

Date: 20060426

Docket: IMM-5978-05

**Montréal, Quebec, April 26, 2006**

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**INDIRA DEL CARMEN ANGULO BARRAZA**

Applicant

And

**THE MINISTER OF CITIZENSHIP**

AND IMMIGRATION

Respondent

## **ORDER**

(Judgment delivered from the bench)

### Introduction

**WHEREAS** there may be a rationale for the decision-maker's finding, the ends can never justify the means and the means can never justify the ends, and an enabling environment for holding a hearing is essential. The comment near the middle of page 28 of the transcript of the hearing (Court Record, at page 95) and other examples cannot be overlooked by this Court. The very essence of justice requires that the decision-maker be perceived not only as unbiased, but also as someone who recognizes the vicissitudes of the human condition of a woman who is the victim of gender-related violence. Whether she is actually a victim is another matter. However, the mere possibility that she may be requires that she be treated not only with respect and dignity as any claimant should, but also in the spirit of the Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution* during the hearing itself;

**WHEREAS** this is an application for judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the

decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) on October 3, 2005, in which the Board ruled that the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act;

**WHEREAS** the applicant, Indira Del Carmen Angulo-Barraza, a Colombian citizen, arrived in Canada on April 9, 2005 and sought Canada's protection on April 15, 2005;

**WHEREAS** Ms. Angulo-Barraza claimed to be a victim of domestic violence perpetrated by her ex-spouse, who assaulted her so severely that she had to be taken to hospital where she learned she had lost the baby she was carrying;

**WHEREAS** the Board's decision does not mention Ms. Angulo-Barraza's particular situation as an alleged victim of domestic violence and gender-related persecution and, most importantly, does not consider the Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution* in the review of Ms. Angulo-Barraza's application;

**WHEREAS** when a decision-maker is dealing with a claimant who may fear gender-based persecution, and recognizing that this person may be subject to the Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*, an enabling environment must be created where the claimant feels safe and confident in the process or methodology of the hearing itself. This includes the need for the decision-maker to act in a manner consistent with the proposed environment, if not in the spirit of the Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*;

**WHEREAS** there may be a rationale for the decision-maker's finding, the ends can never justify the means and the means can never justify the ends, and an enabling environment for holding a hearing is essential. The comment near the middle of page 28 of the transcript of the hearing (Court Record, at page 95) and other examples cannot be overlooked by this Court. The very essence of justice requires that the decision-maker be perceived not only as unbiased, but also as someone who recognizes the vicissitudes of the human condition of a woman who is the victim of gender-related violence. Whether she is actually a victim is another matter. However, the mere possibility that she may be requires that she be treated not only with respect and dignity as any claimant should, but also in the spirit of the Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution* during the hearing itself;

**THEREFORE**, this decision is remitted to the Board for redetermination by a differently constituted panel to ensure that the process used to reach the decision, regardless of what it may be, reflects the foregoing.

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review be allowed.
2. The case is remitted to the Board for redetermination of the claim for Convention refugee and person in need of protection status by a differently constituted panel;
3. Without costs.

“Michel M.J. Shore”

Judge