

Date: 20080506

Docket: IMM-3085-07

Citation: 2008 FC 570

Ottawa, Ontario, May 6, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ALEA ALTENOR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Alea Altenor left her home in St. Lucia in 2006. She claimed refugee protection in Canada based on her fear of persecution as a bi-sexual woman. She says that she was beaten both by her boyfriend and her mother and that the police refused to help her.

[2] A panel of the Immigration and Refugee Board dismissed Ms. Altenor's claim because it disbelieved her account of events. Ms. Altenor argues that the Board's conclusion was unreasonable and asks me to order a new hearing. I agree and must, therefore, allow this application for judicial review.

I. Issue

[3] Was the Board's conclusion unreasonable?

II. Analysis

[4] I can overturn the Board's decision only if it 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": *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47.

1. Factual Background

[5] Ms. Altenor explained that she had an older boyfriend, age 21, when she was only 14. Soon after she began that relationship, she realized she had feelings for other girls. She had her first sexual relationship with a girl when she was 16. She did not tell her boyfriend. Later, she had another relationship with a girl. Her boyfriend found out about it after the two girls had been seen kissing on a street corner. As a result, he beat and raped her. He told Ms. Altenor's mother about her daughter's sexuality, and her mother beat her, too. Ms. Altenor went to the police, who told her she should be ashamed of herself. They threatened to tell her father, who was out of town at the time. At age 17, she fled to Canada.

2. The Board's Decision

[6] The Board did not believe Ms. Altenor's account of events for the following reasons:

- Ms. Altenor said that she had not been sexually active since arriving in Canada because she was too busy going to school and too young to enter gay clubs. The Board doubted that a person with her sexual history would now be celibate.
- The Board wondered why Ms. Altenor would kiss her girlfriend on a street corner when her girlfriend was staying in a hotel.
- Ms. Altenor said that she was living with her boyfriend at the time she had had relationships with other girls. The Board wondered how this was possible.
- When she arrived at the border, Ms. Altenor gave confusing answers when asked how long she had lived with her boyfriend. The Board reviewed her answers and found "she had been living with him for four years, two years, a month, take your pick".
- The Board was surprised by Ms. Altenor's description of her departure from St. Lucia. It seemed to the Board that events unfolded too quickly. The beating and rape by her boyfriend, the departure of her girlfriend, the beating by her mother, the reports to police,

and the arrangements to fly to Canada all transpired over the course of two or three days.

[7] Counsel for the Minister conceded that some of the Board's findings were "silly" and that the Board's language was "inappropriate" and "unpolished" in places. Still, the Minister submitted that, read as a whole, the Board's analysis was reasonable.

[8] In my view, the Board's findings about Ms. Altenor's sexual inactivity in Canada, the location of the witnessed kiss, and her ability to have affairs while living with her boyfriend are clearly unreasonable. They are unsupported by any evidence and devoid of logic.

[9] With respect to the confusing answers she gave at the border about the length of time she lived with her boyfriend, I note that Ms. Altenor was only 17 years old at the time and had not been assisted by a designated representative as required by s. 167(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. In my view, the duty to appoint a designated representative arose prior to that interview and, therefore, the Board should not have used her answers to impugn her credibility: See *Duale v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 150.

[10] All that remains, therefore, is the Board's skepticism about the timing of events surrounding Ms. Altenor's departure from St. Lucia. The Board found the evidence "confusing to say the least" as it was entitled to do. However, this confusion would not have been a reasonable basis, on its own, to dismiss Ms. Altenor's claim. I must, therefore, allow the application for judicial review and order

a new hearing before a different panel. 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 allowed. The matter is referred back to the Board
for a new hearing before a different panel;
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

Immigration and Refugee Protection Act, S.C.
2001, c. 27

*Loi sur l'immigration et la protection des
réfugiés, L.C. 2001, ch. 27*

Representation

Représentation

167. (2) If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

167. (2) Est commis d'office un représentant à l'intéressé qui n'a pas dix-huit ans ou n'est pas, selon la section, en mesure de comprendre la nature de la procédure.