Federal Court  **Cour fédérale**

Date: 20140416

Docket: IMM-1861-13

Citation: 2014 FC 365

Ottawa, Ontario, this 16th day of April 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Kaoutar JORFI

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act"). The applicant challenges the decision made by the Refugee Protection Division of the Immigration and Refugee Board (the "RPD") on February 7, 2013, finding the applicant to be neither a Convention refugee nor a person in need of protection.

Facts

[2] This case has peculiar facts which require that they be presented more expansively than usual.

[3] The applicant is a citizen of Morocco in her early thirties. Her refugee application was made upon arrival in Canada on September 29, 2010, but the facts that give rise to the application begin in January of 2008.

[4] The applicant met in January 2008 a man who has been granted Canadian citizenship, and was originally from Morocco. That man, who would become her husband, was then on a visit to Morocco. After his return to Canada (he is resident of Mississauga, in Ontario) they pursued a relationship over the Internet.

[5] At that time, he was separated from his second wife and in the process of obtaining a divorce.

[6] The future husband came back to Morocco in December 2008 and the relationship continued to evolve, moving from friendship into romance. The future husband's divorce from his second wife came through on July 21, 2009. The applicant got married on August 2, 2009. Her new husband left Morocco fifteen days later, on August 17, 2009. He would come back for another two-week visit between April 23 and May 10, 2010. It would appear that their conjugal life was for a total of thirty-five days.

[7] The applicant asserts that on their wedding night her husband changed. He began demanding that the applicant follow a diet and undergo cosmetic surgery. She was also subjected to physical and psychological violence, including many sexual assaults. It seems that the husband was disappointed to learn of the limited means of his new wife's family. The applicant would have confided in her mother who counselled that all relationships are difficult in the beginning.

[8] In December 2009, the husband submitted a sponsorship request in favour of his new wife in order to join him in Canada. A permanent residence visa was received on July 9, 2010. However, the Computer Assisted Immigration Processing System (CAIPS) shows that the applicant's husband asked for a divorce from the applicant on July 10, 2010 and would have indicated that the marriage was one of convenience.

[9] The husband withdrew his sponsorship on September 1, 2010. The Minister's records show that the applicant was contacted on September 1, 2010 and advised to present herself at the Canadian Embassy for a visa cancellation. The applicant testified that she received only one telephone call from the Embassy and she believed that this was merely a message from an anonymous caller and did not take it seriously. Indeed, after the phone call, she checked the Citizenship and Immigration Canada website and did not find an indication that her sponsorship had been cancelled.

[10] Thus, she caught a flight from Morocco to Canada on September 29, 2010 and, upon her arrival in Montreal, she was confronted with the fact that her visa was void. She claimed refugee status there and then.

[11] Her refugee claim is based on her fear that if she is returned to Morocco, her family and others would consider her to be dishonoured. Furthermore, after the divorce was pronounced, in 2011, her ex-husband would have called her family in order to defame her. She fears him because he abuses drugs and alcohol and was well connected with people who could harm her. As for her father, she claims that he is very strict and suffers from a psychiatric condition, which required several periods of hospitalization.

[12] And then, there are witnesses who appeared before the RPD. There is the brother-in-law of her aunt with whom she had initially sought temporary lodging in Montreal upon her arrival. He depicted the applicant as being involved in the hashish trade, with her aunt, in Montreal. Furthermore, she would have been involved in social security and income tax frauds and would have been trained to use guns in a terrorist camp. The aunt's brother-in-law made a number of other allegations against the applicant which appear to be rather fanciful. In return, the applicant contends that he tried to commit sexual assault on her, that he asked her to be part in social security and other types of frauds.

[13] Another witness testified that he had been asked by the applicant's sister in October 2010, obviously shortly after her arrival in Canada, to assist. He hired her to work for his company at the start of 2011.

[14] Finally, the applicant's sister testified in support of the applicant. She would confirm that the applicant's ex-husband defamed her to her father in Morocco and that he suffered from psychiatric issues.

[15] Considering all of those facts, the applicant contends that she deserves the protection of sections 96 and 97 of the Act.

The decision

[16] The RPD concluded that the credibility of the applicant with respect to her subjective fear of persecution was deficient. Her story is not credible and her reasons for coming to Canada cannot be believed. Noting that the applicant is fully aware that this is her husband's third marriage, she suffers psychological and physical violence at the hands of that person in the short period of time they were together. Notwithstanding the abuse, she agrees to be sponsored to come to Canada. Indeed, the RPD notes that when she arrives in Canada on September 29, 2010, the applicant has not seen her husband in many months. She claims that she found out at the airport that her visa had been cancelled. Evidently, it appears that she had not spoken either to her husband in many months prior to her departure from Morocco about the validity of her visa and the status of their marriage.

[17] The record shows that the applicant had been contacted by the Canadian Embassy in Morocco on September 1, 2010. She claims that she did not know that divorce proceedings had been launched by what was to become her ex-husband. Actually, the ex-husband had been contacted by the Canadian authorities and he confirmed that the visa had to be cancelled.

[18] It is not surprising that the RPD wished to discuss at length with the applicant the circumstances surrounding the phone call received from the Embassy. The transcript of the hearing is rather confusing. The RPD seems to understand that there were in fact numerous telephone conversations with Canadian representatives at the Canadian Embassy in Morocco. The applicant

explains that she thought these were anonymous calls and that she took the request to attend for the purpose of cancelling the visa lightly ("J'ai pris l'appel à la légère.")

[19] In the view of the RPD, at paragraph 22 of its decision:

> . . . Le tribunal trouve pour le moins paradoxales et peu sérieuses les réponses de la demanderesse lorsqu'il s'agit d'immigrer dans un autre pays et que l'ambassade canadienne tente de communiquer avec cette personne pour prendre un rendez-vous et lui expliquer une situation. Elle a même ajouté qu'elle n'était pas sûre que son parrainage était annulé.

[20] The behaviour of the applicant is considered by the RPD to be rather odd. While the applicant contends that she suffered psychological and physical violence at the hands of a husband she spent thirty-five days with, she ignores, one would even suggest she shows willful blindness, the calls by the Canadian Embassy to advise her that the sponsorship is cancelled.

[21] The RPD is also critical of the applicant's contention that she continues to fear her ex-husband when he has not even tried to contact her since her arrival in 2010, a period of more than two years until the RPD decision. The RPD is of the view that the applicant tried to use the situation to her advantage to come to Canada. Accordingly, the RPD concludes that the burden on the applicant has not been discharged to prove that there is a well-founded fear of persecution in Morocco, if she were to return.

Arguments

[22] The applicant makes two arguments before this Court. First, she contends that the tribunal has committed breaches of natural justice. Second, she claims that the assessment made of the case

by the RPD is unreasonable, as per paragraph 47 of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*].

[23] The argument about natural justice boils down to this. The applicant faults the RPD for not having provided fuller analysis of the three testimonies heard. For the applicant, there is an obligation at law to conduct an analysis of the testimony of witnesses; hence, she contends that the mandate of a tribunal is to evaluate the evidence it is presented with and then base its decision on that evidence. In support of that proposition, the applicant refers the Court to *VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 (CA) [*Via Rail*].

[24] The applicant claims that the assessment of her credibility is lacking. She argues that the reference by the RPD to numerous conversations with Canadian personnel in Morocco in September 2009 is not accurate. There would have been one conversation which was followed up by an attempt on the part of the applicant to reach the Embassy.

[25] Thus, she claims that the RPD did not understand the evidence or misconstrued it. Focus is again put on the contention of the applicant that she received only one phone call from the Embassy whereas the RPD referred to numerous exchanges. Indeed, the applicant seems to fault the Embassy for not having followed up following September 1, 2009.

[26] The applicant argues that the RPD misconstrued her statement to the effect that she was hoping that in spite of the visa being cancelled, Canada would provide her with assistance. That, claims the applicant, does not show that she was aware that the visa had been cancelled prior to her

departure from Morocco. That statement was made after she had arrived in Canada and found out that the visa had been cancelled. She was merely calling for empathy on the part of the Canadian authorities.

[27] As far as the applicant is concerned, "[i]t is trite law that the tribunal has an obligation to provide clear reasons for its decision" (paragraph 99 of the Memorandum of Arguments). In her view, "there is a problem because the tribunal has not given clear reasons. […] We submit this is problematic because at the end of the day, the Applicant should be able to read the decision and understand why her claim was denied;" (paragraph 98 of the Memorandum of Arguments).

[28] As for the respondent, a high degree of deference is owed to an inferior tribunal that assesses facts and evidence. In this case, in the view of the respondent, the conclusions reached by the RPD are reasonably open to it in view of the evidence that was before it.

Analysis

[29] The applicant argues that procedural fairness was infringed in this case because the RPD did not analyze in any detail the evidence of three witnesses. In the view of the applicant, this is in breach of natural justice and she refers to *Via Rail, supra,* to support that contention.

[30] The difficulty with the argument is that more recent case-law does not support the argument. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*], the Supreme Court finds:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[31] In the case at bar, it is clear from the reasons of the RPD that it did not have to analyze the testimonies in order to reach its conclusion that the applicant did not have the required subjective fear. A Board is presumed to have taken into consideration all of the evidence, whether or not it specifically indicates having done so in its reasons, unless the contrary is shown (*Davidova v Canada (Citizenship and Immigration)*, 2013 FC 908). Here, there is no failure to provide the applicant with procedural fairness in not reviewing the testimonies that, at the end of the day, were merely peripheral.

[32] The other broad issue raised by the applicant concerns the conclusion of the RPD that the applicant's credibility was defective, leading to the conclusion that there has not been a satisfactory demonstration that the applicant had a subjective fear. The parties agree that the standard of review is reasonableness. I concur.

[33] Thus, as for the failing demonstration that the applicant had a subjective fear, the applicant once again refers to decisions being in and of themselves subject to judicial review because of the inadequacy of reasons. The state of the law has changed since the case-law offered in support of that

argument. In *Newfoundland and Labrador Nurses' Union*, *supra*, the Supreme Court of Canada can hardly be any clearer:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

Here, I find it difficult to conclude that the outcome reached by the RPD is not reasonable. We understand fully why the RPD came to the conclusion it reached and that conclusion is supported by a fair assessment of the evidence as a whole.

[34] The applicant chose to come to Canada on September 29, 2010 in spite of the fact that she had received at least one phone call from the Canadian Embassy in Morocco. In my view, whether or not there have been many attempts to reach the applicant is a red herring once the evidence as a whole has been considered properly. The last time the applicant had seen her then husband was in the spring of that year and he had communicated with the Canadian authorities since then for the purpose of advising that he was not supporting sponsorship for a wife he was in the process of divorcing. It stretches credulity to accept that, in circumstances like these, without even getting in contact with her husband in Canada, the applicant would catch a plane leaving for Montreal where, upon arriving, and being advised that her visa is cancelled, she immediately seeks refugee status.

[35] I believe it is reasonable for the Board to conclude that the applicant was in fact seizing an opportunity that was presenting itself to leave Morocco. In my estimation, the understanding of the RPD that the applicant signaled her knowledge that her visa had been cancelled is reasonable. It is also understandable that the RPD would have queried, given the circumstances in which the applicant was leaving her country, that she would do so in spite of the physical and psychological violence she had suffered at the hands of her husband in the thirty-five days they lived together.

[36] Basically, the Board did not believe that someone who has suffered physically and psychologically at the hands of her spouse, someone that she has not seen in five months, would leave Morocco to come and meet her husband in spite of a communication from the Canadian Embassy to the effect that there was, at least, some issue. That she would not have communicated with her husband after he started divorce proceedings and communicated with the Canadian authorities stretches credulity. Even more bizarre, the applicant would not have communicated with her sponsoring spouse for twenty-eight days, after the call received from the Embassy and before her departure for Canada. This would appear to be willful blindness. It is, in my estimation, quite reasonable on the part of the RPD to conclude that the motivation of the applicant was not what she presents it to be. Indeed, there is nothing wrong to seek a better life for oneself. However, that does not make someone a refugee or a person in need of protection.

[37] It is also quite understandable that the RPD would not give credence to the claim that the ex-husband can seek to persecute her in Morocco when there is no evidence that there was any such persecution in Canada where the ex-husband resides, less than 500 kilometers from where his former wife is. Indeed, not only is there no convincing evidence to that effect, but there is no

indication as to what could ever be his motivation for such action. Similarly, the evidence about the psychiatric issues suffered by the applicant's father was considered to fall short from establishing a subjective fear. I agree. Whatever were the reasons for that marriage, it does not follow that the applicant would be in fear for her safety if she returns to her country of nationality.

[38] As a result, the application for judicial review is dismissed. There is no question for certification.

JUDGMENT

THIS COURT JUDGMENT is that the application for judicial review is dismissed. There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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