

Federal Court



Cour fédérale

Date: 20140717

Docket: IMM-568-14

Citation: 2014 FC 709

Ottawa, Ontario, July 17, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**JENETTE YULA NJODZENYUY AND
CHANEL FOMONYUY MAINIMO [by her
litigation guardian]**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Judy Lewis, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicants' claim for refugee protection, concluding that they

were not convention refugees or persons in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] Was the Board's decision with respect to its review of the evidence, assessment of credibility and the Applicants' well-founded fear of persecution, unreasonable?

II. Background

[3] The Applicants are citizens of Cameroon. They consist of the Principal Applicant [PA], and her daughter Chanel Mainimo [the Minor Applicant or the MA]. The PA also has a son who is a citizen of Canada.

[4] According to her Personal Information Form [PIF] narrative, the PA fears abuse from her spouse and that the MA would be subject to female genital mutilation [FGM] in Cameroon.

[5] In 1991, the PA began a relationship with a man named Fonjo Mainimo. In 1993, they had their first daughter, Judith. The PA was 17 years old at the time and lived in the village of Mboshon, near Kumbo, with Mr. Mainimo and his family.

[6] After she was born, members of Mr. Mainimo's family indicated that Judith should be circumcised. This belief was echoed by the Charmitine, a powerful group of chief women in Mboshon. The PA and her parents objected to this practice for health and safety reasons.

[7] In 1996, five women took Judith from her home to be circumcised. The PA and her parents were told by the Charmitine that they would be killed if they interfered with Judith's circumcision. The PA did not interfere.

[8] Judith did not stop bleeding after her circumcision, her wound became infected, and she died three days later. The PA became angry and depressed.

[9] In December, 1996, the PA moved to Torino, Italy, and worked as a hair stylist. Mr. Mainimo stayed in Cameroon, but their relationship continued. In 2003, Mr. Mainimo was granted refugee status in Italy, and began living with the PA. The PA married Mr. Mainimo in 2003.

[10] In 2004, the PA's father was injured in a car accident and the PA and Mr. Mainimo returned to Cameroon to assist him. In 2007, once the PA's father's health improved, the PA returned to Italy. The MA was born on November 6, 2007.

[11] After the MA's birth, Mr. Mainimo began to drink heavily, stopped working and began to verbally and physically abuse the PA. The PA contacted the police but they were not able to protect her. She describes two particular occasions of abuse in her PIF narrative: on one occasion, Mr. Mainimo burnt the PA's right leg with a hot iron, on another, he grabbed her by her hair in a park. She lost hair as a result of this attack.

[12] The PA attempted to leave Mr. Mainimo by moving to a friend's house in Milan, but Mr. Mainimo found her. He threatened to kill her if she did not return with him to Torino. She complied with his demand. After four months, Mr. Mainimo resumed his abuse. The PA fled to Rome, but was again found by Mr. Mainimo, and returned with him to Torino. A month later, she fled to Belgium, but Mr. Mainimo found her again and she returned to Torino, believing that he could find her anywhere in Europe.

[13] In November, 2010, the PA decided that she must return to Cameroon to escape Mr. Mainimo. In accordance with traditional cultural norms, she stayed with Mr. Mainimo's family. They believed that the PA deserved the abuse that she received, and soon began pressuring the PA to circumcise the MA.

[14] The PA feared for the safety of the MA and fled to a Catholic convent, where she stayed for several months until she was able to acquire a plane ticket to Canada. She arrived in Canada and claimed refugee protection on April 11, 2011. She gave birth to a son on April 24, 2011.

[15] After arriving in Canada, the PA was informed that the Charmitine were searching for her at the convent where she hid prior to leaving for Canada.

[16] In support of her claim, the PA submitted a number of documents. These included a psychological assessment by Dr. Pat Durish, a clinical social worker, which shows that the PA suffers from Post-Traumatic Stress Disorder; three police reports detailing the abuse suffered by Mr. Mainimo; two Canadian physicians' reports which show that burn scarring on her leg and a

bald patch on her head are consistent with her reports of physical abuse by Mr. Mainimo; Judith's death certificate; and several letters of support from friends attesting to Mr. Mainimo's abuse and the nature of Judith's death.

[17] The Board dismissed Dr. Durnish's report on the basis that it is the Board's responsibility to assess credibility.

[18] The Board also drew a number of negative credibility inferences:

- i. The PA only provided one police report, despite testifying that she went to the police three times;
- ii. The PA submitted Italian court documents, but did not mention these documents in her PIF narrative;
- iii. The PA travelled to England in 2007 for a holiday, but omitted this information from her PIF narrative and was not able to explain how she was able to finance this trip;
- iv. The PA did not produce any evidence that she sought medical treatment in Italy from the injuries caused by Mr. Mainimo. The Board dismissed evidence provided from doctors in Toronto as being inconclusive as to how and when she obtained her injuries; and
- v. Judith's death certificate does not provide any information about the cause of her death.

[19] The Board reviewed the documentary evidence of state protection in Italy and concluded that the PA did not adduce clear and convincing evidence to rebut the presumption of state

protection. With regard to Cameroon, the Board notes that societal violence and discrimination against females occurs and that police are ineffective, poorly trained, and corrupt. However, the Board found that there was no evidence that the PA contacted the police in Cameroon.

Moreover, the Board noted that there was no objective evidence that the Charmitine exist.

Consequently, the Board found that the PA would not face a serious possibility of persecution if she returned to Cameroon.

[20] The Board also found that the PA lacks a subjective fear of persecution, based on her reluctance to seek refugee protection prior to arriving in Canada. Since the PA left Cameroon in 1996 she returned twice, and travelled to Italy, Belgium and England. However, she failed to seek refugee protection until she arrived in Canada in April, 2011.

[21] Finally, the Board stated that the PA failed to provide a satisfactory explanation as to why she returned to Cameroon in November, 2010, to escape her husband's abuse, given the fact that the MA could be at risk of FGM.

III. Standard of Review

[22] The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51).

IV. Analysis

[23] The Respondent admits that the Board overlooked the two police reports filed by the Applicant, and agrees that the Board's domestic abuse findings were flawed.

[24] Notwithstanding this, the Respondent contends that the Applicants failed to establish a well-founded fear of persecution. The Respondent argues that there is no objective evidence that the Charmitine exist. Consequently, the Board was not obliged to consider the MA's claim. In the absence of any documentary evidence of their agents of persecution, the Applicants cannot have a well-founded fear of persecution.

[25] Further, the Respondent notes that the Board was not required to assess domestic violence in Cameroon as there was insufficient evidence to suggest that Mr. Mainimo would return to Cameroon to abuse to the PA.

[26] As well, the Respondent argues that the Applicants' delay in seeking state protection was such that it indicates that they lack a subjective fear of persecution. The PA lived in Italy and traveled to Belgium and England but did not seek protection in those countries.

[27] The Respondent also argues that the Board concluded that the Applicants had an internal flight alternative [IFA] in large cities in Cameroon, such as Yaounde or Douala. The onus was on the Applicants to show that they did not have IFA, and the Applicants did not do so.

[28] I find that the Board's assessments of the PA's credibility and the Applicants' well-founded fear of persecution were unreasonable. The Board ignored pieces of critical evidence, made conclusions based on misunderstandings of the evidence, and failed to conduct relevant analyses. The Board's decision as a whole was unreasonable.

[29] I note that while the Board was not obliged to reference all evidence before her, her duty to reference and analyze evidence increases in proportion to the relevance of that evidence in determining a critical issue (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[30] With respect to the Applicants' fear of FGM being performed on the MA, the Board was unreasonable in discounting Judith's death certificate on the grounds that it contained no information regarding her cause of death. There is no location on the certificate suitable for a declaration of a cause of death. It was unreasonable of the Board to discount this evidence on the basis that it failed to provide information beyond its defined purpose (*Ali v Canada (Minister of Citizenship and Immigration)*, 2012 FC 259 at paras 14-15; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1091 at para 18).

[31] The Board also erred in disbelieving the MA was at risk from the Charmitine because there was no mention of the Charmitine in the documentary evidence. The Applicants acknowledge that there is no reference of this particular group in the documentary evidence, but there is a reference to an analogous group in the village of Mfuni. The documentary evidence also shows that FGM is common in Cameroon and "mob justice" is widespread because of the

ineffectiveness of the police. Further, two of the Applicants' letters of support corroborated the existence of the Charmitine. Considering the evidence provided by the Applicants, it was unreasonable of the Board to discount the existence of the Charmitine solely because it was not mentioned in the documentary evidence.

[32] The Board also concluded that the PA's fear of persecution was not well-founded because she did not claim refugee protection in England, Belgium or Italy. However, the PA visited England before Mr. Mainimo started to abuse her – she had no reason to claim refugee protection prior to that time. When in Italy and Belgium, she was found and abused by Mr. Mainimo, and police were unable to offer adequate protection. This leads me to find that it cannot reasonably be inferred that the PA lacked a well-founded fear of persecution owing to a delay in claiming refugee protection.

[33] Moreover, the Board's analysis of the PA's domestic abuse allegations was unreasonable, in that it failed to consider two police reports in impugning the credibility of her claims. Because of this error, it is unclear how the Board would have concluded with respect to the PA's credibility had it considered this corroborative evidence. This, in combination with the Board's failure to consider the report of Dr. Durnish and the recommendations of the Gender Guidelines with respect to the PA's testimony, results in my finding that the Board's general credibility assessment was unreasonable.

[34] The Board's decision is also unreasonable because the Board did not conduct an analysis of the MA's claim with respect to her risk of FGM. The only evidence cited by the Board in

relation to the MA's claim acknowledges that FGM is frequently conducted in Cameroon and is not prohibited by law. Far from invalidating the MA's claim, this evidence supports it. The MA's claim is distinct from the PA's and required an independent assessment (*Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429 at paras 13-16).

[35] Finally, the Board did not make a finding on whether there was an IFA available to the Applicants. The only potential reference to an IFA is at para 28 of the decision, where the Board states "it is possible for a woman to live alone in Cameroon's large cities, such as Yaounde or Douala, as long as they have the necessary resources." It is not clear from this excerpt whether the Board was making an IFA finding, and even if that was the Board's intent, it is not an intelligible or justifiable conclusion.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is allowed and the matter is remitted back to a different Board member for reconsideration;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-568-14

STYLE OF CAUSE: JENETTE YULA NJODZENYUY AND CHANEL
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