

Federal Court



Cour fédérale

Date: 20160909

Docket: IMM-4479-15

Citation: 2016 FC 1023

Ottawa, Ontario, September 9, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**SHOGOUEH AMIRYAR
AHMAD RAMIN SHIRZAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Ms. Amiryar and Mr. Shirzad are citizens of Afghanistan who allege they were married without the approval of Ms. Amiryar's family in August 2014. They then fled Afghanistan as they fear Ms. Amiryar's family would kill them. On arrival in Canada in September 2014 they claimed protection.

[2] The Minister of Public Safety gave notice of intervention before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] on the basis of identity and credibility concerns. In an addition to the notice the Minister concluded the applicants had provided sufficient proof of identity but maintained the claim should be rejected due to credibility concerns.

[3] The applicants' claim was heard in March 2015. At the outset of the hearing, the applicants made several changes to the dates of events reported in their Basis of Claim forms [BOCs]. The changes included the date they applied for Afghan passports prior to fleeing Afghanistan, the date of their wedding and the date they fled Afghanistan. The new dates advanced by the applicants were no longer consistent with key documentary evidence submitted in support of the claim including the applicants' marriage certificate.

[4] In April 2015, the RPD refused the claim on the basis that the applicants' testimony was not credible in relation to their primary allegations and not consistent with documentary evidence they placed before the RPD.

[5] Ms. Amiryar and Mr. Shirzad appealed the RPD determination to the Refugee Appeal Division [RAD]. The RAD considered the RPD's credibility findings and concluded some of the RPD's credibility findings were in error. However, it concurred with other negative credibility findings, characterizing them as central to the applicants' allegations and therefore capable of supporting the overall conclusion that the applicants were not credible. The RAD dismissed the appeal.

[6] In this application, the applicants ask that the decision of the RAD be quashed and that the matter be returned for reconsideration by a differently constituted panel. The applicants submit that the RAD erred in dismissing the appeal by not addressing the cumulative impact of the RPD's flawed credibility findings and by drawing a negative inference as a result of changes to the applicants' BOCs. The applicants further argue that the RAD erred by misapprehending, misstating and ignoring evidence in making negative credibility findings and by attaching no evidentiary value to documents confirming aspects of the claim. Finally, the applicants submit the RAD erred by ignoring the gender-related aspects of the persecution alleged.

[7] The application raises the following issues:

- A. Did the RAD err in addressing the RPD's negative credibility findings?
- B. Did the RAD err in addressing the applicants' documentary evidence?
- C. Did the RAD err by failing to meaningfully apply the Chairperson's Guidelines on Gender-Related Persecution?

[8] Having considered the applicants oral and written submissions, I conclude that the RAD reasonably decided that the applicants' evidence was not credible. The RAD did not commit a reviewable error in dismissing the appeal. The application is dismissed for the reasons that follow.

II. Standard of Review

[9] Issues relating to the exercise of discretion where a number of reasonable conclusions are available to a decision-maker or that engage questions of fact and mixed fact and law are to be

reviewed on a reasonableness standard (*Ngandu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 423 at para 12). An alleged breach of procedural fairness or natural justice is to be reviewed on a correctness standard (*Juste v Canada (Minister of Citizenship and Immigration)*, 2008 FC 670 at para 23 and *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 126 and 129 [*Dunsmuir*]).

[10] The applicants submit that in misstating and ignoring evidence, the RAD failed to observe the principles of procedural fairness. I am not convinced. In advancing their arguments in respect of the RAD's treatment of the documents at issue, the applicants: (1) argue that the RAD failed to address contradictory evidence; (2) dispute the findings on probative value; and (3) allege that the RAD engaged in a microscopic analysis of the evidence. This is not a case where the RAD refused to assess, ignored, or otherwise failed to consider the documents in question. Rather, the issues raised relate to the exercise of discretion and are questions of mixed fact and law to be reviewed on a reasonableness standard.

[11] The standard of review applied in considering all issues raised by this application is reasonableness.

III. Analysis

A. *Did the RAD err in addressing the RPD's negative credibility findings?*

[12] The applicants argue that the RAD erred in drawing a negative inference from late BOC amendments and by failing to consider the cumulative effect of errors identified in the RPD's

decision. The applicants argue that credibility should not be impugned on the basis of BOC amendments that are reasonably and plausibly explained.

[13] The applicants also point to three negative credibility findings made by the RPD that the RAD concluded lacked a sufficient evidentiary basis. The applicants argue that the RAD erred in not considering the cumulative effect of these errors on the final outcome.

[14] I am not convinced by either argument.

[15] The RAD undertook a detailed analysis of each of the many negative credibility findings made by the RPD. In doing so it ultimately concluded that the applicants were not credible witnesses on issues concerning central aspects of their claim.

[16] With respect to the late BOC amendments, the RAD concurred with the RPD's finding that the amendments negatively impacted on the applicants' credibility in relation to the actual dates of important events. In reaching this conclusion, the RAD reviewed and addressed the applicants' explanations for the late amendments to their BOCs. The RAD also noted that the applicants did not address the RPD's reasons for rejecting the applicants' explanations in their appeal.

[17] Important elements of a claimant's narrative that are not included in his/her BOC may impact on a claimant's credibility. Similarly, where amendments are made late in the process, particularly where those amendments relate to important elements of a claimant's narrative, it is

open to the RAD to draw a negative credibility inference (*Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at para 31). In this case, the RAD considered the explanations advanced for the late amendments, and set out its reasons for finding the explanations neither reasonable nor plausible. In particular, it noted that "...the male Appellant's explanation that he had to find housing and therefore he could not make changes to his BOC that go to the very heart of his claims strains credulity."

[18] The changes made to the BOC lead to the applicants' credibility being further undermined. The marriage certificate they tendered and a property transfer document, both of which the RAD found to be credible and probative, indicated the applicants were married in Afghanistan and fled later than what was alleged in their revised narrative. The RAD noted the discrepancies between their narrative, the documentation tendered in support of their claim and the fact that the RPD's findings that they did not leave Afghanistan on the date alleged was not addressed by the applicants in their submissions to the RAD.

[19] The RAD concluded that these "material credibility issues" overcame the errors the RPD made in making the previously mentioned credibility findings. In rejecting these findings, the RAD specifically turned its mind to the impact on the overall assessment of credibility and in each instance concluded that the error was not fatal to the overall credibility determination. This approach was fully consistent with the RAD's role of carrying out its own analysis of the record.

[20] The applicants have not demonstrated that the ultimate conclusions were unreasonable. There was an ample evidentiary basis upon which the RAD could conclude that the applicants

lacked credibility. In reaching this finding, the presumption of truth no longer applied to the applicants' evidence (*Hussain v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1186 at para 11). It was reasonable for the RAD to conclude that matters central to their claim including their date of marriage, the date they fled and their alleged pre-marital relationship, including the allegations that Ms. Amiryar had engaged in premarital sex, were not credible.

B. *Did the RAD err in addressing the applicants' documentary evidence?*

[21] The applicants argue that the RAD erred in confirming the RPD's conclusion that a letter and medical reports were of no probative value due to the material credibility concerns.

Specifically, the applicants submit evidence was ignored, mischaracterized and microscopically examined.

[22] I am not persuaded by the applicants' argument. The documents in this case were before the decision-maker and were considered. In doing so, the documents were found to be inconsistent with elements of the applicants' narrative or lacking in sufficient detail to corroborate the claims being made. These shortcomings, in conjunction with the finding that the applicants were not credible on matters central to their claim lead to the conclusion that the documents were of no probative value in corroborating the narrative, a conclusion that was reasonably available to the RAD.

C. *Did the RAD err by failing to meaningfully apply the Chairperson's Guidelines on Gender-Related Persecution?*

[23] The applicants submit the RAD erred in ignoring the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* [*Chair's Gender Guidelines*] and concluding that the RPD had considered them. Again, I disagree. There is no basis to conclude that either the RAD or RPD were not sensitive to the particular circumstances of women in Afghanistan. While the RAD's decision did recognize the plight of women in Afghanistan, it was ultimately based on reasonable and fundamental credibility concerns relating to material aspects of the applicants' claim. The *Chair's Gender Guidelines* do not serve as a cure for these credibility concerns (*Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at para 5).

IV. Conclusion

[24] The issue before the RAD was credibility and it is on that basis that the claim has been denied. The RAD reasonably found the applicants not to be credible. The decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir* at para 47).

[25] The parties have not proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4479-15

STYLE OF CAUSE: SHOGOUEH AMIRYAR, AHMAD RAMIN SHIRZAD
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 17, 2016

JUDGMENT AND REASONS: GLEESON J.

DATED: SEPTEMBER 9, 2016

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