Date: 20090320

Docket: IMM-3919-08

Citation: 2009 FC 290

Ottawa, Ontario, March 20, 2009

PRESENT: The Honourable Mr. Justice Orville Frenette

BETWEEN:

Victima Rosilia BELTRAN LEON

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division (the RPD) of the Immigration and Refugee Board, dated July 30, 2008, determining that the applicant was neither a "Convention refugee" nor a "person in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). Her refugee claim was therefore dismissed.

I. Facts

[2] The applicant is a citizen of Peru and was born on July 23, 1963.

[3] On May 27, 1991, she had a son with Gustavo Sedano Fabian and named him Noe Gustavo Sedano Beltran.

[4] The applicant pointed out that she had not lived with the father of her child and that she was raising her son on her own. She stated that the family of the child's father abused her and that his brother, Anibal Sedano Fabian, treated her badly. He made amorous advances and proposed to her; these manoeuvres were refused. He persisted and harassed her from 2000 to 2006, attempted to rape her twice and raped her in August 2006.

[5] Following these events, she filed complaints with the police, but to no avail.

[6] The applicant gave custody of her son to his godfather and, on November 1, 2006, arrived in Canada alone, claiming refugee status. She stated that the child's godfather wrote to her on March 5, 2008, to tell her that Anibal went to harass Noe and was trying to find the applicant.

II. Impugned decision

[7] The RPD analyzed the testimonial and documentary evidence and determined that it could not allow the applicant's refugee claim because, according to the RPD, she was not a credible person since her story was, quite simply, invented for purposes of her application.

[8] The RPD based its decision on a contradiction in the applicant's evidence about the identity of her persecutor. It was established that, in her Personal Information Form (PIF), the applicant indicated that she feared Anibal, the brother of her child's father, but, on her arrival in Canada, she told the immigration officer that she feared her child's father, Gustavo.

III. Issues

[9] Does the RPD decision contain errors of law or is it unreasonable having regard to the facts?

IV. Standard of judicial review

[10] For a factual question or a question of mixed law and fact, the appropriate standard of review is reasonableness. On a question of law, the standard of review is correctness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). The decision in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, points out that decisions of administrative tribunals are entitled to deference.

V. Preliminary objection

[11] The respondent opposes the application because it was filed a day late. The applicant requested an extension of time because the delay was caused by the reorganization of her lawyer's office. The respondent opposes this request, relying on the following cases: *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.); *Beilin v. Minister of Employment and Immigration*, [1994] F.C.J. No. 1863 (T.D.) (QL); *Minister of Citizenship and Immigration v. Singh*, [1997] F.C.J. No. 1726 (T.D.) (QL).

VI. Analysis

[12] Subsection 72(2) of the Act requires that applications for judicial review be filed within 15 days of the decision unless the Court extends the time for "valid reasons".

[13] This is a discretion based on equity. I believe that, under the circumstances described above, the delay of one day, which is not imputable to the applicant, justifies the requested extension of time.

A. *Is the decision reasonable on the merits?*

[14] The applicant contends that the negative credibility decision is not founded and that the dismissal of the documentary evidence that supported her version is also not founded in law.

(1) Issue of credibility

[15] The RPD essentially based its decision on the applicant's lack of credibility because the immigration officer at the entry point to Canada wrote that the applicant had said she feared she would be beaten by her child's father if she returned to Peru. The applicant explained that this was a mistake; she repeated a number of times that it was the brother of her child's father, Anibal, who was the assailant. In support of her testimony, she attempted to file copies of complaints about Anibal that she had made to the Peruvian police in 2000 and 2006. But the RPD refused to admit them, stating that the originals were required. The RPD also said that it was easy to obtain false documents in Peru.

[16] There is no doubt that, according to the case law, the RPD may base its decision on inconsistencies between an applicant's statements at the point of entry and his or her testimony to support a non-credibility finding (*Chen v. Minister of Citizenship and Immigration*, 2005 FC 767 ; *Moscol v. Minister of Citizenship and Immigration*, 2008 FC 657).

[17] However, there are distinctions that apply to this general rule in the factual determination of the evidence.

[18] In this case, the applicant spoke in Spanish at the point of entry, and her responses were conveyed by an interpreter. Was there confusion regarding the persons' names or did the applicant misspeak at the time?

[19] The RPD did not probe any further; it simply made a non-credibility finding and refused to consider the applicant's corroborative evidence. The record contained copies of two assault and harassment complaints filed by the applicant against Anibal in 2000 and 2006 with the Peruvian police. The RPD simply excluded this evidence on the ground that it was easy to obtain false documents in Peru.

[20] There is no evidence that the documents submitted by the applicant were false.

[21] Our Court has already determined that evidence of forgery in a country does not mean that a document is false in the absence of concrete evidence to that effect (*Halili v. Minister of Citizenship*

and Immigration, 2002 FCT 999, at paragraphs 4 and 5; *Cheema v. Minister of Citizenship and Immigration*, 2004 FC 224).

[22] Furthermore, the RPD is not bound by strict rules of evidence like the common law courts; thus, the best evidence rule is not mandatory before the RPD.

[23] In my view, this error by the RPD warrants the intervention of our Court.

[24] The applicant alleges that the RPD did not maintain or follow Guideline 4—*Women Refugee Claimants Fearing Gender-Related Persecution*. She submits that the RPD confronted her three times about one aspect of her story (*i.e.* the names of Anibal – Gustavo) and excluded her version and all the evidence that supported it. She contends that the RPD did not comply with Guideline 4 regarding women refugees who are victims of violence and that the RPD did not have an [TRANSLATION] "extremely sensitive attitude". The respondent replies that the fact that the panel did not mention the Guidelines does not mean that it did not follow them (*Munoz v. Minister of Citizenship and Immigration*, 2006 FC 1273 ; *Gutierrez v. Minister of Citizenship and Immigration*, 2007 FC 1192).

[25] Our Court's case law recognizes that the Guidelines are not part of the Act but are useful in interpreting evidence. These Guidelines should be consulted in cases where a woman refugee is claiming persecution based on sex, as in this case (*Begum v. Minister of Citizenship and Immigration*, 2001 FCT 59 ; *Muradova v. Minister of Citizenship and Immigration*, 2003 FCT 274).

[26] The RPD must also consider the documentary and testimonial evidence regarding services available for victims of violence and sexual assault in the specific country involved in the dispute (*Lubana v. Minister of Citizenship and Immigration* (February 3, 2003), IMM-2936-02, at paragraph 14). That requirement was not satisfied in this case.

[27] For all these reasons, the application for judicial review will be allowed.

JUDGMENT

THE COURT ORDERS:

1. The application for judicial review is allowed.
2. The decision by the Refugee Protection Division of the Immigration and Refugee Board, dated July 30, 2008, refusing to grant refugee status to the applicant, is set aside.
3. A new hearing of the application should be held before a differently constituted panel.
4. No question will be certified.

"Orville Frenette"
Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3919-08
STYLE OF CAUSE:	Victima Rosilia BELTRAN LEON v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 12, 2009
REASONS FOR JUDGMENT AND JUDGMENT BY:	The Honourable Mr. Justice Orville Frenette, Deputy Judge
DATED:	March 20, 2009

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