

Federal Court



Cour fédérale

Date: 20130905

Docket: IMM-13158-12

Citation: 2013 FC 848

Ottawa, Ontario, September 5, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

LAVENA GOVENDA RAJU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2011, Ms Lavena Govenda Raju claimed refugee protection in Canada based on her fear of ethnic and religious persecution in Malaysia. Both Ms Raju and her husband, Mr Valmurugan Arungam, are Hindus of Indian ancestry; Malaysia is predominantly Muslim.

[2] Ms Raju claims to have been persecuted by the family of a Muslim woman, named Faridah, with whom her husband had been involved before their marriage in 2005. Faridah's family insisted that Mr Arumugam convert to Islam before he could marry her. When he refused, he was threatened and beaten by Faridah's brother. He fled to Canada and made an unsuccessful refugee claim, returning to Malaysia in 2004.

[3] After Ms Raju and Mr Arumugam married in 2005, Faridah committed suicide and her brother blamed Mr Arumugam for her death. In 2007, a group of Malay men invaded and vandalized their home and assaulted them. Ms Raju experienced a miscarriage as a result of her injuries. They reported the incident to police.

[4] In 2009, Faridah's brother assaulted Mr Arumugam and seriously injured him. Again, police were notified.

[5] A year later, Ms Raju was kidnapped and raped by Faridah's brother. She subsequently attempted suicide, but survived. Again, police were called, but took no action.

[6] Ms Raju fled Malaysia in 2011 and claimed refugee protection in Canada.

[7] A panel of the Immigration and Refugee Board dismissed Ms Raju's claim, concluding that state protection was available to her in Malaysia. Although she tried, without success, to get police protection, the Board concluded that she could have presented her concerns to higher authorities and

other agencies. Further, Malaysia is trying to advance the equality of its minority population. The documentary evidence showed that authorities generally provide protection to minority citizens.

[8] Ms Raju argues that the Board unreasonably concluded that she could obtain state protection in Malaysia. In particular, she maintains that the Board overlooked documentary evidence showing that Hindus are subjected to racial and religious discrimination in Malaysia. That evidence corresponds with her own experience - she and her husband actually reported three separate crimes, but the police apparently took no action. Further, the Board did not appreciate that she felt ashamed about the sexual assault and, for that reason, did not pursue other avenues of recourse. Ms Raju asks me to quash the Board's decision and order another panel to reconsider her claim.

[9] I agree that the Board analysis of state protection was unreasonable. Ms Raju repeatedly attempted to obtain protection from the police and did not receive it. According to the Chairperson's Gender Guidelines, which the Board explicitly referred to, victims of sexual violence should not be expected to seek redress from other agencies. Therefore, considering Ms Raju's particular circumstances, the Board's conclusion that state protection was available to her did not represent a defensible outcome based on the facts and the law. I must, therefore, allow this application for judicial review.

[10] The sole issue is whether the Board's analysis of state protection was unreasonable.

II. The Board's Decision

[11] The Board recognized that the Gender Guidelines applied to Ms Raju's claim and purported to consider them in analyzing her circumstances.

[12] The Board observed that, even though she did not receive protection from the police, Ms Raju could have taken her concerns to higher-level authorities and other agencies. In any case, the police reports Ms Raju filed with the Board contained brief descriptions of her allegations, suggesting that she had given police few details of the alleged crimes.

[13] Further, the documentary evidence shows that Malaysia is taking serious steps to achieve the equality and protection of its citizens, and to address problems of corruption within the police. Rape is punished by up to 30 years' imprisonment; however, many victims hesitate to report sex crimes because the predominantly male police force often responds unsympathetically to them.

[14] Ms Raju herself acknowledged that police responded quickly to a complaint her mother lodged in 2005. Ms Raju's mother, who disapproved of her marriage to Mr Arumugam, told police that her daughter had been kidnapped. Police arrested Mr Arumugam, but released him when he presented their marriage certificate.

[15] Finally, the Board noted that the persecution Ms Raju endured took place mainly in the Sengai Petani area. Incidents that took place elsewhere resulted from Ms Raju and her husband being followed by the persecutors to and from Sengai Petani. The Board believed that the

persecutors likely did not have the means or motivation to pursue Ms Raju in other parts of Malaysia.

III. Was the Board's conclusion on state protection unreasonable?

[16] The Minister argues that Ms Raju had a duty to approach higher authorities and non-state agencies, including Islamic organizations, especially in a country, such as Malaysia, that maintains democratic institutions. The fact that she may have felt shame or feared discrimination does not support a conclusion that state protection was absent. The documentary evidence does not corroborate her allegation that state protection is withheld from the minority Hindu population.

[17] In my view, the Board imposed too great a burden on Ms Raju.

[18] It is clear from the evidence that Ms Raju did attempt, three times, to obtain state protection from the police. While the Board discounted the value of the police reports because they lacked detail, their brevity may actually have been indicative of disinterest on the part of the police.

[19] Further, the Gender Guidelines, on which the Board purported to rely, make clear that victims of sexual violence do not have to go beyond the police to non-state agencies if they do not receive protection at the first instance. The Guidelines state:

[T]he fact that the claimant did or did not seek protection from non-governmental groups is irrelevant to the assessment of the availability of state protection (Part C.2).

[20] Further, while the Board noted Ms Raju's reluctance to pursue avenues of redress beyond the police, once again, it failed to have regard for the Gender Guidelines. The Guidelines suggest that the Board should consider the "social, cultural, religious and economic context in which the claimant finds herself" (C.2) when determining whether her efforts to obtain protection were reasonable. The Board did not do so.

[21] Finally, it is unclear what remedy Ms Raju, a Hindu woman, could obtain from Islamic organizations, whose role is to enforce Sharia law.

[22] While the Board gave other reasons for its conclusion, Ms Raju's failure to seek redress from other organizations figures most prominently in the Board's analysis. It is not clear that the outcome would have been the same had the Board actually applied the Gender Guidelines.

[23] I note the objection from counsel for the Minister that arguments about the Gender Guidelines were not contained in Ms Raju's memorandum of fact and law. Counsel urged me not to consider them. In my view, this is a case where the applicability of the Gender Guidelines was obvious based on the facts and the Board's own reasons. The contents of the guidelines are well-known. Counsel did not allege any prejudice, nor did she request an opportunity to file further submissions. Therefore, in the circumstances, I have taken Ms Raju's oral submissions into account.

[24] In summary, given its failure to take account of the applicable Gender Guidelines in its analysis, the Board's conclusion does not represent a defensible outcome based on the facts and the law.

IV. Conclusion and Disposition

[25] In rejecting Ms Raju's claim, the Board found it significant that she failed to approach authorities beyond the police. However, the Board did not refer to parts of the Gender Guidelines that relieve victims of sexual assault from that obligation and urge decision-makers to take the applicant's personal circumstances into account. Nor did it explain why those provisions should not apply to Ms Raju. Therefore, I find that the Board's conclusion was unreasonable, and must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is returned to another panel of the Board for redetermination.
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13158-12

STYLE OF CAUSE: LAVENA GOVENDA RAJU
v
MCI

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: July 17, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 5, 2013

APPEARANCES:

Raj Sharma FOR THE APPLICANT

Anna Kuranicheva FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raj Sharma FOR THE APPLICANT
Barrister and Solicitor
Calgary, Alberta

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General
Edmonton, Alberta