



RPD File No. / N° de dossier de la SPR : TB4-02403

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	June 16, 2014 April 18, 2016 December 5, 2017 February 6, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	February 20, 2018	Date de la décision et des motifs
Panel	M. Dookun	Tribunal
Counsel for the Claimant(s)	Patricia Ritter (June 16, 2014 only) Adela Crossley (April 18, 2016 only)	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	D. Morse (in writing)	Conseil du (de la) ministre

REASONS FOR DECISION

[1] This is the decision in the claim of XXXX XXXX (the claimant). The claimant is a 37-year-old female citizen of Serbia. She is seeking refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] In assessing this claim, the panel considered and applied the Chairperson's *Gender Guidelines*.¹ The panel has taken into account all aspects of the *Guidelines* including but not limited to the special problems faced by some female victims of violence when called upon to state their claims at refugee determination hearings.

[3] At counsel's request, the claimant was declared a vulnerable person. As an accommodation, the order of questioning was reversed as per rule 10.5 of the RPD rules. The panel agreed that being questioned by her counsel first would place the claimant at greater ease. The claimant was also given the option of having her sister in the hearing room for moral support; however, she declined. A female interpreter was provided at each sitting that went forward and frequent breaks were given throughout the proceedings as an additional accommodation.

[4] At the last two sittings, the claimant was unrepresented by counsel so questions were asked by the panel. After the panel had completed its questioning the claimant was given the opportunity to present her own submissions to the panel, which she did.

[5] The Minister intervened in documents only in this claim on the issue of credibility.

ALLEGATIONS

[6] The claimant alleges in her original Basis of Claim (BOC) form² that she was forced into prostitution for 3 years from 2010 to 2013. This occurred first in Macedonia. Throughout those years, she was transferred to various regions including Kosovo and Serbia. The claimant managed

¹ *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*.

² Exhibit 2.

to escape her captors in 2013 while in Macedonia. She then went to Belgrade, Budapest, and various other cities en route to Canada.

[7] In an amended BOC,³ the claimant added that she fears domestic violence at the hands of her former spouse in Serbia. At the hearing, the claimant also added that she fears persecution due to her Albanian ethnicity.

DETERMINATION

[8] The panel finds that the claimant is neither a Convention refugee pursuant to section 96 nor a person in need of protection pursuant to section 97(1)(a) or (b) of the IRPA.

ANALYSIS

Identity

[9] The claimant established her identity as a citizen of Serbia by way of the certified true copy of her Serbian passport.⁴ She also provided the panel with a Serbian driver's licence.⁵

[10] With regard to her citizenship in Kosovo as declared in her POE documents,⁶ the claimant testified that the information in her POE document was a mistake. She explained that she was born in the region that later became Kosovo; however, she resided in the region that was Serbia after the war and thus holds Serbian citizenship and is not entitled to citizenship in Kosovo.

[11] With regard to her citizenship in Albania as declared in her BOC,⁷ the claimant again explains that this was an error. She stated that she is Albanian by ethnicity only.

Credibility

[12] The claimant did not testify in a straightforward manner. Her responses were evasive and indirect. There were numerous attempts to embellish her testimony. The claimant's story was

³ Exhibit 16.

⁴ Exhibit 1.

⁵ Exhibit 23.

⁶ Exhibit 1, IMM-0008.

⁷ Exhibit 2, question 1e.

inconsistent and contained many contradictions. Even when the panel takes the claimant's psychologist report and the Chairperson's *Gender Guidelines* into account, the panel still finds the claimant not to be credible.

[13] This is mainly because the panel draws a negative inference regarding credibility based on the omission of the domestic violence allegations from the claimant's original BOC as domestic violence now appears to be material to this claim. The claimant explained that she told her lawyer about the domestic violence but she does not know why it was not in her original story. The panel does not find this explanation to be reasonable as the claimant swore that the contents of her original BOC had been interpreted to her and that the contents were true and correct.

[14] At the final sitting, the claimant stated that although she swore to the veracity and accuracy of the contents of her BOC she did not actually read the contents. When asked why she swore to the accuracy of something that she did not read or had not had read to her in a language that she understood, the claimant responded that she did not know. The panel does not find this explanation to be reasonable and overall finds the claimant not to be entirely credible. That being so, the panel places less weight on the claimant's oral or written testimony versus weight that is placed on objective documentary evidence.

Well-Foundedness of Fear and Domestic Violence

[15] The panel finds that there is less than a mere possibility that the claimant would face domestic violence at the hands of her former spouse should she return to Serbia today.

[16] As previously stated, the panel draws a negative inference regarding the credibility of the domestic violence allegations based on its omission from the original BOC. The panel relies more on the objective court documents presented by the claimant from the courts in Serbia.⁸ The panel relies specifically on the Respondent Statement.⁹

[17] The respondent in this case was the claimant. There is no mention of physical abuse contained within the claimant's statement to the court. In the court documents that proceed and follow this statement, there is no mention of physical violence within the marriage. There is

⁸ Exhibit 6, item 5.

⁹ Ibid, pg. 5.

mention of the claimant's former spouse being unfaithful, but there is no allegation of domestic violence made to the court in Serbia.

[18] The panel finds that the court documents are consistent with the original BOC in that it confirms a breakdown in the marital relationship; however, it does not allege physical violence. The claimant was asked why there is no mention of physical violence in her statements to the court. The claimant responded that as far as she knew she had mentioned it. However, there is no reasonable explanation as to why this information is not contained within the court documents or within the first BOC leading the panel to believe that these events did not occur.

[19] However, even if the panel were to accept (which on a balance of probabilities, it does not) that the claimant was a victim of physical violence at the hands of her former spouse in Serbia prior to 2010, there is no evidence to show that her former spouse is now or would be interested in harming her should she return to Serbia today.

[20] According to the court documents, the claimant's former spouse has full legal custody of the children. According to the claimant he has not contacted her or threatened her directly since 2010. The two children that were a product of that marriage are now both adults. One is living in Switzerland with his fiancé and the other is making arrangements to leave Serbia. The claimant testified that her former spouse has a new family. He has remarried and has children with his new wife. Overall, he has shown no interest in finding or harming the claimant.

[21] The claimant later testified that 3-4 months ago her children told her that their father threatened that he wanted her dead. When asked why she did not state this before, the claimant responded that she forgot. The panel does not find it credible that the claimant would "forget" to mention a death threat made by her former spouse if indeed it had occurred. The panel does not find this portion of the claimant's testimony to be credible.

[22] Overall, the panel finds based on all of the information before it that there is less than a mere possibility that the claimant would face domestic violence at the hand of her former spouse should she return to Serbia today. Based on her original BOC, the panel finds that domestic violence is not the reason the claimant left Serbia and is not the reason she fears to return.

Well-Foundedness of Fear and 2010 Abduction

[23] The panel reiterates that it places less weight on the claimant's inconsistent testimony and more weight on the objective documentary evidence such as the Serbian court documents. The claimant alleges that she was abducted in 2010 and held until 2013. However, according to the support and custody court documents¹⁰ the claimant appears to have been actively involved in the appeal process in the years 2011 and 2012.

[24] When asked to explain the appeal court proceedings in 2011 and 2012, the claimant stated that she signed a document before the abduction in 2010 to allow her lawyer to deal with her case. The panel questioned how or why a lawyer would continue with court proceedings after not having heard from the claimant in years. The claimant explained that he did so because of the document she signed in 2010. The panel questioned how and why a lawyer would continue with court proceedings for years without receiving further payment. The claimant responded that she paid in advance. The panel questioned how a lawyer could represent a client that it had not conferred with in years. The claimant could not explain.

[25] The panel does not find it plausible that the claimant was held captive in 2011 and 2012 as alleged given that she was involved in more than one appeal process with the Serbian courts during that time. The court documents quote the claimant as refuting decisions from 2012.¹¹ The court in 2012 finds that the claimant's financial status is such that she is able to provide financial support for her children to their father who was awarded full custody. The claimant's explanation that her lawyer (who she now states is deceased) acted without consulting with her for years is not believable.

[26] That being so, the panel does not accept the claimant's allegations that she was abducted in late 2010 and held continuously until 2013 with no contact with her family during that time. The panel finds that the Serbian court documents tell a different story for which the claimant could not provide a reasonable explanation.

[27] That being so, the panel finds that there is less than a mere possibility that the claimant would face sex trafficking or persecution at the hands of sex traffickers should she return to Serbia today.

¹⁰ Exhibit 6, items 4-6.

¹¹ Ibid, pg. 10.

Albanian Ethnicity

[28] With regard to the claimant's allegation that she fears persecution in Serbia due to her Albanian ethnicity, the panel turns its attention again to the documentary evidence. The claimant's country condition package¹² indicates that the Serbian Prime Minister commented on attacks on bakeries owned by ethnic Albanians by saying that the property of every Serbian citizen must be protected and stressed that the authorities would react sharply. He went further to state that ethnic Albanians are Serbian citizens and will be guaranteed full security. He urged everyone not to commit any acts against ethnic Albanians as those are criminal acts and the state would react by protecting its citizens.

[29] The panel finds that although ethnic Albanians do face discrimination in Serbia, the Serbian government is making serious efforts to protect them. The panel also notes that the documentary evidence¹³ tells us that the Serbian police force does include a small number of ethnic Albanians.

[30] The panel finds that the claimant has not established on a balance of probabilities that she would face discrimination that would amount to persecution in Serbia based on her ethnicity, for which state protection would not be available to her.

CONCLUSION

[31] Therefore, having considered all of the evidence, the panel finds that there is less than a mere possibility that the claimant was or would be a victim of domestic violence at the hands of her former husband in Serbia.

[32] The panel finds that the claimant's allegations regarding her abduction are not credible as they contradict the information found within the claimant's own court documents for which the claimant has not provided a reasonable explanation.

¹² Exhibit 13, page 162.

¹³ Exhibit 21, item 2.1.

[33] The panel finds that the claimant has failed to rebut with clear and convincing evidence the presumption that state protection would be available to her in Serbia against those who would seek to discriminate against her based on her Albanian ethnicity.

[34] The panel therefore finds that the claimant is neither a Convention refugee as per section 96 of the IRPA nor a person in need of protection as per section 97. The Refugee Protection Division therefore rejects this claim.

(signed)

“M. Dookun”

M. Dookun

February 20, 2018

Date