

Federal Court



Cour fédérale

Date: 20091215

Docket: IMM-2250-09

Citation: 2009 FC 1275

Ottawa, Ontario, December 15, 2009

Present: The Honourable Mr. Justice de Montigny

BETWEEN:

JUAN MANUEL BECERRA GARCIA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board. On April 9, 2006, Board member Normand Leduc rejected the applicant's claim for refugee protection on the grounds that the applicant was not credible.

[2] Although the impugned decision is unsupported and even ambiguous in some respects, I believe that the applicant has not shown that the member's findings were unreasonable. Here are my reasons for this assessment.

I. Facts

[3] The applicant is a Mexican citizen. He alleges that, in June 2005, he was hired as a bodyguard by a woman called Aguede Jaimes Nava, who had dealings with several police officers, including Romero Romero, Commissioner of the Federal Preventive Police, and Martinez Ayala, Commander-in-Chief of Investigations of the Judicial Police of the State of Mexico.

[4] On November 17, 2006, the applicant realized that his employer was operating an establishment in which young abducted girls were forced to engage in prostitution. One of them allegedly told the applicant that a woman named “Tia” (aunt) was behind these activities, with the help of police officers. The applicant then realized that the people described by the girl had to be his employer, because “Tia” was her nickname, and officers Romero and Ayala.

[5] The applicant states that the next day he advised his employer that he no longer wanted to work for her because of what he had discovered. As a result, Ms. Nava threatened him and ordered him to keep quiet about what he knew, otherwise her police friends would take care of him.

[6] On November 21, the applicant was allegedly mistreated and threatened by a patrol of the Federal Preventive Police, who again warned him to say nothing about what he had learned. The applicant states that the next day he tried to complain to the Federal Public Ministry with the

help of a lawyer. He was promised an investigation and was told to come back later to obtain a copy of his denunciation. He never did obtain a copy of the denunciation.

[7] The applicant claims that he sought refuge with a friend of his aunt in Acambaro. A few days later, on November 24, 2009, police officers tried to find him at his mother's place, accusing him of making false accusations. On January 2, 2007, a Federal Preventive Police patrol found him in Acambaro, where they pursued him and again threatened him.

[8] The applicant states that, with the help of another lawyer, he again tried to file a denunciation with the Public Ministry. Considering the little interest shown by the officer to whom he gave his account, the applicant fled to another more distant city in Mexico (Mochis) on January 3, 2007. On March 14, 2007, two individuals allegedly again tried to shoot him.

[9] Following this incident, the applicant again brought a complaint with the Public Ministry. The officer asked him for money to accelerate the processing of his complaint and once again refused to give him a copy of his denunciation.

[10] No longer feeling safe, the applicant left Mexico for Montréal on March 27, 2007, where he claimed refugee protection on April 3, 2007.

II. Impugned Decision

[11] The Board member's decision, which is three pages long, essentially deals with the applicant's lack of credibility. The Board member first noted that in his testimony, the applicant stated that he had been told of police officers Romero and Ayala's involvement in his employer's activities by one of the confined victims. This information was not mentioned in answer to question 31 of the applicant's Personal Information Form (PIF). The Board member considered this to be an important omission: not only did the applicant mention in his PIF that one of the victims had informed him of his employer's responsibility, but in addition the involvement of the police officers was crucial to explain why it was impossible for the applicant to find refuge elsewhere in the country or obtain protection from the Mexican authorities.

[12] The Board member also noted the lack of copies of the complaints filed by the applicant and the contradictions in the explanations given by the applicant to justify this deficiency. As far as the November 2006 complaint is concerned, the applicant first stated that his Mexican lawyer had been unable to obtain a copy of the denunciation because he was told that the investigation was completed. He then alleged that the same lawyer had demanded too much money to obtain a copy of the complaint for him. Finally, the applicant claimed that his mother, without having been given power of attorney by him, had unsuccessfully tried to obtain a copy of the complaint.

[13] As far as the complaint dated March 14, 2007, is concerned, the applicant again claimed that the officer who received his complaint had demanded money to obtain a copy for him. Yet the applicant did not report this demand to anyone and did not undertake any subsequent steps to

obtain a copy of his complaint. In addition, the Board member considered the applicant's narrative to be implausible, given the documentary evidence that a complainant can obtain a copy of his or her complaint and denounce a public servant who infringes this rule. When confronted with this evidence, the complainant could only submit that the actual situation in Mexico was quite different from that described in the documentary evidence.

[14] Finally, the member criticized the applicant for not having lodged a complaint with higher authorities, such as the Office of the Attorney General of the Republic. The applicant explained that he had decided to file his complaint with the Public Ministry on the recommendation of his lawyers. He was unable to explain, however, why he had filed at least two complaints with the Public Ministry even though he allegedly did not trust this body.

III. Issue

[15] The only issue in this case is whether the RPD erred in its assessment of the applicant's credibility.

IV. Analysis

[16] It is trite law that credibility findings are akin to issues of fact and must be treated with considerable deference on judicial review. Having had the advantage of seeing and hearing the applicant, the RPD is in a better position than this Court to assess his behaviour and the validity of his explanations. It is only where the RPD's findings are capricious, without merit or made in

bad faith that this Court will intervene: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12.

[17] Considering this standard of review, the issue to be determined by this Court is not whether it would have reached the same conclusion as the Board member, but rather if the member's conclusion was warranted on the basis of the evidence and if it falls within a range of possible, acceptable outcomes.

[18] A close reading of the transcript shows that the Board member was entitled to question the revelations allegedly made to the applicant by one of the victims about the identity of the persons in charge of the establishment in which young girls were being used as prostitutes. At the hearing the applicant stated that the names of the two police officers had been given to him by his employer's young victim, even though he wrote in his PIF that the persons responsible had been identified as being his employer and some police officers. Although this discrepancy between the two versions may not be determining as such, the Board member could nevertheless consider it to be a factor which undermined the applicant's credibility, especially since this was clearly a central aspect of his claim.

[19] The Board member was also entitled to question the various explanations given by the applicant about the lack of evidence corroborating the denunciations he allegedly filed with the Public Ministry. A close reading of the transcript reveals that the applicant had changed his version of the facts several times. Similarly, the Board member could reasonably doubt the

explanation given by the applicant for why he did not complain to the Attorney General of the Republic or to the Federal Investigation Agency rather than the Public Ministry to which the incriminated police officers reported directly. It is true that the applicant was not obliged to contact organizations devoted to protecting human rights. However, there was no excuse for him not to complain to higher Mexican authorities empowered to investigate allegations about federal police officers. In addition, the applicant did not really answer why he complained to the Public Ministry even though he allegedly did not trust the people working there.

[20] Finally, the applicant submitted that the Board member erred when he criticized him for not contacting the Mexican consulate or embassy to obtain a copy of his complaints. However, this is not why the Board member criticized him. Instead, he questioned why the applicant had not taken any steps since he arrived in Canada to corroborate his claims and obtain a copy of his denunciations, be it through a relative or another Mexican lawyer.

[21] In short, I consider that the RPD's decision not to believe the applicant's account was not capricious and was supported by the evidence. The transcript of the applicant's testimony clearly shows that it was rife with inconsistencies, omissions and contradictions. Moreover, the applicant did not provide a satisfactory explanation about the complete lack of evidence that might have lent credibility to his claims. In these circumstances, and despite the fact that the decision could have been more thorough, an intervention by this Court would not be warranted. The applicant did not discharge his burden of demonstrating that the findings made by the Board member were unreasonable or capricious, made in bad faith or unsupported by the evidence.

[22] For the foregoing reasons, the present application for judicial review is dismissed. The parties did not submit any question for certification and this case does not raise any.

ORDER

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Yves de Montigny”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2250-09

STYLE OF CAUSE: JUAN MANUEL BECERRA GARCIA v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 10, 2009

**REASONS FOR ORDER
AND ORDER:** DE MONTIGNY J.

DATED: December 15, 2009

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