

Federal Court



Cour fédérale

**Date: 20111222**

**Docket: IMM-3420-11**

**Citation: 2011 FC 1500**

**Ottawa, Ontario, December 22, 2011**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**SIKANDER BAKSH  
NADIRA RAMKISSOON  
KIMBERLEE KAMEEL BAKSH  
(A.K.A. KIMBERLEE KAMEE BAKSH)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking to set aside a decision of the Refugee Protection Division [RPD or the panel] dated April 28, 2011. The RPD found that the Applicants were not Convention refugees or persons in need of protection as set forth in sections 96 and 97 of the IRPA.

**I. Facts Alleged by the Applicants**

[2] Nadira Ramkissoon, her husband Sikander Baksh, and their daughter Kimberlee Kameel Baksh [the Applicants] are all citizens of Trinidad and Tobago [Trinidad] and members of the country's Indian ethnic group. Mr. Baksh is also a citizen of Guyana. Prior to their arrival in Canada, the Applicants lived in Penal, on the island of Trinidad.

[3] On May 25, 2009, while the Applicants were home, three black men [the assailants] broke into the home, robbed it of several valuables, and, while holding Mr. Baksh captive outside, the assailants sexually assaulted Ms. Ramkissoon one by one.

[4] After the assailants fled, the Applicants immediately contacted their family and the police, who arrived an hour later only to advise the Applicants that they should attend to the police station. After several hours of wait at the station, the police took the Applicants' statements, but Ms. Ramkissoon was only medically examined the following morning. Though the Applicants were informed the police had everything needed to proceed with an investigation, the Applicants were never informed of any further developments or progress of any sort, despite repeated enquiries.

[5] For more than six months after the attack, Ms. Ramkissoon did not return to her home, living instead with her parents in a residence ten minutes away. Finally, on December 10, 2009, the Applicants left Trinidad for Canada, where with the assistance of family members, they eventually filed a refugee claim on May 19, 2010. It was heard on April 4, 2011.

**II. Impugned Decision**

[6] The RPD identified credibility as the determinative issue in this case, raising several concerns that it deemed material to the claim. Specifically, the panel questioned Ms. Ramkissoon's testimony that the robbery and sexual assault was motivated by race when she had previously

testified that it was a random attack (Trial Record [TR] at 243, 245, and 249-250). When asked whether the assailants had mentioned Ms. Ramkissoon's ethnic background, she answered that they told her they were from Laventil, "a place where there are only blacks," and that they would kill the Applicants because of this (TR at 247). The panel found the fact the assailants were from Laventil, a predominantly black populated area two hours from where the Applicants resided, did not establish that the attack was instigated by or linked to race and concluded there was "no credible and trustworthy evidence to indicate that the robbery and sexual assaults that occurred on May 25, 2008 were motivated by race" (TR at 6, RPD Decision at para 12).

[7] The RPD also took issue with the following elements of the Applicants' testimony that were not included in Ms. Ramkissoon's Personal Information Form [PIF], omissions which they could not explain to the RPD's satisfaction: a) the assailants were from Laventil; b) Ms. Ramkissoon's brother-in-law had been approached by an acquaintance at his workplace informing him the assailants had said they would kill the Applicants (TR at 251-253); c) Ms. Ramkissoon's mother had repeatedly gone to the police to enquire about the status of the police investigation; d) the Applicants made a formal complaint to the national headquarters of the police in Trinidad, and; e) the police told Mr. Baksh not to indicate in the police report that he could identify the assailants.

[8] Because of discrepancies between Ms. Ramkissoon and Mr. Baksh's testimony and the fact the account was not included in her PIF, the panel did not believe that the brother-in-law obtained any information from the assailants indicating that the latter were threatening the Applicants if they contacted the police. Likewise, the panel rejected the testimony regarding follow ups with police and complaints made to it about the investigation, as well as the police's alleged directions to Mr. Baksh, because none of these had been included in the PIF and the panel was not satisfied with the lack of explanation for their omission (TR at 6, 9, and 10, RPD Decision at paras 13, 14, and 25-27).

[9] As for the nearly seven months that elapsed between the attack and the Applicants leaving Trinidad, the panel was not satisfied with the Applicants' reason for delaying her departure: in the panel's words, because of "the time it took to get ready to leave, get the passports and arrange everything" (TR at 8, RPD Decision at para 20). The RPD found that if they were in danger of being seriously harmed, it would have been reasonable for the Applicants to leave earlier and this delay undermined their subjective fear. In addition, the panel found it highly unlikely that the assailants would want to harm the Applicants after the substantial period of time that had elapsed since the attack (TR at 8, RPD Decision at para 21).

[10] Overall, the RPD noted that since the Applicants had never been the victims of any crime or violence in Trinidad apart from the attack of May 25, 2009, the attack amounted to an isolated incident and, given all the circumstances, there was no serious possibility that it would reoccur. As a result, the RPD concluded that the Applicants were not being persecuted and, if they were to return to Trinidad, there was no other credible or trustworthy evidence to suggest that they would be pursued by any agent of persecution (TR 8-10, RPD Decision at paras 22 and 28).

### **III. Parties' Positions**

[11] The Applicants have identified several issues which can be resumed as follows. First, the Applicants question the RPD's credibility findings. They argue the panel failed to understand the evidence as a whole and in context, choosing instead to examine the evidence with microscopic zeal and to take issue with omissions that were not significant or central to the issue of whether the Applicants reasonably demonstrated a serious risk of harm. Second, the Applicants submit that the RPD ignored the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines] by failing to consider the psychological impact caused by the attack on the responses given by the Applicants to the panel's questions, leading it to wrongfully

impugn the Applicants' credibility. Third, in a closely linked argument, the Applicants argue the panel failed to analyze whether the claim could be considered on the basis of membership in a particular social group, namely gender. Finally, they argue the panel's overall decision is unreasonable given the oral and documentary evidence adduced at the hearing of the claim.

[12] For its part, the Respondent is of the view that the RPD's credibility findings are reasonable and supported by the record before it, which includes the Applicants' testimony. The Respondent points to jurisprudence from this Court confirming that omissions in the PIF can lead to negative credibility findings and submits that the Applicants have simply failed to provide any adequate reasons for these omissions (*Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ 1867, 52 ACWS (3d) 165; *Castroman v Canada (Secretary of State)*, 81 FTR 227, [1994] FCJ 962; *Grinevich v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ 444, 70 ACWS (3d) 1059). Turning to the Gender Guidelines, the Respondent contends these were applied and adds that they are not intended to shield applicants from having their evidence tested (*Newton v Canada (Minister of Citizenship and Immigration)*, 182 FTR 294 at paras 17-18, [2000] FCJ 738 [*Newton*] and *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at paras 5 and 7, [2006] FCJ 717 [*Karanja*]). The onus remains on the Applicants to demonstrate a well-founded fear of persecution based on an enumerated ground and the Gender Guidelines do not entitle the Applicants to have their evidence accepted without enquiry. The Respondent further states that the RPD appropriately considered the basis for the Applicants' claim and the evidence submitted, but argues there was simply no evidence to support the claim that the attack was based on a Convention ground or to indicate the Applicants were in need of protection.

#### IV. Issues

[13] The parties have focused much of their written submissions on the issue of credibility. However, it is this Court's view that, despite what the RPD may have indicated in its decision, credibility is not at the heart of this matter. At no point in its decision does the RPD question the Applicants' actual account of the events that took place on May 25, 2009. Rather, it takes issue with some of the Applicants' testimony regarding what followed the attack, namely, whether the police instructed Mr. Baksh to falsely indicate he could not identify the assailants, whether Ms. Ramkissoon's mother followed up with the police, whether the Applicants complained to the police's national headquarters about the lack of investigation, and whether the assailants indirectly threatened the Applicants through Ms. Ramkissoon's brother-in-law's co-worker when the brother-in-law enquired with individuals he knew about the attack.

[14] Apart from this rather vague allegation of a threat from the assailants, the credibility issue has very little to do with the RPD's other findings that the attack had been an isolated incident, that it was not racially motivated, and that, given all the circumstances, there was no serious possibility that the Applicants would suffer any related crime if they were to return to Trinidad. It is these findings after all, and not the issue of credibility, which led to the RPD's ultimate conclusion that the Applicants were not Convention refugees or persons in need of protection as set forth in the IRPA.

[15] For these reasons, this Court will focus its analysis not on credibility, but on whether the RPD, in its examination of the Applicants' claim: 1) considered the claim on the basis of gender; 2) applied the Gender Guidelines appropriately; and, 3) in light of the evidence, whether the panel's finding that the Applicants were not at risk of further attacks was reasonable.

## V. Standard of Review

[16] Assessments of credibility and questions of fact are within the panel's area of expertise and must be reviewed on a standard of reasonableness (*Malveda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, [2008] FCJ 527). Where the court must review the RPD's decision with an eye to the Gender Guidelines, these are also considered by the same standard of reasonableness (*AME v Canada (Minister of Citizenship and Immigration)*, 2011 FC 444 at para 8, [2011] FCJ 589). This analysis will thus look for "the existence of justification, transparency and intelligibility within the decision-making process [and] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

## VI. Analysis

[17] The Applicants argue that while the RPD examined their claim on the basis of race, it never considered it on the basis of gender and this despite the issue being explicitly raised both in the PIF and at the hearing. Indeed, the panel even recognized in its decision that the principal Applicant testified the attack was a "gender-based crime" (TR at 6, RPD Decision at para 12). Having examined the RPD decision, it is clear the panel ably considered the claim on both the basis of race and political opinion, arriving at a convincing determination that the attack was not motivated by race or Ms. Ramkissoon's very limited participation in the Congress of the People political party. However, nowhere in its decision does the panel indicate it has considered whether Ms. Ramkissoon belonged to a particular social group, namely that of women from Trinidad who have been raped.

[18] The evidence shows however that the principal Applicant, and to a certain extent also the Applicants' counsel, limited the claim to one of race, thereby diminishing in no uncertain terms the

gender claim. As noted by the RPD at paragraph 10 of its decision, Ms. Ramkissoon testified that the robbery and sexual assaults were random and part of the general criminality and violence against women occurring in the country.

[19] Later on however, she testified that both the burglary and the sexual assaults were motivated by race because she was of Indian descent and added that blacks in Trinidad disliked people of Indian descent. Ms. Ramkissoon also testified that if she would have been a black woman living in her neighbourhood (predominantly composed of people of Indian descent), she would not have been sexually assaulted (TR at 270). During final submissions, the Applicants' counsel made it clear that Ms. Ramkissoon suffered these sexual assaults because of her race and how those of Indian descent are treated by the black majority. It was submitted that had she been black, she would not have been raped (TR at 284).

[20] This should not be interpreted as relieving the decision maker of the obligation of reviewing all claims made, including those not raised during the hearing by a claimant. The jurisprudence is clear on that point (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ 74, followed by *Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6, [2006] FCJ 1914). But referring to the evidence may explain why the panel did not deal with the gender claim explicitly, but rather implicitly.

[21] At paragraphs 11 and 12 of the decision, the RPD determined that the evidence presented did not support a claim based on race:

[11] The Panel asked the principal claimant why she thought the incident of May 25, 2008 was motivated by race. She stated because the assailants were black and they stated during the incident that they were from the town of Laventil, which is a predominantly a black



populated area. She stated that Laventil is a good distance from Penal where she and her family live.

[12] The Board finds that there was no credible and trustworthy evidence to indicate that the robbery and sexual assaults that occurred on May 25, 2008 were motivated by race. According to the principal claimant's own testimony, the assailants did not make any comments or racially derogatory statements to her or the claimant during the incident. The Board finds that the fact that the assailants said that they were from Laventil, a predominantly black populated area, does not establish that the incident was instigated by or linked to race. Further, the principal claimant did testify on more than one occasion that the incident was a random act of violence against a woman, a gender-based crime, not based on race. She also stated that black and white women were sexually assaulted in Trinidad.

[22] The panel then went on to note the numerous PIF omissions that dealt with concerns such as state protection issues, police involvement, any history of the Applicants having been targeted, and so on. It considered the consequences of a return to Trinidad. It mentioned at paragraph 22 that over a period of more than 30 years, the Applicants had not been victims of any crime or violence prior to the attack of May 25, 2009. The panel also noted that in general, to constitute persecution, the harm feared must occur with repetition or persistence and that there was no other credible or trustworthy evidence to suggest that the Applicants would be pursued by any agent of persecution.

[23] During the hearing, reference was made to documentary evidence dealing with the status and protection of women in Trinidad (TR at 175, 2009 Human Rights Report: Trinidad and Tobago at 6), confirming that the panel was aware of the situation (TR at 244 and 287). The gender claim was a subject covered during the hearing and was also referred to by the Applicants' counsel in its final submissions. There is no doubt that a paragraph in the decision dealing specifically with the gender issue would have been the proper course to follow. But in the present case, when reading the decisions as a whole, the evidence presented, and the submissions made before me, I come to the conclusion that the panel dealt explicitly with both the race and gender claims.

[24] To the argument that the Gender Guidelines were not applied appropriately, the Court takes note of paragraphs 6 and 7 of the decision, where the RPD wrote that it has taken the Gender Guidelines into consideration and that it was cognizant of the difficulties faced by the principal Applicant. In fact, the transcript of the hearing shows that the panel dealt delicately with the examination of the principal Applicant and at no time does it reveal a lack of sensitivity to what Ms. Ramkissoon has had to live through.

[25] It is well established in the jurisprudence that the gender based-claim should not be used as a reason for not being able to question the refugee claimant's evidence (*Newton*, above, at paras 17-18 and *Karanja*, above, at paras 5 and 7). The only argument made on this point by the Applicants was that the panel ignored the Gender Guidelines in its assessment of the case. The decision rendered and the transcript of the hearing show otherwise.

[26] Therefore, having had the opportunity to review the documentary evidence, the transcript of the hearing, the submissions of the parties, and the decision rendered, I find that the decision that the Applicants are not convention refugees pursuant to section 96 of the IRPA or persons in need of protection under the meaning of section 97 of the IRPA to be reasonable.

[27] No question for certification was submitted.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed. No question is certified.

“Simon Noël”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3420-11

**STYLE OF CAUSE:** SIKANDER BAKSH et al v THE MINISTER  
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**PLACE OF HEARING:** Toronto, Ontario

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**DATED:** December 22, 2011

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