



RPD File No. / N° de dossier de la SPR : TB1-20639
TB1-20641 TB1-20638 TB1-20642
TB1-20640 TB1-20643

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXXXXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	March 21, 2018 April 6, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	June 13, 2018	Date de la décision et des motifs
Panel	S. Alidina	Tribunal
Counsel for the Claimant(s)	Laura Mariana Santos	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS FOR DECISION

[1] XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX, his wife, XXXX XXXX, their daughters, XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX, hereinafter the claimant, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and
XXXX XXXX XXXX XXXX, the son of XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, are citizens of Mexico.

The claimants claim refugee protection pursuant to sections 96, 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act (IRPA)*.

[2] In this case, testimony was given by the claimant, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, since the claimants' fear of persecution in Mexico stems from her alleged relationship with her ex-common-law partner. Other claimants and members of the claimant's family, agreed with the claimant's testimony provided at the hearing.

ALLEGATIONS

[3] The claimant alleges that she was in abusive relationship with her ex-common-law partner called XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. Because XXXX abused her sexually and physically as well as issued death threats to her and tried to abduct her son XXXX from her, she fled from Mexico to seek protection in Canada.

[4] Detailed narrative can be found in the claimant's Personal Information Form (PIF).¹

[illegible]

ANALYSIS

[5] The determinative issue in this claim is credibility. In making the assessment in this claim, the panel considered the claimant's oral testimony, her written evidence, the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*,² her counsel's written submissions and all of other documentary evidence provided.

[6] Based on the totality of the evidence adduced, and for the following reasons, the panel finds that the claimant is not a credible witness and as such her fear of persecution at the hands of her alleged ex-common-law XXXX is not objectively well-founded.

[7] In assessing credibility, the panel was mindful of the claimant's age, education and her background. In addition, the panel is cognizant of the many difficulties faced by a claimant in establishing a claim, including cultural factors, the milieu of the hearing room, and the stress inherent in responding to oral questions. The panel has taken these considerations into account before arriving at negative credibility findings.

[8] With regard to credibility, the panel is aware that testimony given under oath is presumed to be true, unless there is a valid reason to doubt its truthfulness.³ The panel is also aware that the real test of the truth of a story of a witness is that it be in harmony with the preponderance of probabilities which a practical and informed person would readily recognise as reasonable in that place and in those conditions.⁴ Furthermore, the panel cannot be satisfied that, "the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so."⁵

[9] The claimant testified that she fears her ex-common-law partner called XXXX XXXX XXXX XXXX XXXX who was the father of her son XXXX, who is also a claimant in this case. She testified that her ex-common-law abused her physically, emotionally and sexually. When asked if she had any photo-identity or other documentary evidence to establish XXXX identity and her residence in Mexico, she indicated she had none.

² *Women Refugee Claimants Fearing Gender-Related Persecution*, Guidelines 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*.

³ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

⁴ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357 per O'Halloran, J.A.

⁵ *Orelien v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm.L.R. (2nd) 1 (F.C.A.), at 11.

[10] She testified that she had provided photographs⁶ of XXXX with her and her son and Facebook information to establish his ex-common-law's identity. The male with her in the photographs⁷ she provided has not been identified by a notary public or a reliable independent source to indicate who in those photographs is. There is no date on the photographs nor a statement where the photographs taken. The hand written commentary is not by a statement from a notary public or an independent reliable source. As a result, the photographs the claimant provided are not conclusive about the identity of XXXX XXXX XXXX XXXX XXXX as alleged.

[11] The Facebook⁸ information she provided also does not conclusively indicate the identity of her alleged ex-common-law since Facebook information is not accurate and hence it cannot be used to establish a person's identity. With the computer technology today the Facebook information can be fabricated and included in the Facebook with reasonable ease by anyone with some knowledge of the computers. As a result, Facebook information does not establish XXXX identity conclusively. There is no other documentary evidence or notarized affidavits or other information from an independent and a reliable source to indicate that XXXX lived in Mexico, was the claimant's ex-common-law partner and the father of the claimant's son.

[12] Although the claimant testified that she lived with XXXX for five months or so, at the hearing she did not provide any documentary evidence such as rental bills, utility bills or any other documentary evidence that stated her name and XXXX's name. There are no photographs at her residence in which XXXX is identified by a notary public or a reliable independent source to substantiate that the claimant lived with XXXX XXXX XXXX XXXX XXXX. Therefore, without documentary evidence and or photographs where XXXX has been identified by a notary public and an independent source, the claimant has not established persuasively that she lived with XXXX in Mexico as alleged.

[13] At the hearing the claimant was asked if she had her son's birth certificate and she indicated she had none. At the hearing she did not provide any documentary evidence to indicate what efforts she made to obtain her son's birth certificate and why she failed. Birth certificate

⁶ Exhibit 1, at pp. 12 – 15; at p. 164, Exhibit 6.

⁷ Ibid.

⁸ Exhibit 4.

from the Mexican authorities would have helped the claimant to establish that XXXX lived in Mexico and was her son's father. When asked if she had hospital documents to indicate who her son's father was, she responded in the negative and she did not provide any documentary evidence to indicate what efforts she made to obtain hospital documents that stated XXXX was her son's father.

[14] In this case the claimant, represented by a counsel, had ample time after filing her refugee claim to obtain her son's birth certificate and/or the hospital documents indicating her son's birth and who his father was. The panel expected to see such documents given the claimant's sister XXXX⁹ lives in Mexico at the present time. At the hearing she did not adduce evidence regarding the efforts she had made to obtain such documents from Mexico and why she failed.

[15] Although the name XXXX appears in the claimant's son's passport,¹⁰ it does not establish conclusively that the claimant's father is XXXX XXXX XXXX XXXX XXXX, given XXXX name does not appear anywhere in that document. Also, there is no notarized documentary evidence from XXXX XXXX XXXX XXXX XXXX authorizing the claimant's son to travel to Canada with her.

[16] The onus is on the claimant, represented by a counsel, to establish her claim. She was instructed in her PIF to provide documentary evidence to establish her claim. Therefore, without documentary evidence from independent and reliable sources the claimant has not established persuasively that XXXX XXXX XXXX XXXX XXXX lived in Mexico, was her common-law partner and the father of her son as alleged. As a result, the panel is not persuaded to believe that XXXX tried to abduct her son as alleged.

[17] The affidavit¹¹ from the claimant's acquaintance is not notarized. The photocopy of the writer's registration identity card is also not notarized nor translated to indicate the validity of the card. There is no evidence that the writer was a resident of Mexico at the time the claimant was. As a result, the panel does not give any probative value to the affidavit because the panel finds that document was fabricated to bolster the claimant's claim.

⁹ Exhibit 1, PIF of the claimant, s.4.

¹⁰ Exhibit 1.

¹¹ Exhibit 1, at pp. 191-195.

[18] Therefore, based on the evidence adduced, the panel is not persuaded to believe that XXXX XXXX XXXX XXXX XXXX lived in Mexico, was the common-law partner and the father of her son as alleged. Moreover, since the Ontario Courts¹² indicate that they were not able to obtain XXXX whereabouts in Mexico, the panel finds that the claimants' fear of persecution at the hands of XXXX XXXX XXXX XXXX XXXX is not objectively well-founded.

[19] Therefore, based on the evidence adduced, the panel is not persuaded to believe that XXXX showed up at the hospital on XXXX XXXX, 2005, and had a fight with the claimant's father as alleged. Also, it is not plausible XXXX would show up at the hospital since, according to the claimant's testimony, XXXX had no interest in the child she was carrying. Furthermore, at the hearing, the claimant did not provide any documentary evidence from the hospital or hospital security stating the alleged altercation between XXXX and the claimant's father.

[20] As a result, based on the evidence adduced and the panel disbelieving that XXXX lived in Mexico, the panel is not persuaded to believe that the claimant's father had any problems with XXXX as alleged. Therefore, based on the evidence adduced, the panel disbelieves that the claimant's father had any altercation with XXXX at the hospital on XXXX XXXX, 2005, as alleged. The panel finds that the claimant has fabricated her story about her father having problems with XXXX to bolster her family's refugee claims.

[21] Furthermore, at the hearing, although the claimant testified that she helped XXXX purchase a tattooing business in Mexico, she did not provide any documentary evidence such as the ownership of the business and/or other documentary evidence, such as bank statements, to establish that she financially helped XXXX purchase a tattooing business. She did not provide any documentary evidence such as her pay slips from the business to indicate that she worked as an administrator at that business.

[22] It is reasonable to expect bank documents from the claimant given she had ample time before the hearing to obtain them. She has a sister¹³ in Mexico who could have helped her obtain such documentary evidence from her bank in Mexico. There is no evidence before the panel to indicate such efforts being made by the claimant and the outcome of such efforts.

¹² Exhibit 7.

¹³ Exhibit 1, claimant's PIF, s. 4.

[23] As a result, based on the evidence adduced, the claimant has not established persuasively that she had helped XXXX purchase a tattooing business as alleged. As a result, the panel disbelieves that the claimant had helped XXXX to purchase a tattooing business in Mexico as alleged. Since the panel disbelieves that XXXX lived in Mexico, the panel finds that the claimant has fabricated her story about XXXX owning a tattooing business she had helped to purchase.

[24] Therefore, based on the totality of the evidence adduced, the panel finds the claimant not to be a credible witness, and since her fear of persecution at the hands of XXXX is not objectively well-founded, there is not a serious possibility that the claimant will be persecuted at the hands of XXXX and those she fears should she return to Mexico.

[25] The panel's credibility findings also apply to the claimant's assertion that she faces a risk to her life or of being subjected to cruel and unusual treatment or punishment in Mexico. Since the claimant is not a credible witness, the panel finds that the claimant does not face a risk to her life or to being subjected to cruel and unusual treatment or punishment or to a danger of being tortured should she return to Mexico.

[26] Also, the panel has reviewed all of the documentation entered as Exhibits in this case. Based on the documentary evidence, there is no persuasive evidence to indicate that the claimants will be subjected to any other risk, other than the risk of general violence which all citizens in Mexico are subjected to.

CONCLUSION

[27] As a result, the Refugee Protection Division determines that the claimant, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX is not a Convention refugee nor is she a person in need of protection in Canada, and hence the Refugee Protection Division rejects her claim for refugee protection in Canada.

2018 CanLII 142076 (CA IRB)

“S. Alidina”

June 13, 2018

Date _____