

Federal Court



Cour fédérale

Date: 20110310

Docket: IMM-2733-10

Citation: 2011 FC 259

Ottawa, Ontario, March 10, 2011

PRESENT: THE CHIEF JUSTICE

BETWEEN:

**JESUS MARTINEZ DE LA CRUZ
MIRNA NOEMI MARTINEZ GUTIERREZ
JAZMIN ITZEL MARTINEZ MARTINEZ (MINOR)
GRETELL NAOMI MARTINEZ MARTINEZ (MINOR)
MIRNA VIRGINIA MARTINEZ MARTINEZ (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The tribunal record includes the three personal information forms (PIF) produced for the applicants in December 2008, June 2009 and November 2009.

[2] In dismissing the applicants' claims, the Refugee Protection Division (the member) relied substantially on the first PIF to demonstrate inconsistencies in the applicants' version of the relevant events. The applicants were not questioned by the member about their first narrative.

[3] It was procedurally unfair for the member to ground her reasons for decision on the discrepancies between the first and second PIFs, without raising these inconsistencies during the hearing and affording the claimants the opportunity to provide an explanation. Also, the member's decision makes no reference to clarifications regarding the first PIF set out in the applicants' second PIF.

[4] It is trite law that not every inconsistency must be put to a claimant. Here, however, the inconsistencies were directly related to the member's negative credibility finding. It was necessary, in the circumstances of this case, for the member to confront the claimants with the first narrative by raising her concerns during the hearing: *Kumara v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1172. The member failed to do so.

[5] Accordingly, this application for judicial review will be granted. The Court agrees with the parties that this proceeding raises no serious question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is granted. The decision of the Refugee Protection Division dated April 20, 2010 is set aside and the matter referred for re-determination by a different member.

"Allan Lutfy"

Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2733-10

STYLE OF CAUSE: JESUS MARTINEZ DE LA CRUZ ET AL v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 15, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Lutfy C.J.

DATED: March 10, 2011

APPEARANCES:

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