

Federal Court



Cour fédérale

Date: 20120920

Docket: IMM-1554-12

Citation: 2012 FC 1102

Ottawa, Ontario, September 20, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

EDWIN ANTONIO URQUILLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated January 26, 2012, finding that the applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

Facts

[2] The applicant, Edwin Antonio Urquilla, is a citizen of El Salvador. He joined the National Civil Police in 1991 and worked as a customs officer in the Financial Division. One day in March 2001, he and another agent received a call about an attempted robbery in progress nearby. They attended and intervened. They called the national police for back-up, but two officers from the Financial Division arrived instead. The applicant and his fellow agent observed that the two officers had failed to follow arrest protocol, assaulted the perpetrator and then let him go.

[3] Three months later the applicant was relocated to the Central Financial Division in San Salvador. He was approached by two agents from the Criminal Investigation Unit who were investigating the incident the applicant witnessed. The applicant told the agents about the two officers assaulting the suspect and provided a declaration, as a result of which the two officers were arrested.

[4] The applicant states that he and his fellow agent were both threatened if they did not withdraw the declaration against the two officers. The officers said they had powerful connections both in the police and in the mob and the applicant would be killed along with his family. The applicant alleged several incidents in which police officers approached him and threatened him.

[5] The applicant fled El Salvador to the United States in May 2002. In 2006, he spoke to his brother Frank, who told him that five officers had come looking for the applicant and had threatened him and beaten him severely. In March 2010, the applicant began receiving suspicious phone calls

at his home in the United States. He contacted his aunt in Canada, who investigated a way for him to come to Canada. He arrived on June 7, 2010 and claimed refugee protection at the border.

Decision Under Review

[6] In the reasons for its decision, dated January 24, 2012, the Board found that the determinative issue was credibility, including subjective fear. The Board found that the applicant was not credible in his testimony and it did not believe events had occurred as he described.

[7] The Board identified several inconsistencies and implausibilities, including:

- a. The applicant and his fellow agent allegedly did not take the names of the victims and perpetrator when they intervened in the assault, which was not believable since the applicant is a police officer and knows arrest protocol;
- b. The applicant and his fellow agent watched the two officers beat the suspect, but did not attempt to stop it or report it to their superior, which was implausible, and for which no coherent explanation was provided;
- c. The applicant gave inconsistent evidence regarding the length of time between the incident and his transfer, and also regarding the number of times he reported the threats he received to the prosecutor;
- d. The applicant claimed to have no records of the declaration he made, or the notices of his court appearances;
- e. The applicant claimed not to know if the two officers were still in jail or the outcome of the case, nor did he know the whereabouts of his fellow agent, which the Board found not credible;
- f. The applicant testified that he did not know the year his mother moved, which caused the officer to draw a negative inference since she supposedly moved because of threats from police;
- g. The officer did not believe that the police would suddenly come looking for the applicant and beat his brother Frank in 2006 and drew a negative inference from the failure to make the brother available to testify by teleconference;
- h. The Board noted the applicant's claim that his brother Juan Carlos was killed in 2010 in retaliation, but the Board found no evidence to link that death to the

applicant's situation (since the murder appeared to occur while he was working as a bus driver, and the documentary evidence suggested it was committed by a gang); and

- i. The applicant did not seek asylum while living in the United States for several years.

[8] The applicant's claim was therefore refused.

Standard of Review and Issue

[9] The issue raised by this application is whether the Board reasonably found the applicant not to be credible: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[10] The applicant argues that a claimant's sworn testimony is presumed to be true unless there are reasons to doubt its truthfulness: *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA). The Court fully accepts this proposition as a matter of law, but finds that the Board supplied numerous reasons for doubting the truthfulness of the applicant's testimony in this instance, none of which the applicant has successfully impugned.

[11] The applicant claims that the Board ignored reasonable explanations provided for alleged inconsistencies. Those explanations were open to the Board to assess and determine; which it did. The fact that it did not consider each and every explanation or each and every aspect of the testimony does not render a decision unreasonable. I also note that no compelling argument is advanced in respect of the finding that there was no credible explanation for the eight year delay in advancing a claim while resident in the United States. This is fatal to the application.

[12] The applicant also argues that the Board erred in preferring the documentary evidence over the applicant's testimony without good reason; however, there is again no specific reference to such a finding or an explanation for why that finding was unreasonable.

[13] In sum, I agree with the respondent that the Board identified several inconsistencies and implausibilities, and reasonably concluded that the applicant was not credible. There is, therefore, no basis for the Court to intervene.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1554-12

STYLE OF CAUSE: EDWIN ANTONIO URQUILLA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: August 21, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: September 20, 2012

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