

Taha v. Canada (Minister of Citizenship and Immigration), 2004 FC 1675 (CanLII)

Date: 2004-11-29

File IMM-113-04

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Other [2004] FCJ No 2039 (QL)

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Docket: IMM-113-04

Citation: 2004 FC 1675

Ottawa, Ontario, this 29<sup>th</sup> day of November, 2004

Present: THE HONOURABLE MR. JUSTICE O'REILLY

BETWEEN:

MARWA TAHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Ms. Marwa Taha says that her family has threatened to kill her to protect its honour. She has claimed refugee protection in Canada because she does not believe she can return safely to Lebanon.

[2] Ms. Taha, a Palestinian, says that she was married to a Palestinian man but fell in love, and later began a sexual relationship, with a Christian man. It is this behaviour that has incurred the wrath of her family.

[3] A panel of the Immigration and Refugee Board rejected Ms. Taha's refugee claim. The Board did not believe she was ever married. Nor did it believe that her family would kill her if she

returned to Lebanon. Ms. Taha argues that the Board made serious errors in its analysis of the evidence. She has asked me to order a new hearing before a different panel of the Board. However, I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

## I. Issues

1. Did the Board err when it found that Ms. Taha had failed to prove her marriage?
2. Did the Board wrongly conclude that Ms. Taha was unlikely to be harmed by her family?

## II. Analysis

[4] I can overturn the Board's findings of fact only if I find that they were patently unreasonable, in the sense that they were entirely out of keeping with the evidence.

1. *Did the Board err when it found that Ms. Taha had failed to prove her marriage?*

[5] Ms. Taha says that she was married in 2000 in Lebanon. The marriage was performed by a sheikh, who obtained a civil certificate after the ceremony. Her husband was a resident of the United States and Ms. Taha joined him there in 2001. Her Christian friend followed. Her husband found out about their affair and alerted her family.

[6] The Board doubted that Ms. Taha was ever married and found the rest of her story implausible. As proof of the marriage, she produced a set of undated photographs taken at a party after her arrival in the United States. She also had a ring inscribed with her and her husband's initials, and the date of the wedding.

[7] The Board felt that Ms. Taha's claim depended greatly on proof of the marriage. Yet, it was not persuaded by Ms. Taha's oral testimony and found her corroborative evidence weak. The Board found that Ms. Taha's failure to tender the marriage certificate, and her lack of a convincing explanation for not obtaining it from her family, undermined her credibility.

[8] Ms. Taha argues that the Board erred by requiring documentary proof of her marriage instead of accepting her oral testimony and other supporting evidence at face value. In my view, it was within the Board's prerogative to draw an adverse inference from Ms. Taha's failure to produce a marriage certificate.

[9] The onus fell on Ms. Taha to prove her claim. She had a duty to supply documentary evidence in support of it (Rule 7). Her claim centered on her marriage. She had testified that the marriage certificate was accessible because it was in the custody of her family. Yet, she offered no reason for not obtaining it. In these circumstances, I cannot find the Board's dissatisfaction with Ms. Taha's evidence to be unreasonable. This distinguishes the present case from *Ahortor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 705 (T.D.) (QL), in which this Court criticized a Board member for drawing an adverse inference from a claimant's failure to produce a document that was not reasonably available.

[10] The Board also found the overall scenario described by Ms. Taha to be implausible. For example, the Board thought it unlikely that Ms. Taha would travel to the United States on a false U.S. passport, which she claimed to have destroyed on arrival, when she had a valid Lebanese travel document. It queried why Ms. Taha and her husband did not confirm their marriage in the United States as a means of confirming their status there. It wondered why, after Ms. Taha left her husband,

her lover returned to Lebanon, at the very point when they could be together. The Board thought it peculiar that, while Ms. Taha had been out of touch with her lover for some time, she managed to reach him on his cell phone the day before the hearing.

[11] Again, the Board was not satisfied with Ms. Taha's explanations. It concluded that not only was Ms. Taha never married, she never had a Christian lover.

[12] The Board's analysis derived from the evidence before it. I cannot find any basis for concluding that it ignored or seriously misconstrued the evidence before it.

2. *Did the Board wrongly conclude that Ms. Taha was unlikely to be harmed by her family?*

[13] The Board heard evidence from an expert witness who testified that Ms. Taha could well be in serious danger if she returned to Lebanon. He stated that, in cultural terms, the honour of the Muslim family is reposed in the chaste conduct of its women. However, the expert could not speak directly to the situation in Lebanon. As such, the Board preferred the documentary evidence before it that suggested that honour killings are rare in Lebanon. They are generally confined to uneducated Shiite families in rural areas. Ms. Taha is a Sunni from an educated family in Sidon. Her family sent her to a co-educational, multi-faith school where, in fact, she met her Christian friend.

[14] Ms. Taha argues that the Board was wrong to consider the situation in Lebanon to be distinct from that of the rest of the Palestinian community throughout the Middle East. She maintains that this community is quite homogeneous and that tolerance of honour killings is consistent throughout it.

[15] However, from my review of the documentary evidence, the Board had grounds for its conclusion that Ms. Taha was not at risk. Lebanon is described as the most Western country in the Middle East. Honour killings are rare and confined to a small segment of the rural population. Some reports noted the frequency of killings in the West Bank and Gaza Strip, but did not mention Lebanon.

[16] Again, I cannot find that the Board's conclusion was unsupported by the evidence.

[17] Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

### **JUDGMENT**

**THIS COURT'S JUDGMENT IS** that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

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"James W. O'Reilly"

J.F.C.

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**DOCKET:** IMM-113-04

**STYLE OF CAUSE:** MARWA TAHA v. MCI

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** November 23, 2004

REASONS FOR JUDGMENT

**AND JUDGMENT BY:** THE HONOURABLE MR. JUSTICE O'REILLY

**DATED:** November 29, 2004

APPEARANCES BY:

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