negative credibility finding, the transcript of the hearing reveals that the Omission was a central matter for the Board. The Applicant was questioned multiple times

about the Omission and although she tried to tell the Board that her PIF did address Facebook, the Board seemed to ignore her testimony. In view of this fundamental misapprehension of the Applicant's evidence, I have concluded that her credibility must be reassessed.

Failure to Address Documentary Evidence

[12] The Board dealt very briefly with the questions of a viable IFA in Jerusalem and the availability of adequate state protection. Four short paragraphs were devoted to state protection while seven paragraphs, four of which were one sentence in length, dealt with the IFA. Regarding both issues, the Board criticised the Applicant for not adducing clear and convincing evidence to rebut the presumption of state protection and to establish a serious possibility that her brothers would find her in Jerusalem.

[13] However, the Board failed to address probative evidence from reliable sources which was relevant to both issues. For example, the expert opinion of Professor Neve Gordon, a professor in the Department of Politics and Government at Ben-Gurion University in Israel, addressed the lack of state protection for Bedouin women in Israel and explained that Israeli police allow the heads of Arab clans to decide the outcome of so-called domestic disputes in the name of "cultural differences". Professor Gordon also opined that Arab women who have in some way "damaged" the family honour are in danger in Israel and cannot trust the authorities.

[14] Professor Nitza Berkovitch, also of Ben-Gurion University, provided similar information but also addressed whether Bedouin women could flee to other parts of Israel. She stated that it is impossible to "disappear" in a country as small as Israel. It was her opinion that a single Bedouin

woman could not mingle in the larger Jewish population and if she tried to join another Bedouin community, she would attract attention. Further, because no community would want to have a reputation of helping runaways, she would likely be returned to her own community. Finally, a Response to Information Request dated February 11, 2010 showed that Israeli women's rights activists believe that the state fails to respond adequately to "honour" killings, which according to the materials, are viewed by the police "as a part of Muslim culture".

[15] This evidence corroborates the evidence provided by the Applicant at the hearing, and in particular, her explanations about why she could not expect the police to keep her safe and why she could not live in Jerusalem. Despite being exactly on point, the Board provided no indication that it had specifically considered these materials.

[16] Counsel for the Respondent argued at the hearing that the Board did in fact consider this evidence because it said at paragraph 46 of the Decision that "although state protection is not as satisfactory as wished with respect to potential victims of honour killings in the Bedouin community as indicated by documentary evidence from the claimant, she did not adduce clear and convincing evidence to rebut the presumption." In my view, this statement is inadequate because it is vague. If the Board is going to disregard expert and documentary evidence that is of direct relevance to the claim, it must give clear reasons for doing so and should make a clear finding about whether it considers state protection in Israel to be adequate for Arab women in the Applicant's situation.

[17] For these reasons, this matter must be redetermined.

[18] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that

The Decision is hereby set aside and this matter is referred back for redetermination by a differently constituted panel of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6607-12

STYLE OF CAUSE: HOURYAH ELAKELE v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 21, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: April 23, 2013

APPEARANCES:

Ms. Carole Simone Dahan FOR THE APPLICANT

Mr. Daniel Engel FOR THE RESPONDENT

SOLICITORS OF RECORD:

Refugee Law Office FOR THE APPLICANT
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario