

CANADA / JUDGMENT

TB8-22576

COURT

Refugee Appeal Division

DECIDED

7 January 2020

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RAD File / Dossier de la SAR : TB8-22576 TB8-22577 / TB8-22578 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et Décision Persons who are the subject of the appeal XXXX XXXX
(a.k.a. XXXX XXXX XXXX XXXX) (a.k.a. XXXX XXXX XXXX XXXX) (a.k.a. XXXX XXXX XXXX)
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XXXX XXXX XXXX) (a.k.a. XXXX XXXX XXXX) Personnes en cause Appeal considered / heard at
Vancouver, BC Appel instruit / entendu à Date of decision January 7, 2020 Date de la décision
Panel Paula Faber Tribunal Counsel for the persons who are the subject of the appeal
Mohammad Khan Khokhar Conseil des personnes en cause Designated representative XXXX
XXXX (a.k.a. XXXX XXXX XXXX XXXX) (a.k.a. XXXX XXXX XXXX XXXX) (a.k.a. XXXX XXXX
XXXX) for XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX) (a.k.a. XXXX XXXX XXXX XXXX) (a.k.a.
XXXX XXXX XXXX) Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre
REASONS FOR DECISION OVERVIEW

- [1] These are my reasons for allowing the appeal of XXXX XXXX XXXX XXXX (Principal Appellant), and XXXX XXXX XXXX XXXX (Minor Associate Appellant), and dismissing the appeal of XXXX XXXX XXXX (Adult Associate Appellant), (collectively the Appellants).
- [2] The Appellants are citizens of the Philippines and are appealing a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection.
- [3] The Appellants are two adult sisters and the minor daughter of the Principal Appellant.
- [4] Their claims for refugee protection were heard by the RPD along with their mother/ grandmother. The RPD accepted the adult Appellants' mother's claim as it found that she was credible and that there was no effective state protection at an operational level for victims of domestic violence.
- [5] The Appellants' claims were rejected by the RPD as it found there was a viable Internal Flight Alternative (IFA) in Manila or Cebu.
- [6] The Appellants argue that the RPD's determination is an error and they request that their appeal be allowed. New evidence
- [7] The evidence presented by the Appellants is not admissible on appeal.

- [8] The Immigration and Refugee Protection Act (IRPA)¹ limits what evidence I can accept. According to the law, I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that you could not reasonably have been expected in the circumstances to bring to the RPD before the RPD decision.
- [9] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.
- [10] The proposed new evidence is a typed letter, which is allegedly from the adult Appellants' brother. The adult Appellants have three brothers. It is not clear which brother provided this letter as the signature is indecipherable, the letter is not sworn, and the author of the letter has provided no identity document.
- [11] The letter is not dated, but the content of the letter describes incidents where the brother was confronted by XXXX husband and detained by his father in the month following the RPD rejection of the Appellants' claims.
- [12] I do not find brother's letter to be credible in terms of the source and circumstances in which it came into existence, and it is therefore inadmissible as new evidence on appeal. I also find the timing of the evidence, which is immediately following the RPD rejection, to be suspicious. No oral hearing before the RAD
- [13] Counsel for the Appellants provided a written statement requesting that a hearing be held pursuant to subsection 110(6) of the IRPA.
- [14] This section states that the Refugee Appeal Division (RAD) can hold a hearing when there is new evidence that raises a serious credibility issue. Further, the evidence must be central to the decision. In addition, there is a requirement that the evidence would justify a final decision allowing or rejecting the claim.
- [15] As there is no admissible new evidence on appeal, there is no requirement to hold a hearing.

ANALYSIS

- [16] For questions of fact, mixed fact and law, and law, I have applied the standard of correctness.²
- [17] I have read all the documents in the RPD and Appellants' Records. I have also listened to the audio recording of the RPD hearing.
- [18] In coming to a decision, I have considered the Chairperson Guideline 4: Women Refugee Claimants Fearing Gender Related Persecution (Gender Guidelines).³
- [19] The RPD found that the determinative issue for all of the Appellants was the availability of an IFA in the Philippines.

- [20] The Appellants have argued that the RPD erred by not providing notice that IFA would be an issue. I do not agree. I have reviewed the audio recording of the hearing and the RPD clearly stated that IFA was an issue at the beginning of the hearing, specifically identifying the cities of Manila and Cebu.⁴
- [21] The Appellants also argue that it was a breach of natural justice for the RPD to make separate decision in the joined claims. I do not agree. The RPD had three adult Claimants and one minor Claimant before it, each with her own Basis of Claim (BOC) form and narrative statement. The RPD made decisions in each claim based on the evidence, which is what they are supposed to do. While I may not agree with all of the RPD's findings, I do not find that the RPD breached the Appellants' natural justice by making separate assessments of each claim before it. XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX are Convention⁵ refugees
- [22] In my independent assessment of the evidence, I find that XXXX and XXXX do not have a viable IFA in Cebu or Manila as determined by the RPD.
- [23] XXXX has alleged having been a victim of sexual abuse by her father, XXXX XXXX. She also alleges that she is a victim of domestic violence by her husband, XXXX XXXX, the father of the Minor Associate Appellant. XXXX and her husband were married in XXXX 2012.
- [24] The RPD did not find XXXX allegation that she suffered domestic violence at the hands of her husband to be credible. The reason for this is because XXXX made no mention of having been abused by her husband in the original version of her BOC form narrative dated September 18, 2017. That version of her narrative focussed on the sexual abuse she suffered from her father.
- [25] XXXX additional submission dated October 11, 2017, expands upon the first BOC form narrative and describes how the Appellant learned that her husband had been unfaithful. She explains that when she confronted her husband about his affair, he slapped and choked her. XXXX explanation for failing to mention her husband's violence toward her in her first narrative is that she was ashamed and could not remember everything when she arrived in Canada. This explanation was found not to be credible by the RPD.
- [26] While it was correct for the RPD to question XXXX with respect to the significant addition to her BOC form narrative, I find that the RPD erred in determining that she was not credible for failing to mention the domestic violence in her marriage in the first narrative. XXXX provided the new allegation of domestic violence in her submission to the RPD three weeks after her original BOC narrative was submitted.
- [27] The RPD found that the Appellant's mother was credible and faced a serious possibility of persecution if she is to return to the Philippines as a victim of domestic violence. XXXX allegation of having been subjected to sexual abuse by her father was also not in dispute. According to the Gender Guidelines,⁶ women who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome. Similarly, women who have

been subjected to domestic violence may exhibit a pattern of symptoms referred to as Battered Woman Syndrome. This makes it difficult for women victims to describe their stories.

- [28] In my own independent assessment of the evidence, I accept that XXXX was a victim of domestic violence in her marriage. No IFA and no state protection
- [29] For reasons similar to those stated by the RPD with respect to the adult Appellants' mother, I find that there is no IFA for XXXX and her daughter, the minor Appellant. XXXX is unable to obtain a divorce in the Philippines and as a result is "unable to remove herself from her relationship".⁷
- [30] XXXX explains in her narrative that her husband has accused her of adultery and does not believe that the minor Appellant is his child. Objective evidence in the National Documentation Package (NDP) describes how "the lack of divorce laws affects women more than men as more women suffer from failed marriages due to their economic and other forms of disempowerment. it forces individuals to remain in irreparable relationships, exposes women and children to violence."⁸
- [31] Similar to the RPD reasons for the adult Appellants' mother, I find that there is no effective state protection at the operational level for victims of domestic violence in the Philippines. The objective evidence describes domestic violence as a serious and widespread problem.⁹ As a result, I find that XXXX, as a victim of domestic violence, and her minor daughter, would face a serious possibility of persecution if they are to return to the Philippines. Adult Associate Appellant is not a Convention refugee or person in need of protection
- [32] With respect to XXXX XXXX appeal, I am upholding the decision of the RPD and find that she would not face a serious possibility of persecution or, on a balance of probabilities, face a risk to life or a risk of cruel and unusual treatment or punishment or torture if she is to return to the Philippines and relocate to Cebu or Manila.
- [33] Although not explicit under section 96 of the IRPA,¹⁰ an IFA is an integral part of the Convention refugee definition.
- [34] Once an IFA has been proposed, the onus shifts to the Appellant to show that they do not have an IFA.
- [35] The test to be applied in determining whether there is an IFA is two-pronged.¹¹
- a) The Board must be satisfied on a balance of probabilities that there is no serious possibility of persecution in the part of the country to which it finds an IFA exists and no risk to life or risk of cruel and unusual treatment or punishment or torture.
 - b) The conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the Appellants, for them to seek refuge there.

- [36] The RPD correctly identified IFA as an issue at the beginning of the hearing and the Appellants were given notice that the cities of Cebu and Manila were potential IFA locations.
- [37] XXXX claim is distinguished from that of her mother and sister in that she is single and was not subjected to spousal abuse in a country that does not allow divorce.
- [38] While she describes having been a witness to the spousal abuse inflicted on her mother by her father, she does not allege to have suffered directly from the same or similar sexual abuse that XXXX was subjected to by her father.
- [39] XXXX had been living away from her family since the age of 16 when she started college and has been living in Canada since XXXX XXXX, 2013.
- [40] I find that the evidence does not establish that her father, who is described as a drunk and an unemployed substance abuser, would be interested, motivated or even able to locate the Appellant if she is to return to the Philippines and relocates to the cities of Cebu or Manila.
- [41] The Adult Appellants described how their father would come to their schools and harass them when they were living in the Philippines. These schools were not far from where their father lived and he was aware of where they were living. I do not find that this would be same situation for XXXX if she is to return to the Philippines and relocates to one of the proposed IFA locations.
- [42] The adult associate Appellant's family home is in the place where her father was born, raised and continues to reside, La Union.¹² These incidents of harassment at the school took place many years ago, and the Appellant is now an educated adult.
- [43] Manila is located a significant distance from La Union, and Cebu is located on an entirely different island. According to information in the NDP, Manila has a population of nearly 13 million and Cebu has a population of 951,000.¹³
- [44] I have made my own independent assessment of the evidence in light of the personal circumstances of the Appellant and the circumstances in the proposed IFA locations. I find that it is not objectively unreasonable for the Appellant to relocate to Cebu or Manila.
- [45] The court has set a very high threshold for what makes an IFA unreasonable in all of the circumstances. The standard is high and requires proof of adverse conditions which would jeopardize the life and safety of the Appellant in travelling to and living in the IFA locations.¹⁴
- [46] The Appellant is young university educated woman. She is a XXXX XXXX who worked in a XXXX in the Philippines prior to coming to Canada in 2013.¹⁵ She is of the majority linguistic, ethnic and religious groups in the country. There is no reason to believe that she would not be able to find employment and housing in the larger centres of Manila or Cebu.

CONCLUSION

- [47] I have reviewed and considered the Appellants' testimony, documentary evidence, arguments, and have undertaken my own analysis and make the following determinations. Appeal allowed
- [48] With respect to XXXX XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX XXXX (Minor Associate Appellant) the appeal is allowed. I substitute my own decision that the Appellants are Convention refugees/persons in need of protection. Appeal dismissed
- [49] With respect to XXXX XXXX XXXX (Adult Associate Appellant), the appeal is dismissed and the RPD decision is confirmed. I find that the RPD did not err in finding that the Appellant had a viable IFA in Cebu or Manila.
- [50] Since having a viable IFA is fatal to claims made under both sections 96 and subsection 97(1)16 of the Immigration and Refugee Protection Act, I find that her claim fails on both grounds.
- [51] For the reasons indicated, I find that there is no serious possibility of persecution for the Adult Associate Appellant in Cebu or Manila, and no risk to life, or risk of cruel and unusual treatment of punishment or danger of torture. (signed) "Paula Faber" Paula Faber January 7, 2020 Date 1 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, subsection 110(4). 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 3 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996. 4 Audio Recording of the RPD hearing 24:27. 5 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention. 6 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996. 7 Exhibit RPD-1, RPD Record, RPD Decision and Reasons at p. 10, para 12. 8 National Documentation Package (NDP) for Philippines (30 April 2019), at item 5.1. 9 NDP for Philippines (30 April 2019), at Item 2.1. 10 IRPA, section 96.
96. Convention refugee - A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
- (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country. 11 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (FCA). 12 Exhibit RPD-1, RPD Record, at p.15 and p. 20. 13 NDP for Philippines (30 April 2019), at Item 1.3. 14

Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589(C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.). 15 Exhibit RPD-1, RPD Record, Schedule A, at p. 79 to p. 82. 16 IRPA, section 97. 97 (1) Person in need of protection A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

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