Federal Court  Cour fédérale

Date: 20120202

Docket: IMM-3655-11

Citation: 2012 FC 140

Ottawa, Ontario, February 2, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ELIZABETH NGOZI OWOCHEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 27 April 2011 (Decision), which refused the Applicant's claim for protection as a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant, Elizabeth Ngozi Owochei, is a citizen of Nigeria who was born and has lived most of her life in the village of Abuedo, town of Ubulu Uku, Delta State, Nigeria.

[3] The Applicant claimed refugee protection from her former husband, Nwke Owochei (Owochei), whom she married on 23 March 1972. She says their marriage went well until the birth of their first daughter in February 1974. Owochei was not satisfied because their daughter was not a boy and began quarrelling with the Applicant. Their first daughter died in 1976. After the birth of their second daughter in 1979, Owochei began physically abusing the Applicant and slapping her two to three times per week. After the birth of their third daughter in 1982, the abuse escalated to include punching and flogging with an electric wire. The couple's fourth daughter was born in March 1988 and the abuse continued. After a particularly brutal beating, the Applicant's parents brought the situation to the attention of the village elders, but Owochei refused their orders to stop. He was exiled from the community but returned later. In 1991, the Applicant gave birth to a son, followed by two more sons in 1993 and 1995, all of whom Owochei fathered.

[4] Owochei began a relationship with another woman and brought her into the marital home in 1991. Owochei continued to physically abuse the Applicant and eventually stopped providing for her and her children.

[5] In June 2005, members of Owochei's family visited the house and beat the Applicant so severely she lost consciousness. The police came after one of her sons found her unconscious and went to a police station. The police arrested one woman who had led the group assaulting her, but

this woman was later released. After the incident, Owochei became more violent and told his family to kill the Applicant with poison because she called the police.

[6] In 2005, the village elders told the Applicant to leave home because they could not do anything more about Owochei. She moved to her parents' house, which she described at the hearing as being three to four blocks away. The Applicant brought her youngest son with her but left the other children in the care of their father. Owochei frequently went to the store in front of her parents' house. At the hearing, the Applicant said that she did not encounter Owochei directly during this period because neighbours would alert her when he approached the house, allowing her to hide or flee before he arrived.

[7] In October 2008, the Applicant and her youngest son moved into a rented room in another house in the same village. At 5:00 in the morning on 20 November 2008, Owochei knocked on the door of the Applicant's house and asked to see her. Another tenant opened the door and noticed that Owochei was carrying a cutlass; he alerted the Applicant, who hid. Owochei forced his way into the house and ransacked the Applicant's room. He told the other tenants that he would kill the Applicant.

[8] After this incident, the Applicant hid and moved between several houses in her town. On 3 January 2009, she moved to Lagos, Nigeria, and hid at a friend's house. Owochei discovered the Applicant's whereabouts and sent her a message that he would find and kill her. The Applicant then contacted an agent and made arrangements to come to Canada.

[9] The Applicant left Nigeria on 10 January 2009 and arrived in Canada on the next day. She claimed protection on 16 March 2009. The RPD heard her case on 26 January 2011 and made its decision on 27 April 2011. The RPD gave the Applicant notice of the Decision on 17 May 2011.

DECISION UNDER REVIEW

[10] The RPD found that the Applicant had not provided credible and trustworthy evidence to support her claim and concluded she is neither a Convention refugee nor a person in need of protection. The Applicant is not a Convention refugee because she does not have a well-founded fear of persecution in Nigeria connected to a Convention ground. She is not a person in need of protection because she does not personally face a risk to her life or a risk of cruel and unusual treatment or punishment if she were returned to Nigeria.

Credibility

[11] The RPD found that the Applicant invented, or at least embellished, material parts of her story in order to further her claim for refugee protection. It found that the Applicant's evidence going to the merits of her claim contained discrepancies, was vague, and was confusing. The RPD said that it took the Applicant's education level, cultural differences and nervousness into account in assessing credibility and the plausibility of her allegations.

[12] The RPD found there were major contradictions between the Applicant's Personal Information Form (PIF) and her oral testimony, which impugned her overall credibility. In her PIF, the Applicant said that, when she lived at her parents' home, Owochei would visit and physically abuse her. At the hearing, the Applicant said that she did not see Owochei after leaving the marital

home, but would hear him “physically abuse” her by using words when he visited the store in front of her parents’ house. The RPD told the Applicant that “physical abuse” meant being hit or beaten. The Applicant responded by saying that Owochei would come, beat on the door, and use physical insults. Nearby people would see him coming and alert the Applicant so she could run away.

[13] The RPD pointed out at the hearing that she did not mention in her PIF that she would run away when Owochei visited. The RPD accepted that she ran away to live elsewhere after a number of years at her parents’ house, but found that she did not run away from Owochei. The RPD found that if Owochei had wanted to have direct contact with the Applicant in the small village, he could have done so easily, and that he did not physically abuse her after she left the marital home in 2005. The contradiction between her PIF narrative and her oral testimony was a serious contradiction which impugned her credibility.

[14] The RPD also said there was a basic implausibility in the Applicant’s testimony. She testified that she lived in a small village of only 15 streets. She also testified that, from June 2005 - when she left the marital home - until January 2009 - when she fled to Lagos, Nigeria - she did not see Owochei or any of her five oldest children who lived only a few blocks away. The RPD found that it would be highly unlikely, if not impossible, that she would not have run into any of them over a period of three-and-a-half years in such a small area. The RPD also found that it was highly improbable that none of her children would visit or run into her when they only lived three blocks apart.

[15] The RPD relied on *Canada (Minister of Employment and Immigration) v Dan-Ash*, [1988] FCJ No 571 (FCA) and *Bakare v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 31 and held that the contradictions and omissions in the evidence presented by the claimant on

issues central to her claim rebutted the presumption of a claimant's truthfulness established by *Maldonado v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 72. The RPD also cited *Orelien v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 592 (FCA) at paragraph 20 where the Federal Court of Appeal said that, "…one cannot be satisfied that evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so." The RPD found that the Applicant had not discharged the onus on her to establish her claim.

[16] The RPD concluded that the Applicant generally lacked credibility because her testimony did not have the ring of truth one would expect from a trustworthy witness with a genuine claim. It found that there was insufficient credible or trustworthy evidence before it to find that if the Applicant returned to Nigeria she would face a serious possibility of persecution. It also had insufficient evidence to find that it was more likely than not that the Applicant would face a risk to life or a risk of cruel and unusual treatment or punishment or to a danger of torture.

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. 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,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is	*a*) soit se trouve hors de tout pays dont elle a la nationalité

unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries;	et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
[…]	[…]
Person in Need of Protection	**Personne à protéger**
97. (1) 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	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents

	à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[18] The Applicant raises the following issues:

a. Whether the RPD erred in finding that the Applicant was not credible;

b. Whether the RPD failed to consider the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender Related Persecution (Guidelines);

c. Whether the RPD erred by failing to engage in any analysis of the Applicant's objective risk based on the facts it treated as credible;

d. Whether the Applicant was denied procedural fairness through inaccurate interpretation;

e. Whether the RPD provided adequate reasons.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] In *Elmi v Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Further, in *Hou v Canada (Minister of Citizenship and Immigration)* 2005 FC 1586, Justice John O'Keefe held at paragraph 23 that the standard of review on a finding of credibility was patent unreasonableness. Also, in *Aguebor v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. The standard of review on the first issue is reasonableness.

[21] The Applicant asserts that the RPD failed to consider the Guidelines in the context of its analysis of her credibility. This was the issue before Justice Michael Phelan in *Hernandez v Canada (Minister of Citizenship and Immigration)* 2009 FC 106, where he held at paragraph 13 that, where the guidelines are used as part of the analysis of credibility, they become subsumed in the standard of review of reasonableness. The standard of review on the second issue is reasonableness (see also *Plaisimond v Canada (Minister of Citizenship and Immigration)* 2010 FC 998 at paragraph 32 and *Higbogun v Canada (Minister of Citizenship and Immigration)* 2010 FC 445 at paragraph 22).

[22] Recently, the Supreme Court of Canada held in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 that the adequacy of reasons is not a stand-alone basis for quashing the Decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible

outcomes." (See paragraph 14). If the Reasons, supplemented by the record, permit the Court to determine if the outcome is within the *Dunsmuir* range, they will meet the required threshold.

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[24] In *Balakumar v. Canada (Minister of Citizenship and Immigration)* 2008 FC 20, at paragraph 9, Justice Phelan held that whether the RPD applied the correct test in determining a refugee claim is a question of law, which includes the question of whether there must be a separate section 97 analysis. In *Bouaouni v Canada (Minister of Citizenship and Immigration)* 2003 FC 1211 Justice Edmond Blanchard wrote that "whether the Board properly considered both [sections 96 and 97] claims is a matter to be determined in the circumstances of each case." Justice Carolyn Layden-Stevenson held in *Brovina v Canada (Minister of Citizenship and Immigration)* 2004 FC 635 at paragraph 17 that a section 97 analysis need not be conducted in every case; only where there was evidence before the RPD to support that analysis must it be conducted. This is a question of law, reviewable on the standard of correctness, so the standard of review on the third issue is correctness.

[25] The fourth issue concerns the adequacy of translation at the RPD hearing. Adequacy of translation is a procedural fairness issue, which attracts the correctness standard. See *Khosa*, above,

at paragraph 43. The Federal Court of Appeal, in *Mohammadian v Canada (Minister of Citizenship and Immigration*) 2001 FCA 191 held that the factors for assessing accurate translation in a criminal context, enunciated by the Supreme Court of Canada in *R. v Tran*, [1994] 2 SCR 951, applied to immigration proceedings. In *Singh v Canada (Minister of Citizenship and Immigration)* 2010 FC 1161, at paragraph 3, Justice François Lemieux summarized the factors as follows:

> …
>
> a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
>
> b. No proof of actual prejudice is required as a condition of obtaining relief.
>
> c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
>
> d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
>
> e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
>
> f. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.

ARGUMENTS

The Applicant

The RPD's Credibility Finding Was Unreasonable

[26] The Applicant notes that the RPD found there was a contradiction between her PIF – where she said her husband came to her parents' home and physically abused her – and her oral testimony – where she said that he made threats and pounded on the door, but she ran away. She says that the RPD correctly noted the contradiction, but argues that her testimony actually diminished what she wrote in her PIF, so the RPD should not have interpreted this as embellishment.

[27] The Applicant also says that the RPD should have realized that the contradiction arising from her use of the words "physical abuse" may have been nothing more than a misunderstanding. Her PIF narrative was prepared without a lawyer and through an interpreter, but the RPD ruled out this explanation before she heard the Applicant's answer. She points to the following exchange to support her position:

> RPD: Okay, I want to tell you something. I've been a member of the Board for seven years… I have never heard someone say physically abuse to mean anything else than the person hit me or beat me in some way.
>
> Applicant: Madam, my story still remains the same the way that I said it the first day. Maybe it was put down in that form by the interpreter who wrote it but that was the story that I remember happened because that was what happened

[28] The Applicant also argues that the wording in her PIF was an abstract statement. At the hearing she was not embellishing, but telling the RPD what had happened in her own words. She believed that what was written in English in her PIF narrative was broad enough to include threats

of violence against her, which she says is within the realm of fair understanding for an uneducated person working through an interpreter. She says there may have been a meaning which was incorrectly conveyed by the interpreter who assisted with the preparation of her PIF. It was unreasonable for the RPD not to consider possible errors in translation when it was evaluating her credibility.

[29] The Applicant also argues that the RPD did not consider that evidence given through an interpreter is fraught with potential misunderstanding. She says that the purpose of a hearing with oral testimony is to let the person say what happened in detail, directly in her own words. She says that *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA), *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (FCA), *Rajaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1271 (FCA), and *Ramirez v Canada (Minister of Employment and Immigration)*, [1992] 2 FCJ No 109 (FCA) all support her position.

[30] Relying on *Attakora*, above, the Applicant also says that the RPD engaged in a microscopic examination of her testimony. She also says that the contradiction the RPD used to impugn her credibility was weak and points to *Sheikh v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 568 where Justice Lemieux held at paragraph 24 that

> the inconsistencies found by the Refugee Division must be significant and be central to the claim […] and must not be exaggerated**.** [citation omitted]

[31] The Applicant also argues that the RPD erred when it failed to take into account the Guidelines. She notes that the Guidelines caution the RPD that a battered woman could use language that is strong to describe the threat of violence, since violence has been the reality with her

abuser. The Guidelines also say that women claimants face special problems in demonstrating their claims are credible and trustworthy. The Applicant relies on *Garcia v Canada (Minister of Citizenship and Immigration)* 2007 FC 79 and *N.Z. v Canada (Minister of Citizenship and Immigration)* 2011 FC 193 for the proposition that it is an error in law for the RPD to not take the Guidelines into consideration when assessing a refugee claim by a woman who has suffered domestic violence.

[32] The Applicant argues further that the RPD compounded several errors within its implausibility finding by ignoring aspects of the Applicant's testimony, ignoring the domestic abuse context, and making plausibility assumptions without a valid and relevant evidentiary basis.

[33] She says that the RPD made an assumption that all children of abused women seek their mothers out when they have left the home. The RPD based its finding that it was implausible for her children to not visit her once she moved to her parents' house on this unreasonable assumption. There was no evidence before the RPD that her children would want to visit her. The children of an abused woman might feel ambivalence to their mother for a number of reasons, including the influence of the abusive parent, their feelings of being abandoned or unprotected, or uncertainty about whether they should seek out the abused parent. By making an unfounded assumption, the RPD did not apply contextual sensitivity in assessing conduct in domestic abuse cases (see *Garcia*, above, and *Sanchez v Canada (Minister of Citizenship and Immigration)* 2011 FC 68).

[34] The Applicant further says that the RPD speculated in a way that was contrary to the evidence by presuming that her husband would have come into contact with her earlier. Because she was avoiding him she cannot be expected to justify Owochei's thinking or why he escalated his behaviour.

[35] The Applicant says that the RPD anchored its credibility finding on all of these findings when it wrote at paragraph 12 of the Decision that:

> While each individual discrepant response to questions about material aspects of the claim might not amount to a finding of a lack of credibility, I find that assessed in their totality and in their context, they lead me to make a finding of a general lack of credibility on the part of the claimant.

[36] Had the RPD not made the errors the Applicant has alleged, it could have arrived at a different assessment of credibility.

The RPD Failed to Analyse the Applicant's Section 97 Risk

[37] The Applicant further asserts that the RPD's overall conclusions leave the fact that she was a victim of domestic abuse for three decades undisputed. The RPD's findings imply that it believed most of what she said. The RPD's general finding that she lacked credibility at paragraph 12 of the Decision was only supported by two unreliable aspects of her testimony. The RPD concluded at paragraph 15 of the Decision that the only material aspects of her testimony were fabrications or embellishments and that it did not have sufficient credible evidence.

[38] Although the RPD disbelieved some incidents or aspects of her testimony, it should have assessed whether she faces an objective risk of abuse in Nigeria under section 97 of the Act. The Applicant is a woman who has experienced domestic abuse over a long period. She says she could still be at risk from Owochei in Nigeria, where men are entitled to abuse women and enjoy impunity in doing so. The RPD erred by treating the fact that it rejected the most recent incident (and the plausibility of her children not visiting her) as dispositive of any other risk.

[39] She also says that the RPD did not find her totally lacking in credibility. There was evidence which was credible and trustworthy on which the RPD could have concluded that she faces a risk under section 97 if she were returned to Nigeria. She points to a report from the US Department of State and the RPD's Response to Information Request NGA103509.E.29, both of which were part of the National Documentation Package for Nigeria before the RPD. In addition, the Applicant says that she has established a link between her circumstances and other similarly situated people, so it was an error for the RPD not to examine her risk under section 97.

The RPD Provided Inadequate Reasons

[40] The Applicant says that the RPD's reasons are insufficient to show why her claim failed. She relies on *Mehterian v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 545 (FCA). She also says that the RPD failed to mention why the Guidelines are not applicable in her case even though she submitted at the hearing that they were. This omission also makes the RPD's reasons inadequate.

The Respondent

[41] The Respondent notes that the RPD denied the Applicant's refugee claim because she lacked credibility on key and central elements of her allegations of a well-founded fear of persecution. She provided vague, confusing and implausible evidence that the RPD found lacked credibility. Because the Applicant lacked credibility, she could not establish a well-founded fear of persecution. The RPD's reasons are clear, cogent, and reasonable.

The RPD's Credibility Findings Were Reasonable

[42] The RPD's conclusion on credibility was within the *Dunsmuir* range and should not be disturbed on judicial review. The Applicant seeks only to have the Court re-weigh the evidence, which is not its proper role on judicial review. Although the Applicant has asserted that the RPD did not find she was abused, the RPD did not have to make such a finding. Overall, the RPD found she was not credible because of contradictions in her evidence. It was reasonable for the RPD to conclude it was implausible that she would not see Owochei for four years when they apparently lived only four blocks apart. It was also reasonable for the RPD to find a contradiction between her PIF – where she said Owochei physically abused her – and her oral testimony – where she said he beat on the door of her parents' house and shouted. The RPD explained reasonably why it rejected her explanation.

[43] The Respondent notes that I said in *Higbogun*, above, at paragraph 39 that "inconsistencies and contradictions create a perception of a lack of credibility." He says that the RPD's reliance on inconsistencies in the Applicant's evidence was reasonable.

[44] The Respondent reminds the Court that the RPD has had the benefit of observing the testimony of the Applicant directly and is in the best position to determine the credibility of her account (see *Aguebor*, above, at paragraph 4). The RPD is entitled to draw reasonable inferences from the evidence and to reject uncontradicted evidence if it is not "consistent with the probabilities affecting the case as a whole" (see *Faryna v Chorny*, [1951] BCJ No 152; [1952] 2 DLR 354 at 357 (BCCA)), and that the RPD is entitled to make reasonable findings based on implausiblities, common sense and rationality. Though the Applicant disagrees with the RPD's findings and puts forward her own interpretation of the evidence, this is not sufficient to quash the Decision.

[45] In this case, the RPD did not overlook evidence or err in its assessment of the Applicant's evidence. The RPD conducted a reasonable assessment of the Applicant's evidence going to the merits of her claim and found that it contained discrepancies, exhibited vagueness and was confusing. Taken together, the Applicant's evidence did not have the ring of truth and led the RPD to conclude that the Applicant was not a credible witness. It was open to the RPD to find on the basis of the evidence before it that the Applicant did not meet the onus of demonstrating that she faces a well-founded fear of persecution or risk in Nigeria.

[46] The RPD's consideration of the plausibility of the Applicant's story was reasonable. Her testimony was inherently implausible and not in accordance with rationality and common sense when viewed against the backdrop of other evidence. The Respondent relies on *Gonzalez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No. 805 at paragraph 27 for the proposition that the RPD may consider the manner in which the story was told and tested in the course of the hearing against the backdrop of other evidence and its own understanding of human behaviour.

The Guidelines are not Dispositive

[47] The Respondent says the Guidelines are not binding on the RPD and do not shield a claimant from having her evidence tested. The Guidelines also do not entitle a claimant to have her evidence accepted without inquiry and are not intended to serve as a cure for all deficiencies in a claimant's claim or evidence. The claimant bears the onus of proving her claim throughout the process. The Respondent quotes *Newton v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 738 where Justice Denis Pelletier said at paragraphs 17 and 18 that

> The Guidelines are an aid for the CRDD panel in the assessment of the evidence of women who allege that they have been victims of

> gender-based persecution. The Guidelines do not create new grounds for finding a person to be a victim of persecution. To that extent, the grounds remain the same, but the question becomes whether the panel was sensitive to the factors which may influence the testimony of women who have been the victims of persecution
>
> […] The Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth.

[48] The Applicant has adduced no persuasive evidence to establish that the RPD did not follow the Guidelines. Neither the Applicant nor her counsel objected to the conduct of the hearing at that time and there is no evidence that the Applicant was unable to present her case fully. Having disbelieved the Applicant's story, the RPD was not required to apply or specifically mention the Guidelines. There was also no reason to believe that the Applicant was reluctant to testify or needed alternative arrangements. The RPD displayed sensitivity to the Applicant's circumstances when it specifically acknowledged her education level, cultural differences and nervousness.

[49] The RPD found that the Applicant generally lacked credibility and the application of the Guidelines would not have cured this problem. The Respondent relies on *Sy v Canada (Minister of Citizenship and Immigration)*, 2005 FC 379 at paragraphs 17 to 19.

The Applicant did not have a Well-Founded Fear of Persecution

[50] The Respondent notes that, in *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, the Federal Court of Appeal found at paragraph 3 that

> [W]here the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[51] Though she has referred to general country condition documents, the Applicant has not linked this evidence to her particular circumstances. The Respondent relies on *Canada (Minister of Public Safety and Emergency Preparedness) v Baraniroobasingam* 2010 FC 92, where Justice Sean Harrington held at paragraph 6 that country conditions alone are insufficient to ground a refugee claim. The Applicant failed to discharge the onus on her to prove her claim, so the Decision should stand. She testified that her friend told her Owochei still hunts her, but did not support this testimony with objective evidence. Without credible evidence to support her claim, it was bound to fail and neither the Guidelines nor the country condition evidence can cure this defect. The RPD's conclusion that she did not have a well-founded fear of persecution was reasonable.

ANALYSIS

[52] The determinative issue in this case was credibility; the RPD said:

> While each individual discrepant response to questions about material aspects of the claim might not amount to a finding of a lack of credibility, I find that assessed in their totality and in context, they lead me to make a finding of a general lack of credibility on the part of the claimant. In other words, the testimony of the claimant does not exhibit the "ring of truth" one would expect from a trustworthy witness making a genuine claim.

[53] Although this looks like a general negative credibility finding, the reasons are brief and it is not clear whether the RPD believed any of the Applicant's story. It seems obvious from the Decision as a whole that the RPD accepted her identity and that she came from the village of Abuedo, town of Ubulu Uku, Delta State, in Nigeria. The RPD also explicitly accepts that "after a number of years she ran away from her parent's home to live elsewhere at a boarding house" even though "she did not run away from her husband coming to harass her at her parent's house." How much of her past abusive relationship with her husband is accepted is unclear because the RPD only

addressed the “merits of her claim” which it says “contained discrepancies, exhibited vagueness and was confusing.” The Applicant and the Court are not given a full context or a comprehensive set of reasons because the RPD only deals with “some examples” of the defects it found in her testimony.

[54] Although the Decision suggests that the RPD based its conclusion on several inconsistencies, I think its treatment of the Applicant’s allegation of “physical abuse” is sufficient to dispose of this case.

[55] The RPD relied on the supposed contradiction between what the Applicant said in her PIF about “physical abuse” by her husband while she resided at her parents’ house and what she said at the hearing to the effect that she never saw her husband again after she left the family home and that he came to the store, beat on the door, and used verbal abuse. For the RPD, there is a clear distinction between physical abuse and verbal abuse and this is enough for it to conclude that “her responses to this major material contradiction are inadequate and unreasonable.” The RPD makes a specific finding that the husband “did not come and physically abuse her after she left the marital home in 2005, and this is a very serious contradiction which impugns her overall credibility.” This finding is extremely important for the overall negative credibility finding. There is, however, no evidence that she ran away from her parents’ home for any other reason; if the RPD accepted that she was running away, it is reasonable to expect that it would pay close attention to the Applicant’s explanation that she did not change her story from physical abuse to verbal abuse.

[56] The problem is that, in its reasons, the RPD does not mention the principal explanation offered by the Applicant for this discrepancy or say why her explanation is inadequate or unreasonable. The relevant portions of the transcript read as follows:

Q. So what was your life like when you lived at your parent’s? [*sic*]

A. My situation was pathetic because I felt like I was homeless, I couldn't (inaudible) the homes, but this was me now dealing with my parents (inaudible) to survive.

Q. And did you have contact with your husband?

A. No, we didn't have contact; I didn't see him anymore.

Q. So when was the last time you saw your husband?

A. Right from the day I left his house I did not see him (inaudible).

Q. Now, in your personal information form, on page 3, you're talking about when you lived at your parent's [*sic*] house and you wrote: "My husband did not leave me alone at my parent's [*sic*] house. On many occasions he visited me there and at the store and physically abused me". That's very different from what you just told me.

I'm sorry, please wait until our interpreter translates. I said that's very different from what you just told me.

Let him translate and then you can tell me more.

A. So what happened was that I never saw him after that but there were many times that he came to the store where I was doing my petty trade and people who recognized him will call and say my husband was coming and I will run away, so that I don't get beaten and get harassed.

Q. Okay, there's still something there that I don't understand what you wrote and I want to make sure you understand it. You wrote: "On many occasions he visited me there" – – that's referring to your parent's [*sic*] house. "He visited me there and at the store and physically abused me".

A. Madam, the scenario was this; the store being in front of the house and were other rooms behind the store. When they came to told me that my husband was coming I will escape, I

go to the back and here him physically abuse – – abusing – – like using words, in the store and said whenever – – whenever he sees me he was going to do this, he was going to do that; that was the physical abuse that I was referring to. But to see him, I didn't see him.

Q. Okay, I want to tell you something, I've been a member of this Board for seven years, I've done many claims of women who say that their husbands were abusing them. I have never heard someone say physically abuse me to mean anything else than the person hit me or beat me in some way.

A. Madam, my story still remains same the way that I said it the first day. Maybe it was put down in that form by the interpreter who wrote it, but that was the story that I remember happened because that was what happened.

Q. Okay. It's very difficult for me to read that your – – what you wrote was that your husband did not leave you alone and that he physically abused you and now you're telling me that you never saw him again after you left his home or the home where you had lived in 2005.

A. The way I spoke to this interpreter is the way I'm speaking to you. He will come, yes, he will make noise, use his hands and beat the door and shout abuses and insults, yes, I didn't see him. He came to my parent's [*sic*] home, yes; I didn't see him because before he'd come to where we were word would have come to me that my husband was coming, my husband was coming, because everybody knew what I went through in his hands and the moment they saw him coming towards my parent's [*sic*] place always (inaudible) that he was coming and I would just run behind and people would tell him that I'm not there, I'm not there. I heard him raise his voice, I heard him, you know, shout and threaten and abuse, that's exactly what I said to the interpreter when I spoke (inaudible).

[57] The Applicant says she has always described the abuse in the same way and explains that something got lost in translation yet the RPD never considers whether this may have occurred. The record shows that there were translation issues with this Applicant, which makes the RPD's failure to consider the problems she raised puzzling. Her PIF was interpreted to her in Yoruba by a Yoruba interpreter, while at the hearing an Igbo interpreter was used; this interpreter told the RPD that Igbo and Yoruba are "extremely different." The Applicant speaks both languages, but it is clear that Igbo is her most comfortable language because a pre-hearing was held to determine what kind of interpreter was required for the hearing and the RPD decided to proceed with the Igbo interpreter. It is also clear that the Applicant is not fluent in English.

[58] Against the backdrop of these translation issues, the Applicant explained that she has never changed her narrative about the kind of abuse she experienced from her husband while she was at her parents' house. She asked the RPD to consider whether this was a translation problem and not a credibility issue, but the RPD did not act on this request. Given the language issues in this case, I think it was unreasonable for the RPD not to consider the translation issues raised by the Applicant to explain an apparent inconsistency.

[59] As the Federal Court of Appeal said in *Attakora*, above,

> I have mentioned the Board's zeal to find instances of contradiction in the applicant's testimony. While the Board's task is a difficult one, it should not be over-vigilant in its microscopic examination of the evidence of persons who, like the present applicant, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.

[60] Also, the Federal Court of Appeal said in *Owusu-Ansah*, above

> The inconsistencies relied on often go unnoted during the Board's hearing and unremarked by counsel in argument before it. In many

> cases, this among them, the claimant's evidence has been given through interpreters, usually different at each proceeding. The process is fraught with the possibility of innocent misunderstanding. It is also to be noted that, in the scheme of the legislation, reasons for a decision are composed by the Board some considerable time after the decision has been rendered not, as in the usual judicial proceeding, as a critical part of the decision making process.

[61] The Federal Court of Appeal also said in *Rajaratnam*, above, that

> Applying the law as so developed to the case at bar, I am persuaded that, by and large, what the Board characterized as "discrepancies" cannot properly be so viewed. There were no real internal inconsistencies in the applicant's testimony at the hearing and the differences between what she stated there and in her Personal Information Form can be explained, it seems to me, by innocent misunderstanding because of the fact that she was assisted on each of these separate occasions by different interpreters. I consider the criticisms offered by the applicant's counsel to be entirely fair and accurate in the circumstances.

[62] In these cases, it is noteworthy that the interpreters were speaking the same language. In the present case, the Applicant had to convey her narrative through two interpreters who spoke different languages.

[63] Because the Decision is so brief and only really provides two examples of what the RPD calls the Applicant's discrepancies, and because the alleged discrepancy about the kind of abuse which the Applicant suffered "is a very serious contradiction which impugns her overall credibility," my finding that the RPD was unreasonable not to consider the translation explanation disposes of this application. There is no reason to consider the implausibility finding. The matter must be returned for reconsideration.

[64] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3655-11
STYLE OF CAUSE:	**ELIZABETH NGOZI OWOCHEI**
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 8, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 2, 2012

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