



RPD File No. / N° de dossier de la SPR : TB2-09926  
TB2-09949

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXXXXXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	July 30, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	August 3, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	S. Seevaratnam	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Razgar Hasan	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	XXXX XXXX	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

2018 CanLII 143508 (CA IRB)

## REASONS FOR DECISION

[1] The claimants XXXX XXXX, file number TB2-09926, and her minor daughter XXXX XXXX XXXX, file number TB2-09949, claim to be citizens of Australia and are claiming protection pursuant to Section 96 and Section 97 of the *Immigration and Refugee Protection Act*.<sup>1</sup>

[2] The principal claimant, XXXX XXXX was appointed as the designated representative for her minor daughter, XXXX XXXX XXXX.

[3] The panel has carefully considered the *Guideline on Women Refugee Claimants Fearing Gender-Related Persecution* in assessing the merits of this claim.<sup>2</sup>

## ALLEGATIONS

[4] The claimants fear returning to Australia as members of a particular social group - victims of domestic abuse. The principal claimant testified that her ex-husband, XXXX XXXX XXXX, threatened their lives.

## DETERMINATION

[5] The panel finds that the claimants have failed to satisfy that they are Convention refugees pursuant to Section 96 or persons in need of protection pursuant to Section 97 of the *Immigration and Refugee Protection Act*.

## IDENTITY

[6] In Exhibit 1, the claimants have provided copies of their genuine passport issued by the Australia. The panel accepts the claimants to be nationals of Australia.

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<sup>1</sup> *The Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended, sections 96 and 97(1).

<sup>2</sup> Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

## CREDIBILITY

[7] The principal claimant responded to all questions posed by her counsel and the panel directly and clearly. The panel finds the principal claimant to be a credible and trustworthy witness on the issue of domestic abuse.

## WELL-FOUNDED FEAR OF PERSECUTION

[8] The principal claimant testified that she consented to an arranged marriage. She stated that she was sponsored by her husband, XXXX XXXX XXXX, and landed in Australia in XXXX 2007.<sup>3</sup> She further stated that he treated her well for the first year, however, then he began to drink, smoke and gamble and began to threaten her by physically pushing and hitting her. The principal claimant testified that he had an extra-marital relationship with another woman and he filed for a divorce which became effective XXXX XXXX, 2012.<sup>4</sup> The claimant testified that the physical altercations she experienced did not require any medical attention and she never contacted the police due to fear of reprisals. Furthermore, she alleged that she was unfamiliar with the Australian legal system. The claimant further testified that she came to Canada in search of protection where her parents and her siblings are residents. According to the claimant, her daughter does not have a relationship with her father and her ex-husband has not initiated any contact with her and their daughter since their arrival in Canada in XXXX 2012.<sup>5</sup> The claimant testified that both her and her daughter psychologically fear returning to Australia and believe their life will be in danger upon their return.

[9] The panel notes that no medical evidence, police reports, affidavits from family members and friends, or psychological assessments have been provided in support of their claims either from Australia or Canada. These documents are routinely provided in support of refugee claims.

[10] There is a presumption that, except in situations where the state is in complete breakdown, the state is capable of protecting its citizens. To rebut the presumption of state protection, a

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<sup>3</sup> Exhibit 2, Personal Information Form (PIF) TB2-09926, response to q.31, Narrative, received September 10, 2012.

<sup>4</sup> Exhibit 5, Divorce Certificate, received July 3, 2018.

<sup>5</sup> Exhibit 1, Package of information from the referring CBSA/CIC, response to q. 21, received August 17, 2012.

claimant must provide clear and convincing evidence of the state's inability to protect its citizens.<sup>6</sup>

[11] The panel has sought guidance from objective, reliable and reputable resources to assess the legitimacy of a claim based on being victims of domestic and child abuse in Australia.

[12] According to the United States Department of State's (DOS) *Australia 2017 Human Rights Report*, "Australia is a constitutional democracy with a freely elected federal parliamentary government"<sup>7</sup> and that the "[c]ivilian authorities maintained effective control over the security forces."<sup>8</sup>

## Women

[13] The DOS' *Australia Country Reports on Human Rights Practices for 2017*—indicates that:

The law criminalizes rape, including spousal rape, and the government enforced the law effectively. The laws of individual states and territories provide the penalties for rape. Maximum penalties range from 12 years' to life imprisonment, depending on the jurisdiction and aggravating factors.<sup>9</sup>

[14] The report further indicates that:

A 2015 policy initiative to address domestic violence included a \$100 million (\$75 million) for federal and state government programs to provide support for victims, including funding for numerous women's shelters. Police received training in responding to domestic violence. Federal, state, and territorial governments collaborated on the National Plan to Reduce Violence against Women and their Children 2010-22, the first effort to coordinate action at all levels of government to reduce violence against women.<sup>10</sup>

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<sup>6</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

<sup>7</sup> Exhibit 4, National Documentation Package (NDP) for Australia (April 30, 2018), item 2.1, p. 1, Executive Summary, para 1.

<sup>8</sup> *Ibid.*, para 2.

<sup>9</sup> *Ibid.*, p. 12, s.6, para 1.

<sup>10</sup> *Ibid.*, p.12, s.6 – Women, para 3.

## Children

[15] Page 13 of the DOS report states that:<sup>11</sup>

State and territorial child protection agencies investigate and initiate prosecutions of persons for child neglect or abuse. All states and territories have laws or guidelines that require members of certain designated professions to report suspected child abuse or neglect. The federal government's role in the prevention of child abuse includes funding for research, carrying out education campaigns, developing action plans against commercial exploitation of children, and funding community-based parenting programs.

[16] The objective evidence before the panel is clear that effective state protection and community support funded by the Government of Australia is available for victims of domestic and child abuse. The panel has allocated more weight to the documentary evidence from reliable and reputable sources to the *viva voce* evidence of the claimant. The documentary evidence does not have a vested interest in the outcome of this claim. Accordingly, the claimants have failed to rebut the presumption of the availability of state protection for victims of domestic and child abuse. Furthermore, the principal claimant's *viva voce* evidence clearly established that her ex-husband has had no contact with them and has shown no interest in her or her daughter since their arrival in Canada in XXXX 2012. There is no credible evidence to establish that the ex-husband would pursue the claimants if they were to return to their country of nationality today, namely Australia.

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<sup>11</sup> Exhibit 4, NDP for Australia (April 30, 2018), item 2.1, p. 13, s.3 – Children, para 2.

## CONCLUSION

[17] For the above-mentioned reasons, the panel finds XXXX XXXX and her daughter XXXX XXXX XXXX not to be Convention refugees pursuant to Section 96, and they do not qualify as persons in need of protection pursuant to Section 97 of the *Immigration and Refugee Protection Act*.

(signed)

“S. Seevaratnam”

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S. Seevaratnam

August 3, 2018

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Date