



RPD File No. / N° de dossier de la SPR : TB2-05595

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	June 7, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	June 20, 2018	Date de la décision et des motifs
Panel	R. Rossi	Tribunal
Counsel for the Claimant(s)	Ohene K Andoh I.C.C.R.C.	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)		Représentant(e)(s) désigné(e)(s)
Counsel for the Minister		Conseil du (de la) ministre

2018 CanLII 142075 (CA IRB)

REASONS FOR DECISION

[1] This is the decision in the claim of **XXXX XXXX XXXX** (the claimant) – a national of Swaziland who claims refugee protection pursuant to section 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (the *Act*) because of domestic abuse by her husband.

DETERMINATION

[2] The panel finds that the claimant is not a Convention refugee as she does not have a well-founded fear of persecution for a Convention ground in Swaziland. Further, the panel finds that she is not a person in need of protection as her removal to said country would not subject them personally to a risk to life, to a risk of cruel and unusual treatment or punishment.

IDENTITY

[3] The panel finds the claimant has established her identity as a national of Swaziland based on a photocopy of her passport as contained in Exhibit 1.²

ALLEGATIONS

[4] As there is potentially a gender component to this claim of domestic abuse, the panel considered carefully the contents of the *Chairperson's Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution*,³ both during the hearing and while rendering its decision.

[5] The claimant has set out the basis of her claim in the narrative portion of her Personal Information Form (PIF)⁴ as well as in an Updated Narrative.⁵ The claimant is a 42-year-old woman who is married to **XXXX XXXX**. She has two teenaged sons who live in Swaziland:

¹ *The Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended.

² Exhibit 1, Package of information from the referring CBSA/CIC.

³ 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*.

⁴ Exhibit 2, Personal Information Form (PIF).

⁵ Exhibit 4, Claimants' Docs.

XXXX, born in 2000 and XXXX, born in 2003. The claimant's sons, aged 17 and 15, moved out of their father's home in 2017 and went to live with the claimant's sister.

[6] The claimant married XXXX in XXXX 1999, but the claimant's father did not approve of the marriage. Her family shunned her because she had run away to marry the man. At some point in 2008, the claimant discovered that her husband was abusing alcohol and he had girlfriends. He began to call the claimant names and insult her. She complained to XXXX family, but his family blamed the claimant for his behavior.

[7] In 2010, XXXX was XXXX as XXXX XXXX and diagnosed with having XXXX. The claimant said he was placed on various medications, which made him aggressive and confused, but she continued to nurse him. He recovered in 2011, and during this time he beat the claimant and forced her to have unprotected sex with him. He would also bring other women to their home. The claimant left the house in response, but her husband found her two days later and threatened her further.

[8] The claimant reported the man's behavior to the police, who told the claimant to take it up with the elders as they do not get involved in family matters. The claimant's female friend XXXX XXXX arranged for the claimant to leave Swaziland, which the claimant did on XXXX XXXX, 2012. After spending a few years in Ontario, the claimant moved to Alberta where she currently resides.

CREDIBILITY

[9] The determinative issue in this claim is credibility. The sworn testimony of a claimant is presumed to be true unless internally inconsistent, inherently impossible, or contradicted by the objective documentary evidence.⁶ The panel doubts the credibility of this claimant on material aspects of her refugee claim; and in respect of documents filed late. As a result, the panel does not find her to be a credible witness. Her overall lack of credibility became determinative of her claim, such that the central issue for the panel in this case, was the claimant's lack of credibility.

⁶ *Maldonado, Pedro Enrique Juarez v. M.C.I. (F.C.A., no. A-450-79)*, Heald, Ryan, MacKay, November 19, 1979. Reported: *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.)

[10] Claimants appearing before the Board must establish that they have a subjective fear of persecution and also that the fear is well-founded. Claimants must establish the factual elements of their case on a balance of probabilities, but they do not have to prove that persecution would be more likely than not. The evidence must show only that there are "good grounds" for fearing persecution. The test, which has become known as the *Adjei*⁷ test, is set out as: "Is there a reasonable chance that persecution would take place were the applicant returned to his country of origin?" Set against the assessment of credibility, the panel has identified significant issues with material aspects of the claimant's story. Considered cumulatively, these issues undermine the claimant's overall credibility, which became the determinative issue of this claim. The panel recounts these concerns below.

Late Disclosure of Documents

[11] The claimant's late filing of her identity and supporting documents and the claimant's failure to provide a reasonable explanation for this resulted in the panel placing very little weight on any of the materials in Exhibits 4⁸ and 5.⁹ Six days before this hearing, on June 1, 2018, the claimant's counsel sent a package of information to the Board entitled 'Counsel's Exhibit.'¹⁰ In it, the claimant provided an addition to her PIF, stating that XXXX went to her mother's home on XXXX XXXX, 2018, looking for the claimant and threatening to set fire to the claimant's parents' home. The claimant's mother called the police and had the man removed from the premises. XXXX has allegedly been updating the claimant with news about her husband's 'continuous threats'. The claimant's helper in Swaziland has also been updating the claimant and stating that XXXX has been abusing her sons. In 2013, XXXX broke her son XXXX XXXX. The man struck the back of XXXX head as well. The claimant said she has received unknown calls from Swaziland and South Africa while here in Canada. When she uploaded an application to her cellphone, XXXX called the claimant. The claimant claims her children ran away from XXXX in XXXX 2017.

⁷ *Adjei, Joseph v. M.E.I.* (F.C.A., no. A-676-88), Mahoney, Stone, MacGuigan, January 27, 1989. **Reported:** *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680; (1989), 7 Imm. L.R. (2d) 169 (C.A.), at 682.

⁸ Exhibit 4, Claimants' Docs.

⁹ Exhibit 5, Late Disclosure of Medical Report.

¹⁰ Exhibit 4, Claimants' Docs, received June 1, 2018.

[12] In addition to this update to her narrative, the Counsel's Exhibit comprises other identity and corroborating documents as well as medical information, affidavits and general information articles, totalling 18 items.¹¹ Then, two days before the hearing, on June 5, 2018, the claimant's counsel sent the Board a psychologist report¹² for the claimant, which was written following a XXXX XXXX, 2018 psychological assessment with a resulting report dated XXXX XXXX, 2018.

[13] The Board accepted the late disclosure because it could not comfortably discount items that relate to the material aspects of this claim for protection. This issue of late disclosure, however, is important because the materials were provided to the Board mere days before the hearing. The late filing of these materials complies with neither the Board's Rules on Late Disclosure let alone the Board's Practice Notice for the disclosure of materials for refugee hearings.

[14] The claimant's excuse for the late filing of documents was in part because she had been unhappy with her previous counsel's and she decided to retain her current counsel in the spring of 2017. She alleged that they had kept her documents, and these were returned to her at a later date. Yes, the panel notes that the claimant hired her current counsel as long ago as April 2017. It is entirely reasonable to expect that her materials would have been submitted long before her hearing and not two and 6 days beforehand. Her current counsel submitted that distance is a factor and a challenge given that his client lives in Alberta. However, the Board notes that the claimant met with her counsel in April 2017, and they have communicated by telephone and by email since that time. The claimant's counsel advised the claimant to obtain a psychological report, but the claimant said she found it difficult to do so in Alberta. There was no explanation provided for the difficulty in obtaining such a report in that province. With assistance from her counsel, the claimant arranged for an assessment to be held in Toronto on May 30, 2018, seven days before her hearing.

[15] The claimant's counsel consulted with the claimant and he asked her whether she remembered when he had sent her a list of items that she should gather for her hearing. She responded that it was in 2017, yet the claimant offered no explanation as to why she would wait

¹¹ Exhibit 4, Claimants' Docs.

¹² Exhibit 5, Late Disclosure of Medical Report.

until six days before her hearing to file her documents. The panel finds there was more than sufficient time for her to obtain her identity documents and to submit these to the Board in accordance with its Rules.

[16] Most relevant to the panel's decision to assign little weight to the materials, is the claimant's explanation that she has had many of the identity items in Exhibit 4 in her possession for the past six years (items 5-10 for example), having contacted her house maid, or 'helper' in Swaziland sometime in 2012 to gather and send these items to the claimant.¹³ These identity documents, photos, and a set of medical records that attest to her husband's XXXX status and monitoring: should have been provided to the Board well before the June 7, 2018 hearing date. The claimant said she thought she could wait and bring everything to the hearing on the day of the hearing, which makes no sense given the counsel's advance filing of the materials. The claimant has had more than enough time to submit her materials, yet she failed to do so in accordance with the proper RPD Rules.

[17] The panel observed that the claimant is well-spoken in English, and the services of a Swazi interpreter for this hearing were unnecessary. The claimant presented to the panel as a smart and confident person who provided answers to all questions put to her by both the panel and her counsel. The panel finds the claimant to be aware of the hearing process and the requirement to comply with the Board's processes. The claimant not only advised Legal Aid of her dissatisfaction with previous counsels; she made arrangements to hire the current counsel, who the panel finds has presented materials to the best of his ability. The panel finds her to be fully aware of the Board's processes, particularly as she has been assisted by various counsels, and the panel draws a negative inference from her feigned ignorance of the process.

[18] Thus, her explanation that she thought she could wait until the day of the hearing to bring items, is not believed by the panel for the reasons stated. Having considered the totality of evidence and submissions and explanations proffered to the panel, the panel finds that the burden of explaining why materials were filed so late in this case rests not with the counsel, but with the claimant. She has failed to persuade the panel to accept late-filed items when she has been in Canada for more than six years, and the panel draws a negative inference from the late filing.

¹³ Exhibit 4, Claimants' Docs.

[19] As for the filing of a psychologist report,¹⁴ only two days before her hearing, the panel does not find persuasive the claimant's explanation for not obtaining a report of this kind well in advance of her hearing. Given the length of time she had been engaged in communications with her counsel – more than one year and after alleging that she had attended a handful of counselling sessions in 2016 and 2017, the panel does not believe that this issue of requiring a psychological assessment would only have been raised or known to the claimant a few weeks before her hearing. Moreover, as indicated, at some point in mid or late-April 2018, the claimant had already contacted XXXX XXXX XXXX¹⁵ to obtain a single-statement letter attesting to having attended three counselling services of an unspecified nature. It is evident to the panel that she knew some sort of information attesting to the impact of the alleged abuse would be necessary, and that such information was required well before the hearing. In fact, her counsel had impressed upon her the urgency of obtaining a report far sooner than her plan to simply bring one along to the hearing. The panel notes further that the report itself merely outlines the claimant's story based on what the claimant has told the author of the report. Most significantly, given the panel's considerable concerns with the claimant's lack of credibility – identified in her provision of less-than-truthful testimony and problematic documents as analyzed below, the panel assigns no weight to the late filing of this report.

Problematic documents

[20] The panel is unable to ascertain with any certainty, let alone probability, the provenance of any of the late-disclosed materials related to identity, medical records, and affidavits. Many are problematic items for the reasons identified below, and the panel finds none of these have probative value, let alone corroborate the claimant's story. Further, they raise substantial credibility concerns for the panel as follows.

Affidavits

[21] For example, the claimant presented affidavits¹⁶ from various people attesting to the claimant's life with her abusive husband, and how the man is not only still looking for her, but he

¹⁴ Exhibit 5, Late Disclosure of Medical Report.

¹⁵ Exhibit 4, Claimants' Docs, Item 16, page 30.

¹⁶ Exhibit 4, Claimants' Docs, Items 11-15.

is going to various of these people's homes and/or call to threaten them as well. There is no objective evidence before the panel to either corroborate or substantiate any of these statements.

[22] The most problematic of these materials is the document purporting to be an affidavit¹⁷ from XXXX XXXX, allegedly the claimant's friend. This person's affidavit contains details of beatings suffered by the claimant, observations of scars and bruises on the claimant's body, and accounts of reporting of incidents that do not even appear in the claimant's narrative. Further, the affidavit alleges an incident where the claimant reported to the police, and the 'district commissioner...warned him to stop the abuse.' There is no record of this incident in the claimant's PIF or her narrative.¹⁸

[23] The panel notes that this affidavit, sent to the claimant just three weeks before the hearing, contains more information than the claimant's own narrative. The claimant offered no explanation for all of the information contained in this affidavit; nor did she speak to, or address, any of the items that the affiant wrote. It is incumbent for the claimant to communicate clearly all of the incidents that compelled her to seek Canada's protection as well as to detail what efforts if any were made to access state protection. This friend's affidavit is more comprehensive with regard to alleged abuse than even the claimant makes. Yet, the claimant filed no amendments to her narrative to reflect this affiant's statements. The panel not only finds this affidavit to be self-serving, it has been secured just three weeks before the hearing and filed late. The panel already determined that little weight would be accorded to items filed mere days before a hearing, into the claim of a person who has been in Canada for more than six years, and who has enjoyed legal representation throughout her stay. The panel finds this item to have been written in an effort to bolster the claimant's story and her claim for protection. The panel draws a negative inference from this problematic item.

[24] In reviewing these affidavits, all of which were obtained only a few weeks before the hearing, the panel notes the following details:

- The affidavit of XXXX XXXX was sworn to on XXXX XXXX, 2018 bearing a stamp of the Royal Swaziland Police, XXXX Police Station. Yet, this affiant's Swazi national

¹⁷ Ibid, Item 11, pp. 20-22.

¹⁸ Exhibit 2, Personal Information Form (PIF).

identity card, which accompanies the affidavit, bears a stamp of certification by the “National Commissioner of Police & Oaths” from XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and is dated XXXX XXXX, 2018, nearly a month before the affidavit was sworn.

- Like the affidavit of XXXX XXXX, the affidavit of XXXX XXXX, the claimant’s mother, was also sworn to on XXXX XXXX, 2018 bearing the same police stamp. And, like the XXXX affidavit, this affiant’s Swazi national identity card has also been certified as a true copy by the “National Commissioner of Police & Oaths” in a stamp from another city – XXXX – and dated XXXX XXXX, 2018, nearly a month before the affidavit was sworn.
- The affidavit of XXXX XXXX XXXX, the claimant’s brother-in-law, was sworn out on XXXX XXXX, 2018 at the XXXX police station. This affiant’s Swazi national identity card shows as having been certified by the “National Commissioner of Police & Oaths” in a stamp from XXXX dated two weeks later on XXXX XXXX, 2018.
- The affidavit of XXXX XXXX, the claimant’s maid or ‘helper’, was sworn out on XXXX XXXX, 2018 bearing an attorney’s stamp in XXXX. This affiant’s Swazi national identity card has been certified as a true copy by the “National Commissioner of Police & Oaths” at the XXXX police station dated XXXX XXXX, 2018, nearly two weeks before the affidavit was sworn.

[25] Even if the panel had been persuaded to accept these materials as corroborating evidence of the claimant’s story, which it does not, it makes no sense that three women residing in three different areas of the region would have had their national identity cards certified weeks before they even swore affidavits, with two of these sworn out in another city. The maid’s national identity card was also certified nearly two weeks before she even filed an affidavit. It makes no sense for the women to have gone to have their national identity cards certified for this exercise, particularly where the claimant testified that she had only contacted them in May to ask them to send these statements. In fact, it is implausible that the affiants would do this, given they had not yet been contacted by this claimant. As for the brother-in-law’s affidavit, his documents reverse this trend, presenting an affidavit before having the identity card certified two weeks later. None

of these items is assigned any weight by the panel. At best, these items constitute self-serving details to buoy this claim for protection from a claimant whom the panel finds not to be credible in respect of a material aspect of her claim; that is, that she is a victim of domestic abuse.

[26] The panel finds the claimant to be untruthful regarding how she obtained the other personal and identity documents. She told the panel that her ‘helper’ continued to work for the husband and to take care of the two boys even after she left Swaziland. She said the woman came to the house less often after the claimant left for Canada, but she still came to the house, usually when the claimant’s husband had left for work. In reviewing the maid’s affidavit, however, this woman attests to fearing the man’s behavior and specifically that he might also rape her. However, despite the fear, she continued to keep working at the house for another year, only leaving the house in 2013, and without incident. The panel finds this evidence to be both implausible and not credible. The panel does not believe that the maid would continue to work for the husband despite the claimant’s lengthy absence if she truly feared the man. Further, it makes no sense that years after leaving, the man would still be chasing after the former maid to find out where his wife is, or where his children are. The panel does not believe the contents of this affidavit given that it does not find this or any of the affidavits to be verifiable or genuine documents attesting to real events.

[27] In fact, the claimant’s oral testimony undermines further the veracity of these affidavits. She testified that her husband had known since 2014 that she was living in Canada. Further, when the claimant uploaded a cellphone app in 2016, her husband was able to contact her in Canada directly. Assuming that the claimant is affirming to tell the truth on this point, then the affiant’s statements are mendacious in alleging that the man is threatening these people in XXXX 2018 and demanding that they reveal the claimant’s whereabouts.

The husband’s medical records

[28] The claimant told the panel that her maid, or helper, sent her all of the identity documents, including the husband’s medical records, because she had access to all of these materials since she still works in the family home. The panel does not find credible that the claimant’s helper, would steal all of these important original identity and medical documents from the family home, and from the man who lives there, and surreptitiously mail them out of the country. Most implausible

to the panel, is the claimant's story that the maid simply took all of the husband's XXXX prescription records and XXXX monitoring records from her employer and mailed them to the claimant to buoy the latter's claim for protection. At a minimum, the panel finds these records to be vitally important documents to establish the husband's XXXX infection and that he suffers from XXXX and that may be required to assist in his medical treatment and records. The moment these materials would be discovered missing by him would almost certainly create an issue for the affiant, yet her affidavit contained no such allegation or statement. There were in fact no recorded repercussions for the helper, limited instead to an allegation that the claimant's husband continued to ask the helper where his wife was living, which the panel does not believe.

[29] The panel also does not believe the claimant's story about how her husband's records were obtained. In fact, given the lack of credibility on this material aspect of her claim, the panel finds only one element of this fabricated claim to be plausible: that the claimant's husband was XXXX positive and that he suffered from XXXX. His condition clearly distressed the claimant, but she admitted to nursing the man for a long time during part of his illness, but she eventually left him. By extension, considering all of this evidence, the panel finds it more plausible that the claimant left her husband – not because he abused her – but because he was XXXX positive, possibly, or perhaps as a result of his infidelity, and/or having unprotected sex as the claimant referenced. It is more plausible to the panel that the claimant feared for her and her sons' exposure to her husband's diseases, which her counsel credibly submitted to the panel was the reason she fled Swaziland. As he asked aloud in his submissions: 'What kind of woman would want to be in that kind of sexual relationship – with someone who has XXXX and XXXX?' In the particular circumstances of this claim, the panel finds that the claimant's fear of exposure to her spouse's diseases might have caused her to leave the relationship, but this fear cannot serve as the basis for a claim for international protection.

Son's medical certificate

[30] The medical certificate¹⁹ for the claimant's son XXXX is assigned no weight by the panel as evidence of the husband's alleged abuse. This item is dated XXXX XXXX, 2013 and states that the claimant's son suffered a broken XXXX. The claimant said her sister sent the document to the claimant. The item is suspicious for a number of reasons: first, there is barely any information in this two-page item beyond listing a hospital in XXXX and a phrase - 'broken arm (fractured radius bones).' Second, there is a stamp bearing a physician's name 'Dr. XXXX XXXX XXXX XXXX XXXX' but the signature is entirely different from the stamp, bearing a capitalized letter 'R' and letters that in no way correspond to the name. Third, there is nothing in this paper to link the husband to the son's broken arm. It is therefore, insufficient evidence to establish the claimant's story that her husband abused their son.

[31] Fourth, and most significant, the paper provides two places for the physician to indicate either 'he/she' in referencing the patient. The patient in this case is alleged to be XXXX, the claimant's oldest son – a male. However, the paper has crossed out 'he' in two places and instead it clearly references a female. Yet, the claimant has no daughters and no daughters are listed in her PIF. This questionable information was put to the claimant. She explained that she gave her son a girl's name in Swati, so the doctor must have thought he was writing out a medical certificate for a girl. The panel then put to the claimant that if this is true, it did not believe that a physician would issue a medical certificate regarding a patient's condition or history without seeing the patient, and most important, making a fundamental mistake like issuing a paper for a male but indicating 'she' in two places.

[32] Simply stated, if the paper is to be believed, the physician could not have seen the patient for whom he was issuing this certificate. The doctor would have to have believed, following the claimant's testimony that her son's name is a girls' name in Swati, he was dealing with a girl. The claimant's counsel submitted that this was a mix-up on the doctor's part, and that it was merely an 'extract' from a larger record. There is no evidence to substantiate this latter submission. Further, setting aside the other problematic elements of this item as identified in the paragraph above, and focusing solely on this issue of using 'she' to describe the son, the panel is not persuaded that a physician would make such errors, let alone provide a signature to a paper attesting to a diagnosis without seeing the patient. Had a doctor actually seen the claimant's son, the record would

¹⁹ Exhibit 4, Claimants' Docs, Item 17, pp. 32-33.

indicate that it was a male patient. Taken together, the panel finds the item to be an amateurish attempt to fabricate evidence to bolster this claim for protection. More importantly, this wilful proffering of suspicious documents, as outlined in these reasons, entirely undermines the claimant's credibility in this case. The panel does not believe this claimant's testimony and evidence, and the panel does not believe that she is a victim of abuse.

CONCLUSION

[33] The claimant has crafted a claim for protection based on her alleged domestic abuse. While the counsel submitted that his client was a forthright witness who offered no inconsistencies in her testimony. In this regard, the panel cannot assign weight to this submission or testimony. For the reasons stated, the panel finds the opposite to be true. The claimant is not a credible witness in respect of her allegations. The panel assigns no weight to her materials as presented.

[34] Finally, the claimant's counsel respectfully requested that the panel provide some time for the claimant to attempt to get a document translated in Swaziland – a Facebook page that speak to her husband having impregnated an underage girl. However, the claimant's counsel acknowledged that they would likely not get a translation back from Swaziland in time before the panel rendered its decision. The panel stated that the item might be received by the Board and considered during the panel's deliberation in preparing its findings, but no formal post-hearing submissions were permitted. Moreover, having completed its assessment of the totality of the evidence and having drafted its reasons, no such material was forthcoming within the panel's deliberations and work. Accordingly, the panel issued its reasons based solely on the evidence and testimony before it.

[35] For the foregoing reasons related to implausibility and credibility, the panel finds this claimant to have fabricated this claim for protection. The panel finds that the claimant is not a Convention refugee under section 96 of the Immigration and Refugee Protection Act or a person

in need of protection under the meaning of sections 97(1)(a) or (b) of the Immigration and Refugee Protection Act. The panel rejects her claim.

(signed)

“R. Rossi”

R. Rossi

June 20, 2018

Date