

Date: 20070713

Docket: IMM-2613-07

Citation: 2007 FC 749

Ottawa, Ontario, July 13, 2007

Present: The Honourable Mr. Justice Shore

BETWEEN:

DAVID ANTONIO GARZA GALAN

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is case unto itself, following the events described and raised by the applicant in his application to stay the removal order.

Given that quasi-judicial decisions cannot be made on an assembly line, a unique case requires reflection, patience, active listening and an open mind. To ensure that natural justice prevails and that procedural fairness is apparent, it is dangerous to draw general conclusions from a specific premise.

[TRANSLATION]

... in *Harrison v. Carswell*, Mr. Justice Laskin describes *Peters* as an *individual case* indisputably tied to the particular facts submitted to him from which, as a result, a general statement cannot be formulated as a precedent. As the *individual case* is not contemplated by the law, it requires the court to examine it in light of specific rules which do not necessarily govern the general rules. “*it is up to the courts to determine in individual cases whether the right to counsel is infringed, and, if so, what remedy, if any, is appropriate in the circumstances.*” (*Juridictionnaire, last update, 2006-07-27.*)

JUDICIAL PROCEEDING

[2] This application to stay follows an application for leave and judicial review filed by the applicant on May 8, 2007, against a decision by the pre-removal risk assessment officer (PRRA).

ANALYSIS

[3] In *Toth v. Canada (Minister of Employment and Immigration)*, 86 N.R. 302 (F.C.A.), the Court of Appeal adopted three (3) requirements:

- a. The existence of a serious issue;
- b. The existence of irreparable harm;
- c. The assessment of the balance of convenience.

SERIOUS ISSUE

[4] The PRRA officer proceeded to an incomplete factual summary of the applicant’s story in this particular case.

[5] The applicant explained in his PRRA that, when he was very young, he became the head of his family following his father’s assassination. The PRRA officer did not take into consideration the

specific personal background to the effect that the applicant had spent his youth in Guatemala, taking into account the history of the country and recent events.

[6] The applicant also specified that he became a target of the Maras because he was a member of a religious group and because he took care of a youth group, implementing social programs and improving living conditions, giving them alternatives to delinquency and membership in a street gang.

[7] He stated that he received threatening phone calls, that he was physically and mentally tortured and that he had been shot at in an attempt to take his life.

[8] In these circumstances, the applicant fled his country for Canada, as there was a threat to his life.

[9] With the knowledge that the applicant had never been heard by a panel or an administrative authority, it would have been necessary, in this rare case, to seek clarifications about the possible danger to the applicant.

[10] As the evidence indicated the possibility of direct danger targeting the applicant, according to the principle of natural justice in this particular case, some clarifications would have been essential to test the applicant's claims and therefore to ensure that there was procedural fairness.

[11] Even though it does not have an effect on the PRRA regarding the personal danger to the applicant's life in Guatemala, the Court nevertheless observes that, further, the applicant's wife is three (3) months pregnant and the applicant's presence with her would be an advantage, to help her during her pregnancy as well as during the first months after the child's birth.

[12] Indeed, the PRRA acknowledges that Guatemala is a country that has faced many political upheavals for more than the last half-century and that it is facing very serious problems with street gang violence.

[13] However, the officer ignored the fact that the applicant is an active member of a religious community and that he had been a member of this youth group, teaching alternatives to delinquency and gang membership. Accordingly, this position is such that he is a person who is more targeted than the rest of the population which is already facing a serious risk.

[14] The applicant submits that he has serious questions to raise.

IRREPARABLE HARM

[15] With regard to irreparable harm, the applicant submits that a panel or administrative authority never took the applicant's story into consideration – not in a significant manner. The PRRA officer is the only authority to whom the applicant could have submitted his arguments. The failure to compensate for this shortcoming is such that the applicant would be at risk of cruel and unusual treatment if he were to be removed to Guatemala.

[16] Finding that the applicant was not at risk of cruel and unusual treatment or persecution in his country is an error in law; the standard of review is a “reasonable chance of persecution” and a contradiction worthy of consideration before this Court.

BALANCE OF CONVENIENCE

[17] The applicant believes that if he returns to Guatemala, his life will be in danger while awaiting his return to the country.

[18] Taking into account the foregoing, the three (3) justificatory requirements are met and neither the Minister nor the public interest will suffer as a result of the requested stay.

CONCLUSION

[19] For all of these reasons, the application to stay the removal is allowed.

JUDGMENT

THE COURT ORDERS that the application to stay the removal be allowed.

“Michel M.J. Shore”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2613-07

STYLE OF CAUSE: DAVID ANTONIO GARZA GALAN
v. MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario (by teleconference)

DATE OF HEARING: July 13, 2007

REASONS FOR JUDGMENT: SHORE J.

DATE OF REASONS: July 13, 2007

APPEARANCES:

Claude Brodeur FOR THE APPLICANT

Alexandre Tavadian FOR THE RESPONDENT

SOLICITORS OF RECORD:

CLAUDE BRODEUR FOR THE APPLICANT
Montréal, Quebec

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada