

Date: 20090414

Docket: IMM-4237-08

Citation: 2009 FC 369

Ottawa, Ontario, April 14, 2009

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**OTHONIEL CASTILLO GONZALEZ
LADY ELIZABETH CONTRERAS MUNOZ
and ANGELINNE CASTILLO CONTRERAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are challenging the legality of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated September 2, 2008, finding that the applicants are neither “Convention refugees” nor “persons in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, as amended. The applicants’ lack of credibility with respect to the essential elements of their claim was determinative.

[2] The principal applicant, his spouse and their daughter are Mexican citizens. On June 30, 2007, the principal applicant allegedly witnessed a minor woman being raped by members of a group called “Mara Salvatrucha.” He tried to help the victim, which resulted in the attackers going after him. However, the applicant was able to flee. On that same day, the applicant apparently received death threats from members of the group. Following that incident, the applicants left their home to take refuge at a ranch in the city of Alvarado. The applicant claims that he had contacted Eduardo Vasquez Badillo in order to lodge a complaint with the public prosecutor, but was strongly advised to leave. Therefore, the complaint was never filed. The applicant came to Canada on July 20, 2007. On July 25, 2007, Mara Salvatrucha members presumably entered the applicants’ home in the city of Veracruz. They looted the premises and stole some of the applicants’ identity documents. The applicant’s spouse claims that she was there when this happened. After that incident, the applicant’s spouse and daughter joined him in Canada on November 7, 2007.

[3] The Board rejected the applicants’ refugee protection claim because they lacked credibility on essential elements of their narrative. First, the Board noted the contradictions in the female applicant’s testimony as well as between her testimony, her Personal Information Form (PIF) and the point-of-entry documents.

[4] Among other things, the female applicant alleged that she and her daughter had taken refuge at a ranch in Alvarado, Veracruz, from July 13, 2007, until they left Mexico for Canada. However, her PIF and the point-of-entry documents state that she had lived at the same address in a town in Veracruz for ten years. That contradiction was not satisfactorily explained at the hearing, especially

since the female applicant had stated at the start of the hearing that her PIF and the documents enclosed with it were complete, true and accurate.

[5] Then the female applicant testified that Mara members entered the applicants' house in the city of Veracruz on July 25, 2007, and that she was there at the time. Yet, she had stated earlier that she had not returned to the city of Veracruz after seeking refuge at the ranch. Confronted by the Board on this contradictory testimony, she was unable to provide satisfactory explanations. The Board noted later on that the female applicant offered acceptable explanations after her counsel invited her to justify the contradiction. However, the Board assigned them little probative value because they were provided later on in the hearing.

[6] Second, the Board alleges that the male applicant omitted to mention in his PIF an element crucial to his claim, namely, that Mara members had presumably stolen his wallet and identity documents when they entered his home in July 2007, and that, as a result, they would be able to find him anywhere in Mexico. Yet, he had stated at the start of the hearing that the information in his PIF was complete, true and accurate.

[7] Finally, the Board pointed out the lack of documentary evidence corroborating the central elements of the applicants' claim, specifically,

- a. a document corroborating that the applicants had lived on the ranch from July to November 2007, and

- b. a document stating that the male applicant had consulted the lawyer, Eduardo Vasquez Badillo, from the city of Veracruz, following the June 2007 incident.

[8] This application for judicial review must be dismissed. The applicants are not seriously disputing the reasonableness of the findings of fact stated clearly in the Board's impugned decision. They are basically claiming that the Board did not ask them to file additional evidence corroborating that they had lived on a ranch following the alleged events.

[9] Learned counsel for the applicants, who had also represented them at the hearing before the Board, did not make an application to provide additional documents during or after the hearing, in accordance with section 37 of the *Refugee Protection Division Rules*, SOR/2002-228, as amended. The applicants were represented by experienced counsel at all times. In this case, the Board was not at all obligated to invite the applicants afterwards to file additional evidence that would corroborate their narrative. The truthfulness of the applicants' allegations is very questionable because of the contradictions noted in the impugned decision. Thus, due to the lack of evidence corroborating the applicants' narrative, it was reasonable for the Board to find their claim very weak.

[10] This Court must give a great deal of deference to the Board's decisions concerning questions of credibility and of assessing the evidence. Since most of the negative findings in the impugned decisions were not refuted by the applicants, it is not the Court's role, within the framework of an application for judicial review, to reassess the evidence and substitute its own

opinion for that of the Board. Even if the error alleged by the applicants were admitted (which is not the case here), it would not be determinative. Having taken care to examine the existence of justification, transparency and intelligibility within the decision-making process and considering that the Board's non-credibility finding falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47), I am of the opinion that there is no valid reason to set aside the impugned decision and return the matter to the Board.

[11] Therefore, this application for judicial review must be dismissed. Counsel have not proposed a question to be certified, and I agree that this matter raises none.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Margarita Gorbounova, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4237-08

STYLE OF CAUSE: **OTHONIEL CASTILLO GONZALEZ
LADY ELIZABETH CONTRERAS MUNOZ
and ANGELINNE CASTILLO CONTRERAS v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 7, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MARTINEAU J.

DATED: April 14, 2009

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