



RPD File No. / N° de dossier de la SPR : TB1-02775

Private Proceeding / Huis clos

De Novo

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	February 2, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	March 8, 2018	Date de la décision et des motifs
Panel	D. Forsey	Tribunal
Counsel for the Claimant(s)	Annie O'Dell	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2018 CanLII 132418 (CA IRB)

REASONS FOR DECISION

[1] XXXX XXXX, a 30 year old citizen of Namibia, claims refugee protection pursuant to Sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).

[2] The claimant's identity as a Namibian national is established by her testimony and by her personal identity documents filed. These documents include her Namibian passport and National Identity Card¹.

[3] This is a De Novo hearing resulting from a decision of the Board dated November 05, 2012. This decision was quashed by the Federal Court, The Honourable Madam Justice McVeigh, on January 28, 2014 and remitted back to the Board for reconsideration.

[4] The details of the claim are provided in the claimant's Personal Information Form (PIF)². In summary, the claimant alleges she fears persecution at the hands of her step-father, whose name is XXXX XXXX. The claimant alleges that she left Namibia due to the sexual, physical and psychological abuse she suffered at Mr. XXXX hands; a sexual abuse that started when she was 16 years old with fondling and touching and which lead to a rape when she was 19 years old. The claimant alleges that her mother was aware of, and indeed sanctioned, the continued sexual and physical abuse. Further, the claimant alleges that the abuse escalated when her step-father arranged for her to have sex with his brother in December, 2010. Following this incident the claimant fled to her brother's home in XXXX where she took refuge until February 2011. Her brother later arranged her passport and travel to Canada. The claimant left her small child from a former boyfriend in the care of her sister in Namibia before making her journey to Canada. The claimant left Namibia on XXXX XXXX, 2011, arrived in Canada the same day and proceeded to make her claim for protection upon her entry into Canada. The claimant has since given birth to a child in Canada.

[5] 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 Namibia. Nor is she a person in need of protection as, on a balance of probabilities, she does not face a risk to life or a risk of cruel and

¹ Exhibits M1 & C6.

² Exhibit C2 & C4 (amended PIF dated Juan 23, 2018.)

unusual treatment or punishment should she return to Namibia. There are no substantial grounds to believe that her removal to Namibia would subject her personally to a danger of torture.

[6] The panel has taken into consideration the Chairperson's Gender Guidelines³ in this matter. All relevant factors were examined and guided in respect to the Chairperson's Gender Guidelines in coming to its decision, such as the social and cultural context in which the claimant found herself, along with the issues of state protection, changing country conditions and Internal Flight Alternative (IFA).

[7] The determinative issue in this claim is credibility, state protection and Internal Flight Alternative (IFA).

[8] The claimant testified in a straightforward manner and there were no significant inconsistencies between her viva voce evidence, her PIF and Amended PIF that were not explained to the satisfaction of the panel with respect to the prior incidents of abuse. Therefore, the panel finds that the claimant is a credible witness with respect to the incidents that occurred in Namibia prior to and including 2010.

[9] The panel has pursued the Country conditions documentation on file⁴ together with the written submissions from counsel⁵; and all of the other evidence and makes the following findings:

A state, unless in complete breakdown, is presumed to be capable of protecting its citizens; international protection comes into play only when a refugee claimant cannot obtain protection domestically. A claimant is required to approach the state for protection if protection might reasonably be forthcoming or alternatively, if it is objectively reasonable for the claimant to have sought protection⁶.

³ Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

⁴⁴ Exhibit R3 & C 5

⁵ Submissions from Counsel dated February 13, 2018

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

As a result, a claimant who alleges that state protection is inadequate must persuade the Board, on a balance of probabilities, that the evidence establishes this inadequacy⁷, and that such evidence must be clear and convincing. The claimant's burden of proof is directly proportional to the level of democracy in the state in question. The more democratic the state's institutions, the more the claimant must have done to exhaust all available courses of action. A claimant from a democratic country will have a heavy burden when attempting to show that they should not have been required to exhaust all recourses available domestically before claiming refugee status.

[10] The documentary evidence provides the following relevant information with respect to the country and its democratic institutions:

- Namibia is a multiparty democracy with a population of just under 3 million persons.
- International observers characterized the recent 2014/15 elections as generally free & fair.
- Freedom House, a United States (US) based non-government organization (NGO) which conducts research and advocacy on democracy, political freedoms and human rights, granted Namibia "Free" state status in its 2012 Freedom of the World Report.
- Individuals generally could criticize the government publicly or privately without reprisals.
- There were no reports that the government, or its agents, committed or were responsible for arbitrary or unlawful killings.
- There were no reports of politically motivated disappearances.
- With respect to the Namibian Police Force and their role (NAMPOL); there are 16,500 uniformed officers which operate under the Ministry of Safety and Security. The Namibian Defense Force, with an estimated 17,500 active duty members, is part of the Ministry of Defense.

⁷ Flores Carrillo v. Canada (Minister of Citizenship and Immigration, [2008] 1 F.C.R.3 (F.C.); Flores Carrillo, Maria Del Rosario v. M.C.I. (F.C.A., no.A-225-07), Letourneau, Nadon, Sharlow, March 12, 2008, 20078FCA 94.

- Police corruption and impunity were problems in some cases. NAMPOL lacked resources, training, and personnel to effectively deter or investigate street crime. Police continue to receive human rights training from various sources. Nampo continued to operate a Women's Network to advocate for equality of, and equity for female police officers.
- There is an autonomous ombudsman, with whom the government cooperated; he was considered effective in addressing some of the corruption and human rights problems.

Taken as a whole, the objective evidence reveals that, while problems exist, Namibia is a fully functioning democratic state and there has been no breakdown of the state or its judicial authority.

[11] On the question of state protection, a claimant's burden of proof is directly proportional to the level of democracy that exists in the state in question. In the present case, the panel finds that the level of democracy in Namibia is sufficiently high so as to require the claimant to demonstrate that she has made meaningful efforts to utilize the available avenues of state protection and that those avenues were not, or would not, be forthcoming.

[12] In the case of current legislation, the government of Namibia has passed legislation to tackle the issue of sexual violence and domestic abuse, namely the Combating of Rape Act, 2000(CRA) and the Combating of Domestic Violence Act, 2003 (CDVA). It is noteworthy that some documentation refers to laws being applied, but that problems remain in their implementation.

[13] The CDVA came into force on November 17, 2003. This Act defines domestic violence as "engaging in: physical abuse, sexual abuse, and economic abuse, and intimidation, harassment, entering the residence or property of a complainant, emotional, verbal or psychological abuse." The Act applies to heterosexual couples as well as family members in domestic situations. The CDVA provides for protection orders and sets out the application process. There is no cost to apply for a protection order. Orders can be tailored to the situation in question and may include terms such as the following:

- Measures banning possession of weapons.
- Prohibitions regarding contact between the abuser and the victim.

- The providing of alternative accommodations, including paying the rent for alternative accommodations.
- Measures regarding the division and protection of property.
- Temporary maintenance orders.
- Measures regarding child custody and access to any involved children.

[14] While protection orders are available under Namibian Law, the panel notes that some sources reported that they were not effective due to the administrative obstacles and inconsistencies and sometimes lengthy wait times when attempting to obtain them.

[15] However; the panel notes that the claimant is presently twenty-nine years of age. She has testified that she had completed her secondary schooling education to Grade 10 at a private boarding school in Namibia. The panel observed first hand at the hearing and is satisfied that she is an articulate woman and has the requisite ability to access the justice system in Namibia and engage the protection measures provided by Namibian law for women in abusive domestic relationships. It is noteworthy that the claimant testified that she is currently studying Grade 12 in Canada; although not completed at this point in time. The panel further notes that English is one of the official languages of Namibia.

[16] The panel is aware that when carrying out a state protection analysis it is not sufficient to rely solely on enacted legislation without considering whether the actual intent of the legislation is being implemented.

[17] However; the objective evidence reveals that the government's legislation and efforts to address the problem of violence against women are being implemented, albeit not perfectly.

[18] As noted: The US Department of State 2017 Country Reports on Human Rights Practices pertaining to Namibia notes that numerous cases of rape were prosecuted during the year, and the government generally enforced rape penalties, which provided for sentences of between 5 and 45 years' imprisonment for convicted rapists.

[19] Further evidence indicates that the Namibian police intervened in domestic violence cases when reported.

[20] There are several government-run women's shelters in operation across the country offering assistance for victims of domestic violence, however; that is not the review for state protection. The panel is aware that state protection must be provided by the state actors not NGO's or other groups in place to assist women victims.

[21] The panel notes that violence and discrimination against women are serious human rights problems in Namibia. While the situation remains imperfect, the documentary evidence reveals that Namibia is a free and democratic country which in recent years has taken steps to improve the plight of abused women.

[22] The claimant testified that she never sought the assistance of the police. When asked if she thought she could obtain adequate state protection in Namibia if she was ever approached or threatened, the claimant testified that she did not think so as they would still do nothing.

[23] However; the adequacy of state protection cannot rest on the subjective fear of the claimant, a claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.

[24] Given the documentary evidence, the panel is satisfied that the level of state protection available to the claimant is adequate in her particular set of circumstances. It suggests that the state is making reasonable efforts to protect women from domestic violence and is effective in implementing its laws. State protection need not be perfect, as no state can guarantee perfect protection. The claimant has an obligation to make reasonable inquiries about the possibility of state protection and to avail herself of the state protection mechanisms that are available.

[25] The panel is of the view that the claimant's failure to take steps to seek protection is objectively unreasonable under the circumstances that she found herself in that time and place.

[26] Further, the panel is convinced that the claimant has the skills and ability to approach the police and/or to avail herself of other resources that could assist her in efforts to seek state protection should she require protection if she were to return there.

[27] The claimant has not rebutted the presumption of state protection. She has not provided clear and convincing evidence that state protection for her in Namibia from her alleged abuser is inadequate.

[28] As a result, and given the findings and the availability of adequate state protection in Namibia, the panel determines that the claimant is not a Convention refugee as state protection is reasonably available to her.

[29] Further, the panel finds that there is a viable Internal Flight Alternative in Walvis Bay, as this issue was presented to the claimant at the beginning of the hearing.

[30] The question of whether an Internal Flight Alternative (IFA) exists is an integral part of the Convention refugee definition. The test to be applied in determining whether there is an IFA is two-pronged and both prongs must be satisfied for a finding that a claimant has an IFA:

- The board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- Conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all circumstances, including those particular to the claimant, for them to seek refuge there.

[31] The claimant bears the burden of proof to show that they face a serious possibility, or a reasonable chance of persecution in the entire country, and specifically in the potential IFA areas named.

[32] The panel is sensitive to the situation of women in assessing whether it is reasonable for a claimant to relocate. The Federal Court of Canada⁸ stated that decision-makers must consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue hardship, and decision-makers must take into account religious, economic and cultural factors.

⁸ Syvryn, Ganna v. M.C.I. (F>C., no.IMM-159-09), Snider, October 13,2009,2009 FC 1027.

[33] Further, the claimant submitted a Psychodiagnostic Evaluation Report⁹ by XXXX XXXX, Psy. D., C. Psyc. XXXX XXXX XXXX XXXX Service that shows the results of the doctor's interview with the claimant. The claimant's evidence is consistent with her narrative and oral testimony in that she purports to have been abused, yet taken as a whole, there is nothing in the report from Dr. XXXX to show that the claimant was abused. The panel assigns no weight to this document as the persuasive evidence of this claimant's allegations of domestic abuse. The panel further notes that while the doctor interviewed the claimant, the doctor's report does not satisfactorily or persuasively establish that the claimant's experiences are the result of what she is alleging in respect to her refugee claim. Further, the doctor's clinical assessment, based on her professional opinion, is that the claimant suffers from symptoms of some post-traumatic stress disorder and depression. This is not persuasive evidence that the doctor is in any position to state categorically that the claimant before her is a victim of domestic abuse. The panel did not find that the claimant's condition/mood in any way impacted her ability to give testimony or recall details of her alleged abuse. In any case, the panel did not require details of the abuse from the claimant as those details were in her sworn PIF.

[34] The panel finds that, on a balance of probabilities, there is no serious possibility that the claimant would be persecuted in Namibia if she were to relocate in Walvis Bay. My reasons are as follows:

[35] The claimant testified that she fears her abuser, Mr. XXXX XXXX, as he would find her wherever she is living in Namibia. She fears that he would continue the sexual abuse, or harm her for disclosing the abuse and tainting his reputation. She further stated that she has had no contact with her mother or Mr. XXXX in the passing years since coming to Canada. There is no evidence that the Mother and/or Mr. XXXX has continued to pursue, contact, or make inquiries of the claimant in any way. Further, the panel notes that although her brother may not be able to accommodate her in a living arrangement, he has thus far been her only resource person who assisted her in the past and there is no evidence that he would not assist her in the future should she require assistance with obtaining protection should she require it. The panel notes the obvious fact that neither her mother nor Mr. XXXX would need to be advised by the claimant about her return to the country; and thus, would have no knowledge of her whereabouts in Walvis Bay. The

⁹ Exhibit C7

claimant does not have a high profile in Namibia as she has been absent from the country for almost 8 years. The claimant provided no persuasive evidence that her mother or Mr. XXXX possesses the resources, wherewithal or interest to mount a search throughout Namibia except to state that he is an influential man with money and power in her village. There is no persuasive evidence that this man would further sully his reputation by continuing to pursue the claimant and expose his past conduct and abuse toward her, or that he can act with impunity throughout Namibia. It is simply not reasonable to conclude that he would do so in such circumstances on a balance of probabilities.

[36] The panel notes that Walvis Bay is a port community that has a population of 100,000 (in 2017) which is located in the western part of the country on the Atlantic Ocean, near Swakopmund, and is an international resort community. Namibia has a total population of over 2,500,000. Walvis Bay is a considerable distance from the home of her mother and Mr. XXXX. Walvis Bay has its own international airport allowing the claimant to avoid travelling anywhere near their home.

[37] As the panel concluded previously, the claimant has adequate state protection in Namibia. Thus, the claimant failed to provide a reasonable explanation as to why there is a serious possibility of persecution in Walvis Bay on a balance of probabilities.

[38] With respect to the second prong, the panel is not persuaded that it would be unreasonable for the claimant to live in Walvis Bay. The claimant has provided no persuasive evidence that she would not be familiar with the cultural issues and norms in Walvis Bay. The claimant has already travelled to Canada by herself. This is a strong indication of the claimant's mobility capacity and her ability to assimilate in different places. Therefore, the panel is satisfied that it would not be unreasonable to expect that the claimant would be able to adapt to new surroundings in Walvis Bay. The claimant stated that she has command of English, one of the official languages of Namibia, and the Otjiherero language. The panel is satisfied that the claimant would be familiar with the languages in Walvis Bay.

[39] Although economic concerns are not included in the grounds for refugee protection, it is a concern for a woman living on her own in Namibia. The panel considered economic concerns in

terms of the IFA being reasonable in all circumstances. In doing so the panel has considered the current profile of the claimant.

[40] According to her own evidence, she is a twenty-nine year old woman with 10 years of education in Namibia and is currently studying at the Grade 12 level in Canada. Documentary evidence indicates that the claimant is better educated than the average citizen in Namibia.

[41] Independent documentary evidence indicates that Walvis Bay is a thriving tourist community, and is a hub port for the region servicing the petroleum industry as well as offshore diamond drilling. There is no persuasive evidence to suggest that she would be at a greater disadvantage of finding employment than any other high school educated woman in Walvis Bay.

[42] Therefore, based upon the claimant's age, education, employment opportunities and language capabilities, and the various agencies available to assist her, the panel finds that there are no serious social or economic barriers to the claimant relocating. The documentary evidence taken as a whole on internal relocation in Namibia indicates that a woman in the claimant's position can relocate to Walvis Bay and find employment, shelter and protection as well as support in Walvis Bay.

[43] Therefore; the panel finds, based on a balance of probabilities, that it would not be unreasonable, in all circumstances, including those particular to the claimant, for her to seek refuge in Walvis Bay. The panel finds that, on a balance of probabilities, that the claimant has not established a lack of an IFA alternative in Walvis Bay; therefore, the panel concludes that you are not a Convention refugee.

[44] Given the findings on IFA and State protection, the panel finds, on a balance of probabilities, the claimant is not a person in need of protection pursuant to sections 97(1) of the IRPA, as there is no risk to your life, or of cruel and unusual treatment or punishment should you return to Namibia. There is no persuasive evidence adduced that would support a finding that you face a danger of torture pursuant to section 97(1) (a) of the Immigration and Refugee Protection Act.

[45] Given the findings above; you, the claimant would have adequate state protection should you require it and a viable IFA in Walvis Bay. As a result, the panel finds that you are not a person who faces a risk to life or cruel and unusual treatment or punishment if you were returned to Namibia.

[46] For the reasons set out above, the panel finds that your claim must be rejected.

(signed)

“D. Forsey”

D. Forsey

March 8, 2018

Date