



RPD File No. / N° de dossier de SPR : VB1-01784

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	May 23, 2012	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	July 19, 2012	Date de la décision
Panel	Negar Azmudeh	Tribunal
Counsel for the Claimant(s)	Baldev Sandhu Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) des tribunaux
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS FOR DECISION

[1] The claimant, XXXXXXXXXX, is a citizen of India and claims refugee protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹

[2] The duty of this panel is to find if there is sufficient credible or trustworthy evidence to determine that there is a “serious possibility”² that the claimant would be persecuted, or that there are substantial grounds to believe that she would be tortured, or at risk of losing her life or being subjected to cruel and unusual treatment or punishment if you returned to India. This also means that it must not be possible to get protection from this persecution or risk from Indian authorities and, further, that there is no other within India where you could live safely and that it would be reasonable to do so, in the claimant’s circumstances.

[3] In coming to my decision, I have considered the testimony and the other evidence before me. I have also kept in mind the points raised in the *Chairperson’s Gender Guidelines*. The panel has decided that the claimant is a Convention Refugee.

ALLEGATIONS

[4] The claimant’s complete allegations are set out in answer to Question 31 of her Personal Information Form (PIF) and need not be repeated here in detail. To summarize, the claimant alleges that in 1998 her family arranged for her marriage to an Indian man who resided in the US. The claimant moved to the United States (US) in 1998 where she stayed illegally continuously until she came to Canada on or about XXXXXX, 2011. The claimant alleges she never had any status in the US and that she just entered the country illegally, joined her husband and continued to live there without being detected by US authorities.

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

² *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680; (1989), 7 Imm. L.R. (2d) 169 (C.A.)

[5] The claimant alleges her husband left the family in 2004 and returned to India. In 2009, he died and left her a widow. The claimant also alleges that she has no siblings and that her parents are both deceased. As a widowed woman with limited education and with no family support whatsoever, the claimant alleges she cannot return to India without a reasonable fear of persecution.

Identity

[6] The claimant testified in Punjabi through an interpreter. She has also filed her Indian birth certificate with Citizenship and Immigration Canada,³ as well as a copy of her expired Indian passport⁴. I find that she has established her identity and citizenship as a national of India.

ANALYSIS

[7] I find the claimant to have been generally credible. In this case, the panel initially had concerns about the claimant's potential status in the US. Before a decision was reached, the panel received documents that suggest the claimant probably did not have a valid status in the US⁵. The fact that the claimant is a widow is established first by her marriage certificate⁶ and then by her husband's death certificate⁷.

[8] The claimant alleges that she has nobody in India, and as a widow with no family support, she will face a reasonable possibility of persecution. The Sarpanch's letter further corroborates the fact that the claimant probably has no family member and no property in India. With her grade 10 education and her lack of work experience outside of the house, I find that she is in a particularly vulnerable position.

[9] The country documents in Exhibit 3 indicate that the position and treatment of women within the family in India is such that a significant percentage of women may be the victims of

³ Exhibit 2, pages 15-16.

⁴ Exhibit 5, page 4.

⁵ Exhibit 6.

⁶ Exhibit 5, page 7.

⁷ Exhibit 5, page 3.

some kind of domestic abuse.⁸ Women can seek protection from the authorities, and legislation has been introduced to persecute perpetrators. However, some Indian women, such as those from rural areas or those who are illiterate, may be unable to access this assistance.

[1] In reference to internal flight alternative (IFA), case law indicates that the test for an IFA has two parts. First, whether the claimant would be safe from harm in a different part of India, and second, whether it would not be unreasonable in a claimant's particular circumstances to relocate there.

[2] In reference to the second part of the test for an IFA, I find that it is not objectively reasonable for the claimant to seek to live elsewhere in India for the following reasons.

[3] I find that the country documents on India establish that the discrimination that a lonely woman with limited education would face in India amounts of persecution. Country documents such as the UK Country of Origin for India,⁹ indicates that internal relocation for single women and widows may differ from the situation for men, as it may be difficult for women on their own to find secure accommodation. Rents are high and landlords are often unwilling to rent to single women. Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman. Internal relocation may be unduly harsh to expect for women from a rural background to relocate to another part of India, because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

[4] The claimant has very limited literacy skills and no employment experience outside the home. Given her limited skills and lack of other support, including a social safety net, the claimant would likely face considerable and protracted hardship on returning to India.

⁸ Exhibit 3, National Documentation Package (NDP), India 31 May 2010, Item 5.2 IND103450.E. 13 May 2010. Domestic violence, including legislation, availability of state protection and support services for victims.

⁹ Exhibit 3, NDP, India 31 May 2010, Item 2.4.

[5] I also find the claimant's decision to come to Canada, while it may not be objectively reasonable, it demonstrates the claimant's desperate attempt to not return to India. Given her life story which involved a low level of education, no outside work and no independent network, I do not make an adverse finding that she did not attempt to seek help from US authorities.

CONCLUSION

[10] For these reasons I determine that XXXXXXXXXX is a Convention refugee in accordance with s. 96 of the *Act*.

(signed) “Negar Azmudeh”

Negar Azmudeh

July 19, 2012

Date

REFUGEE PROTECTION DIVISION / ARRANGED MARRIAGE / DEATH / SPOUSE / INTERNAL
FLIGHT ALTERNATIVE / VIOLENCE AGAINST WOMEN / WELL-FOUNDED FEAR OF PERSECUTION
/ FEMALE / POSITIVE / INDIA