

Federal Court



Cour fédérale

Date: 20140722

Docket: IMM-7-13

Citation: 2014 FC 729

Ottawa, Ontario, July 22, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**CHRISTINE TJIKARI KAMAHEKE
CLAUDIA KAZAKU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] holding that the Applicant and her daughter are neither Convention refugees nor persons in need of protection.

II. Background

[2] The Applicant is a citizen of Namibia. Her husband is in Zimbabwe, two of her children are somewhere outside Namibia, one other is in Namibia and the youngest is with the Applicant in Canada.

[3] The Applicant is HIV positive and has been on medication since 2010.

[4] The crux of the Applicant's claim is that her uncle is angry at her for not marrying a cousin. He has been threatening her since 1993. Her husband was allegedly arrested on false charges and he and the other daughters have left Namibia.

[5] The Applicant also asserts that she will be discriminated against because of her HIV status.

[6] The RPD's decision centres on the lack of credibility of the refugee claim based on 18 years of her uncle's efforts to have the Applicant marry his son. The Applicant took no steps to engage state protection. The Applicant also failed to mention in the Port of Entry notes a later allegation that a daughter had been kidnapped.

[7] The RPD dismissed the psychological report by Dr. Pilowsky because little weight should be given to a report that reiterates the patient's details and diagnoses (PTSD and depression) based on only a five minute conversation.

[8] As an alternate finding, the RPD found that state protection was available. It did so after a thorough consideration of Namibian laws, available medical assistance and the effectiveness of state protection in the context of this type of claim.

[9] The only troubling aspect of this state protection analysis is the comment that “the state of Namibia is making serious efforts to protect its citizens” (underlining by Court).

III. Analysis

[10] The standard of review applicable to this decision is reasonableness (*Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993, 417 FTR 19).

[11] The finding on state protection was reasonable. A review of the actual analysis shows that the RPD in fact considered operational issues and effectiveness. The criticism of a tribunal’s use of “serious efforts” is based on the assumption that the tribunal considered only the efforts not the effectiveness of any state protection measures.

[12] Where, as here, a fair review of the analysis shows that “effectiveness” was considered, the criticism of the use of words like “serious efforts” loses significance.

[13] The credibility findings, particularly as they attract considerable deference, were reasonable. Justice O’Keefe in *Rios v Canada (Minister of Citizenship and Immigration)*, 2012 FC 276, 214 ACWS (3d) 240, summarized the applicable principles for the review of credibility findings at paragraph 68:

It is well established that credibility findings demand a high level of judicial deference and should only be overturned in the clearest of cases (see *Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1330, [2011] FCJ No 1633 at paragraph 30). As such, the Court should generally not substitute its opinion unless it finds that the decision was based on erroneous findings of fact made in either a perverse or capricious manner or without regard for the material before it (see *Bobic v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1488, [2004] FCJ No 1869 at paragraph 3). In reviewing a board's decision, isolated sections should not be scrutinized. Rather, the Court must consider whether the decision as a whole supports a negative credibility finding (see *Caicedo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1092, [2010] FCJ No 1365 at paragraph 30).

[14] The RPD's conclusion that discrimination due to HIV status does not rise to the level of persecution is reasonable. It was fairly open to the RPD to reach that conclusion.

[15] The other issues raised were peripheral. However, the Court does observe that the RPD was well within its mandate to give little weight to the psychological report for the reasons it gave.

IV. Conclusion

[16] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7-13

STYLE OF CAUSE: CHRISTINE TJIKARI KAMAHEKE, CLAUDIA
KAZAKU v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: PHELAN J.

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APPEARANCES:

John Norquay FOR THE APPLICANTS

Nimanthika Kaneira FOR THE RESPONDENT

SOLICITORS OF RECORD:

HIV & AIDS Legal Clinic Ontario FOR THE APPLICANTS
Toronto, Ontario

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