

Date: 20071115

Docket: IMM-1693-07

Citation: 2007 FC 1192

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 15, 2007

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**Lesli Karina CASTRO GUTIERREZ
Haly Madeline CASTRO GUTIERREZ
Gardiner Beigad CASTRO
Astrid Arleth CASTRO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants, all citizens of Guatemala, are challenging the legality of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Tribunal), rendered January 22, 2007, finding that they were not Convention "refugees" or "persons in need of

protection" within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The principal applicant based her refugee claim on her membership in a particular group, abused women, and the other applicants, in the family group. The applicant claims that her first husband, the father of her two first children, disappeared without a trace in 1995. She then began a romantic relationship with a Mr. Osorio and this union led to the birth of a daughter in 2001; he now has custody of this daughter. In December 2003, the applicant and a Mr. Rivero, a man with responsibilities at his municipal office, became friends. However, in January 2004 when they were out together, the applicant was drugged and raped by Mr. Rivero. After this rape, she gave birth to her youngest daughter in 2004. Mr. Rivero continued to have a relationship with the applicant under threats and warned her that he would kill her if she told her friends that he was the father of her last child. The applicant left Mexico for Canada in February 2006 with her three minor children.

[3] Considering the general behaviour of the applicant makes her story unlikely, considering contradictions revealed during her testimony and finding that the applicant had attempted to support her claims with a false complaint certificate, the tribunal dismissed the applicants' claim for protection.

[4] Essentially, the applicant is alleging that the tribunal did not take into consideration the *Guideline on Women Refugee Claimants Facing Gender-Related Persecution* (the Guideline) and arbitrarily dismissed her explanations, which makes the tribunal's decision patently unreasonable (*Griffith v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1142 (QL) at

paras. 3, 17 and 18; *Keleta v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 56 at paras. 13 to 15; *Myle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 871 at paras. 26 and 31; *Villarreal Zempoalte v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 263, at paras. 9 to 15). As for the respondent, he claims that the affidavit filed in support of this application aims to mislead the Court and that the complaints the applicant makes against the tribunal's negative decision are not valid.

[5] First, we must remember that the Guidelines are to ensure that gender-based claims are heard with sensitivity by the tribunal. In the Guidelines, the tribunal is encouraged to consult *R. v. Lavallée*, [1990] 1 S.C.R. 852, at footnote 31

For a discussion of the battered woman syndrome see *R. v. Lavallee*, [1990] 1 S.C.R. 852. In *Lavallee*, Madame Justice Wilson addressed the mythology about domestic violence and phrased the myth as "[e]ither she was not as badly beaten as she claims, or she would have left the man long ago. Or, if she was battered that severely, she must have stayed out of some masochistic enjoyment of it." The Court further indicated that a manifestation of the victimization of battered women is a "reluctance to disclose to others the fact or extent of the beatings". In *Lavallee*, the Court indicated that expert evidence can assist in dispelling these myths and be used to explain why a woman would remain in a battering relationship.

[6] The fact the Guidelines are not mentioned in the reasons for decision does not mean the tribunal did not consider them (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35; [1998] F.C.J. No. 1425 (QL) at para. 17; *Keleta, supra*, at para. 14; *Villarreal Zempoalte, supra*, at para. 11) and, in the present case, the alleged failure to follow the Guidelines, which was far from being proven to the Court's satisfaction, would not justify the vacation of this decision. It is not patently unreasonable in the circumstances and is based on all the

evidence on file. In this case, the applicant's credibility was at the heart of the refugee claim. The applicant's credibility was seriously compromised when she attempted to support her claims with a false complaint certificate. This document (certification), dated August 8, 2005, was issued from the office of the Public Ministry of the City of Villanueva and attests to the serious threats uttered by Rivero against the applicant and her children. However, according to the reply obtained from Guatemalan authorities, the certification is not in accordance with the complaint form used by the Office of the Prosecutor of the City of Villanueva. Moreover, the seal does not correspond to the official stamp. Lastly, the signing official never worked at the Office of the Prosecutor of Villanueva.

[7] Producing a false document to support allegations in a refugee claim must not be minimized by the Court and legitimately allows the tribunal to doubt a claimant's credibility (*Rahaman v. Canada (Citizenship and Immigration)*, 2007 FC 1008, at paras. 15 to 17). We must note that false identity papers the claimant may have obtained from a smuggler are not included in this category. As I wrote in *R.K.L v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] F.C.J. No. 162 (QL), at paragraph 11:

However, not every kind of inconsistency or implausibility in the applicant's evidence will reasonably support the Board's negative findings on overall credibility. It would not be proper for the Board to base its findings on extensive "microscopic" examination of issues irrelevant or peripheral to the applicant's claim: see *Attakora v. Canada (Minister of Employment and Immigration)*, (1989), 99 N.R. 168 at para. 9 (F.C.A.) ("*Attakora*"); and *Owusu-Ansah v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 442 (QL) (C.A.) ("*Owusu-Ansah*"). In particular, where a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions, it has been held to be peripheral and of very limited value to a determination of general

credibility: see *Attakora, supra*; and *Takhar v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 240 at para. 14 (QL) (T.D.) ("*Takhar*").

[Emphasis added].

[8] In this case, the tribunal could certainly dismiss the explanations, which I found very brief and not very convincing, provided by the applicant about the certification and conclude that she attempted to support her claims with a false document. Contrary to the claims by counsel for the applicant today in the specific case being reviewed, it was a determining factor.

[9] Additionally, a quick review of the transcript shows that the applicant's story is filled with implausibilities. It is clear that the tribunal had serious doubts not only about the authenticity of the certification provided by the applicant in support of her story, but also about other fundamental aspects of her claim. The tribunal noted that upon her arrival in Canada, the applicant stated she had never filed a complaint against Mr. Rivero. This statement contradicts her story and confirmed that the certification was likely fake.

[10] At paragraph 32 of her affidavit in support of this application for judicial review, the applicant categorically denies that she told the immigration officer that she had never filed a complaint against her former friend. This paragraph states the following:

[TRANSLATION]

I never stated that I did not file a complaint against this man out of fear. I stated that I did not have the complaint with me because the question was: *Do you have the complaint with you? I answered: NO.*

[11] The applicant firmly states that she had a relationship with a man who threatened her, a key point to her claim. However, as the immigration officer's notes from the point of entry indicate, the applicant clearly stated that she was afraid to file a complaint against her ex-husband. This statement reads as follows:

Question: What did you do then?

Reply: I cried and I asked him what happened to me. When I realized what had happened, I was furious and I told him I would report him to the police.

Question: And did you do that?

Reply: No, because he is part of the Rios Mont F.R.G. that has killed many people.

[12] Without finding there was perjury, I feel that this new statement by the applicant, again contradictory regarding a fundamental aspect of her refugee claim, reinforces the Court's belief that the tribunal's general finding was not patently unreasonable.

[13] To conclude, I note that the reasons by Member Lapommeray were given orally at the hearing. This, of course, includes the risk of a potential debate before this Court on the exact meaning of certain expressions that can sometimes be a little awkward in oral reasons. Counsel for the applicant added to this at the hearing before this Court, and referred to certain questions the member asked to support the applicant's claim that the tribunal was being insensitive towards her. Having had to initially consider the entire transcript following such serious allegations, I am now satisfied that the tribunal did not overstep the acceptable limits in this case. In my opinion, a reasonable person would not detect a reasonable apprehension of bias in the tribunal's questions, or

any violation of the Guidelines. It is clear here that the tribunal was at all times motivated by the search for the truth and it took the applicant's specific situation into consideration. However, I urge the tribunal to be more cautious in the future in its wording of questions to suspected victims of spousal or family violence.

[14] For these reasons, the application for judicial review must be dismissed. No question of general importance was raised and none arises in this case.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

Certified true translation
Elizabeth Tan, translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1693-07

STYLE OF CAUSE: **Lesli Karina CASTRO GUTIERREZ**
Haly Madeline CASTRO GUTIERREZ
Gardiner Beigad CASTRO
Astrid Arleth CASTRO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 6, 2007

REASONS FOR ORDER
AND ORDER: **JUSTICE MARTINEAU**

DATE OF REASONS: November 15, 2007

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