

Federal Court



Cour fédérale

Date: 20140722

Docket: IMM-5752-13

Citation: 2014 FC 728

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 22, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GHIZLENE HABICHE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Preamble

[1] A lack of credibility at the very heart of an account cannot be corrected by explanations before the Federal Court that contradicts the entire account provided earlier to a trier of fact.

II. Introduction

[2] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated August 1, 2013, by the Refugee Protection Division of the Immigration and Refugee Board (RPD) to reject the applicant's claim to be deemed a refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

III. Facts

[3] The applicant, Ghizlene Habiche, is a citizen of Algeria. In 2008, she married Redouanne Guet, an Algerian man who obtained his Canadian citizenship in 2002.

[4] After the wedding, the applicant alleges that she was mistreated by her in-laws, who apparently forced her to wear a veil in respect for Islamist values. She alleges that she was also mistreated by her husband.

[5] She claims that a man assaulted her in 2010; he purportedly held a knife to her ribs, told her to put a veil on, stole her purse and threatened to kill her if she reported him to the police. The applicant then allegedly filed a complaint with the police and the attacker was apparently arrested and sentenced to six months in prison.

[6] Despite her attacker's conviction, the applicant apparently continued to receive anonymous calls telling her that she would pay dearly.

[7] The applicant left Algeria and arrived in Canada on September 16, 2010, after obtaining a visitor's visa to attend her sister's wedding.

[8] In October 2010, the applicant's mother filed a sponsorship application, but it was refused in December 2010 because the applicant was of legal age.

[9] The applicant did not claim refugee protection until January 27, 2011, even though she arrived in Canada on September 16, 2010. Subsequently, the applicant's husband filed a sponsorship application for her.

[10] On August 1, 2013, the applicant's refugee claim was rejected by the RPD. On September 3, 2013, the applicant filed this application for judicial review of that decision.

IV. Decision under review

[11] The RPD found that the applicant is not credible by reason of the many contradictions, implausibilities and inconsistencies in her testimony as well as significant omissions related to the essential elements of her refugee claim.

[12] In particular, the RPD noted that the applicant contradicted herself several times regarding her husband's complicity in her in-laws' abusive actions and her fear of him.

[13] The RPD also raised significant inconsistencies in the evidence; namely, the applicant failed to mention in her complaint to a police officer that she was physically assaulted by the

attacker who stole her purse. The RPD also found it surprising that the applicant did not mention in her complaint that her attacker insisted that she wear a veil by holding a knife to her ribs.

[14] The RPD also found it implausible that the applicant was forced to live with her in-laws in cooperative housing because, according to her visa application record, her address was her father's house.

V. Issue

[15] Did the RPD err by making a negative finding with respect to the applicant's credibility?

VI. Relevant statutory provisions

[16] Sections 96 and 97 of the IRPA apply in this case:

Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the	b) soit, si elle n'a pas de nationalité et se trouve hors

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Standard of review

[17] This Court has held that the RPD's findings on credibility are questions of fact and are reviewable on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

VIII. Analysis

[18] The applicant alleges that the RPD erred in its analysis of the agents of persecution by failing to assess the main agents of persecution and erred by basing its findings on hypotheses and failing to consider her testimony and explanations.

[19] For the following reasons, the Court finds that none of those errors was committed by the RPD.

[20] In this case, the RPD identified several problems in the applicant's account and testimony. It found that the applicant was unable to maintain a consistent account and provide reasonable explanations for the discrepancies and contradictions in her narrative. The RPD's finding was reasonable given those many unresolved problems.

[21] This Court stated the following in *Bizarro v Canada (Minister of Citizenship and Immigration)*, 2013 FC 140:

[18] This Court has repeatedly recognized that the RPD can reasonably base its negative findings with respect to credibility on the omissions and contradictions that it identifies with respect to important facts alleged in the Personal Information Form and the oral testimony (see *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ 1867 at paragraph 33, 52 ACWS (3d) 165; *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paragraph 18, 154 ACWS (3d) 1183). Furthermore, it is open to the RPD to reject an explanation provided with respect to such omissions when they are unreasonable (*Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at paragraph 10). Thus, the RPD's findings regarding the omissions in the applicant's written account as well as its rejection of the applicant's explanations with respect to those omissions are well-founded. [Emphasis added.]

[22] Contrary to the applicant's claims, it is clear that the RPD considered her testimony and explanations, but did not find them sufficient to mitigate the contradictions and inconsistencies that undermined her credibility.

[23] The Court also does not consider the RPD's analysis of the agents of persecution unreasonable. The RPD did consider the applicant's circumstances with regard to each of the agents of persecution. It determined that the allegations concerning her in-laws were unfounded because there were several significant discrepancies in her account in that respect. It also found

that the allegations against her attacker were not credible because she omitted several important facts in support of those allegations in her account and in her complaint to the police.

[24] The Court is of the opinion that the applicant is essentially asking it to reassess the evidence and substitute its own assessment for that of the RPD. However, it is not the role of the Court to substitute its judgment for the findings of fact made by the panel (*Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 ACWS (3d) 325 at paragraph 36).

[25] The Court appreciates that the applicant is attempting to join her family in Canada. However, sections 96 and 97 are reserved solely for cases that deserve such treatment (*Horta v Canada (Minister of Citizenship and Immigration)*, 2014 CF 609). The purpose of the refugee determination system in Canada is not to give a quick and convenient route to landed status for immigrants who cannot or will not obtain it in the usual way (*Urbanek v Canada (Minister of Employment and Immigration)* (1992), 144 NR 77, 34 ACWS (3d) 315).

IX. Conclusion

[26] In light of the foregoing, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the applicant's application for judicial review is dismissed without any question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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