

Date: 20061220

Docket: IMM-2924-06

Citation: 2006 FC 1519

BETWEEN:

ISRAEL BARRIONUEVO

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of a decision dated May 1, 2006, by the Refugee Protection Division of the Immigration and Refugee Board (the IRB), that the applicant is not a “Convention refugee” or a “person in need of protection” under the definitions in sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c.-27.

[2] Israel Barrionuevo (the applicant) is a citizen of Argentina, who claims to belong to a family, some of whose members have been killed by the police.

[3] The IRB found the incidents involving the applicant, members of his family and the police to be plausible, and considered these incidents to be reprisals for the activities of the applicant's mother, who, it seems, publicly denounced the actions of the police.

[4] However, the Board concluded that the applicant was not a "refugee" or a "person in need of protection" on the ground that he had an internal flight alternative. The panel stated the following on this issue:

The panel is of the opinion that the claimant had an internal flight alternative in Argentina, for the following reasons.

- (a) The incidents involving him took place in Mar del Plata.
- (b) He is not being sought by the police, as he himself confirmed at the hearing on April 7, 2006.
- (c) His movements are not restricted. He stated in fact that he left the airport to travel to Canada with no difficulty.
- (d) The panel suggested to him the city of Buenos Aires, with a population of over 12 million, more than 500 km from Mar del Plata, and the cities of Rosario and Tucuman.
When asked about this possibility, he claimed to be on a black list. The panel is not satisfied with such an answer, which does not explain how it is that the list exists only in the city of Buenos Aires, and not at a strategic location such as the airport, through which he passed without difficulty.
- (e) Argentinean citizens are free to settle wherever they wish within the borders of their country.

...

During its deliberations, the panel received Exhibit P-12, which describes the conditions in Argentinean prisons as being characterized by violence, revolt, torture and killings. Having reviewed this document, the panel determines that, since the claimant is not being sought by the police, it does not believe that he would be thrown into jail to suffer the fate described in Exhibit P-12.

* * * * *

[5] The standard of review applicable to the IRB's conclusion regarding an internal flight alternative is patent unreasonableness (see, *inter alia*, *Chorny v. Minister of Citizenship and Immigration*, 2003 FC 999 and *Ramachanthran v. Minister of Citizenship and Immigration*, 2003

FCT 673). The standard of review on the issue of whether the IRB properly applied the principles set out in the case law pertaining to internal flight alternatives is correctness (*Ezemba v. Minister of Citizenship and Immigration*, 2005 FC 1023).

[6] In this case, the applicant's submissions essentially deal with the assessment of the facts leading to the conclusion that he had an internal flight alternative. The application of the principles delineated in *Rasaratnam v. Canada (M.E.I.)*, [1991] F.C.J. No. 1256 (F.C.A.) (QL) and *Thirunavukkarasu v. Canada (M.E.I.)*, [1994] 1 F.C. 589 (C.A.) is not disputed.

[7] The onus is on the applicant to prove that there is a serious possibility he will be subject to persecution everywhere in Argentina, in accordance with the principle aptly stated by the Federal Court of Appeal in *Thirunavukkarasu*, above, at page 595:

On the one hand, in order to prove a claim to Convention refugee status, as I have indicated above, claimants must prove on a balance of probabilities that there is a serious possibility that they will be subject to persecution in their country. If the possibility of an IFA is raised, the claimant must demonstrate on a balance of probabilities that there is a serious possibility of persecution in the area alleged to constitute an IFA. . . .

[8] The applicant essentially maintains that the police force harassing him exists throughout the country, and therefore he cannot find refuge anywhere in Argentina.

[9] Relying on *Thirunavukkarasu*, above, the respondent replies that if the agents of persecution are agents of the state, the burden of proof is on the applicant to establish that he was not a victim of purely local agents, but that the entire Argentine police force persecuted him, including the federal police in Buenos Aires.

[10] The respondent also refers to the documentary evidence, which clearly indicates that each province in Argentina has its own police force (U.S. Department of State, Argentina, Country Reports on Human Rights Practices – 2004, at page 93 of the panel record). Moreover, the respondent correctly points out that the applicant failed to adduce any evidence to support his allegation that the entire police force is persecuting him. In *Ranganathan v. Canada (M.C.I.)*, [2000] F.C.J. No. 2118 (QL), at paragraph 11, the Federal Court of Appeal stated that “[a] failure by a claimant to fulfill his obligations and assume his burden of proof cannot be imputed to the Board so as to make it a Board’s failure.”

[11] Thus, under the circumstances, I concur with the respondent that the applicant failed to establish that it was patently unreasonable for the IRB to find as it did regarding an internal flight alternative. Accordingly, the intervention of this Court is not warranted, and the application for judicial review is dismissed.

“Yvon Pinard”

Judge

Ottawa, Ontario
December 20, 2006

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2924-06

STYLE OF CAUSE: ISRAEL BARRIONUEVO v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 23, 2006

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Pinard

DATED: December 20, 2006

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