

Federal Court



Cour fédérale

Date: 20110329

Docket: IMM-4757-10

Citation: 2011 FC 387

Toronto, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CHARM LEANA JOHN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision of the Refugee Protection Division (RPD) in which the Applicant's claim for protection was rejected, in large measure, on the basis of a negative credibility finding. In my opinion the decision is made in fundamental error and must be set aside.

[2] The Applicant's claim is gender-related as a result of horrific physical, sexual, and emotional abuse suffered at the hands of her male partner in St. Lucia.

[3] With respect to the hearing before the RPD, Counsel for the Applicant relied upon a current psychological report which identified the Applicant as suffering from post-traumatic stress disorder and, with respect to her ability to testify during the course of the hearing before the RPD, contained the following key paragraph:

Ms. John experienced headaches in the past, but these no longer occur with regularity. Other stress-related symptoms include occasional weakness, easy fatigability, and problems with concentration and memory. Intrusive ideation (i.e., memories of traumatic events and worries that erupt spontaneously into consciousness) occurs frequently and interferes with reading and conversation. At times, her mind simply goes blank. Ms. John has become distracted and forgetful (e.g., she confuses dates and details of past events; she forgets about items placed on the stove to cool she misplaces her keys). Concentration and memory problems are common among people exposed to traumatic events. Difficulties are exacerbated under pressure, such as arises in the high-stakes context of a Refugee Hearing. Symptoms may arise during the Hearing in the form of difficulty understanding questions, requests for questions to be repeated or rephrased, inability to retrieve specific details of the past, or an apparent inability to formulate a coherent response. Should such problems become evident, it will be important to understand that they likely reflect the disorganizing effects of traumatic stress rather than an effort to evade or obfuscate.

(Applicant's Application Record, pp. 43 – 44)

As I have previously found in the decision in *Kuta v Canada (Minister of Citizenship and Immigration)* 2009 FC 687, when dealing with gender-related claims it is critical that the RPD pay special attention to “*Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines issued by the Chairperson*” in reaching a determination. *Guideline 4* states:

Women refugee claimants who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome, and may require extremely sensitive handling.

[4] In the decision under review, the RPD makes the following key statements:

In making the assessment in this case, the panel considered the *Chairperson's Gender Guidelines* to ensure that warranted accommodations were made in terms of questioning the claimant and the overall hearing process.

Before making my decision I took into consideration the psychological report. I note that the report indicates that because of the trauma the claimant experienced, she suffers from posttraumatic [sic] stress disorder and minor depression, chronic depressed mood and is vulnerable to psychological damage if she returns to St Lucia, and that the claimant requires counseling. I find that the claimant has not provided evidence that counseling would not be available to the claimant if she returned to St Lucia. In fact, documentary evidence indicates that counseling is available to abused women in St Lucia. As well, since the diagnosis is based on the claimant's self reporting of the abuse and on the basis of one interview, and because of my finding that the claimant is not credible in certain aspects of her claim, I give this report little evidentiary weight. The claimant could, for example, be stressed from other causes, including earlier sex abuse and the negative relationships she had in Canada. [...]

[Emphasis added]

(Decision, paragraph 5)

With respect to the finding that the Applicant is not credible, in part, the RPD said this:

As well, I draw a negative inference from the claimant indicating that [the Applicant's male partner] Marcus was 18 when she moved in with him, instead of 17, as this is not a fact that one would reasonably expect the claimant to be mistaken about since 17 is being under age. The claimant testified that she fell in love with Marcus when she was 18 and moved in with him in 2002. The claimant was asked how old she was in 2002 and she testified that she was 18. It was noted for the claimant that in 2002 she would have been 17 and not 18. The claimant had no response. I draw a negative inference from the claimant's inability to explain the inconsistency.

The claimant was asked the date of Marcus' birthday. The claimant at first testified that it was July 4, 1985. Then she looked at counsel with a questioning look and said sorry, it is in 1984 and that he will be 25 this July. It was noted for the claimant that if he was born in 1984 that he would be 26 this July and not 25. The claimant had no response. Since the claimant herself was born in 1985, it would be reasonable to expect that she would know whether Marcus was born the same year as she, and that

she would not make a mistake about the year of his birth. I draw a negative inference.

[Emphasis added]

(Decision, paragraphs 14 and 15)

[5] I agree with Counsel for the Applicant that the quoted passages expose fundamental errors, which render the decision under review as unreasonable.

[6] First, it is a reviewable error to first determine that a claimant is not credible and then to use that lack of credibility as a basis for rejecting or giving little weight to evidence that is submitted to corroborate the claimant's testimony. In the present case the psychological report is tendered, not to prove the truth of the Applicant's statements to the psychologist, but to prove her current state of mind. The Applicant's impaired state of mind can be found to support the truth of her evidence of the abuse she suffered.

[7] And second, the Applicant's state of mind was an important factor to be taken into consideration by the RPD when evaluating her evidence: to do so constitutes a practical application of *Guideline 4*. Thus, the RPD was required to take care in evaluating the Applicant's evidence through the lens of her psychological make-up; it is obvious to me that this requirement was not met. I find that the Applicant's state of mind was not realistically and fairly considered in reaching the negative credibility findings quoted above.

ORDER

Accordingly, the decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4757-10

STYLE OF CAUSE: CHARM LEANA JOHN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 28, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: MARCH 28, 2011

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