

Federal Court



Cour fédérale

**Date: 20140702**

**Docket: IMM-12646-12**

**Citation: 2014 FC 642**

**Ottawa, Ontario, July 2, 2014**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**MARIO SALVATORE BOZZETA ORE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**INTRODUCTION**

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board], dated November 8, 2012 [Decision], which

refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under s. 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of Peru who came to Canada on September 27, 2011 after suffering threats, violence and extortion at the hands of a criminal gang, Los Malditos de Atahualpa. He made a claim for refugee protection at Fort Erie upon his arrival, but this claim was rejected by the RPD on November 8, 2012. The Board found that the Applicant's reasons for fleeing Peru had no nexus to a Convention ground of protection, and that the risk he faced in Peru was a generalized risk, making him ineligible for protection pursuant to s. 97(1)(b)(ii) of the Act.

[3] The basic facts are not in dispute. The Applicant was working as a taxi driver in Callao, Peru in February 2011 when two men hired him to take them to Lima. The Applicant says he recognized one of the men as a former school mate. On the way, they put a gun to his head, beat and robbed him and stole the taxi. They threatened to kill him if he went to the police, and left him on the side of the road. The Applicant was picked up by a passer-by and taken for medical care. He reported the incident to the police at the insistence of the taxi owner, who went along to attest to the Applicant's story. The Applicant's submissions to the RPD included a police report dated February 21, 2011 describing these events, as well as a medical report describing the head injuries he received on February 20, 2011.

[4] On March 22, 2011, the Applicant received a phone call from the perpetrators demanding \$10,000 and threatening to kidnap one of his children if he did not comply. As he did not have the money, he decided to go to live at his aunt's home in Chancha Mayo. The Applicant says in his Personal Information Form [PIF] that a man attempted to kidnap one of his children as they were leaving school on May 6, 2011, but was thwarted by the quick reaction of some other parents. The Applicant's common law wife reported this to the police the same day. The police report says the perpetrator said "tell your father that we are going to kill him" and that he came on behalf of "Morote," one of the men who stole the taxi. After this, the Applicant returned home as his children were afraid.

[5] The record includes another police report dated May 15, 2011 describing an attack on the Applicant by two inebriated men who also said they came on behalf of "Morote." They beat him, threatened his life, and demanded that he withdraw the report about the car theft. A police officer attended the scene but was unable to locate the perpetrators. The police took the Applicant to the hospital, and the record includes a medical report dated May 15, 2011 citing "trauma due to blows."

[6] On June 1, 2011, the Applicant took his family to live in Huanchaco, Trujillo, thinking they would be safer, but he says the perpetrators found them there. They harassed his family while he was at work and said they were going to kill him because he had gone to the police. The Applicant and his wife went to ask the police about progress in their investigation, but were told there were no results yet and theirs was not the only report the police had to investigate. They decided to return to Callao, as they were "going from place to place without protection."

[7] Finally, on July 30, 2011, the Applicant was attacked outside a supermarket by two men who beat him and tried to put him in a car. He escaped with the help of some bystanders who came to his aid. He provided a police report of the same date to the RPD. It says that the men, one of whom was “Morote,” pointed a revolver at his head, threatened to kill him, and demanded he withdraw the report about the car theft.

[8] The Applicant left Peru soon after this, on August 18, 2011, and travelled to Canada through Mexico and the United States. He says he is afraid to return to Peru because his life is in danger and the authorities there do not have the means or the will to protect him.

#### **DECISION UNDER REVIEW**

[9] The RPD identified the determinative issues in the claim as nexus and generalized risk. It found that the Applicant had been a victim of crime, which did not provide a nexus to a Convention ground of refugee protection. The claim was therefore analyzed under s. 97 of the Act. The Board found that the Applicant faced a generalized risk and was excluded from protection pursuant to s. 97(1)(b)(ii).

[10] The Board noted that when asked why he was targeted, the Applicant acknowledged that he would have been perceived to have money. He testified that the perpetrators believed that he owned the taxi, and when asked if the gang members would target any taxi driver he replied that they kill cab drivers and are in the business of extorting. He said they were hired killers who extort, and if you do not accede to their demands, the consequences follow. The Board therefore

found that “[t]he fears of the claimant relate to the fact that he did not pay the extortion demand, and moreover, he reported the perpetrators to the police.”

[11] The Board cited statistics showing that crime is high and increasing in Peru, including homicides and drug trafficking. It considered the documentary evidence and found that:

[18] Documentation in the National Documentation Package on Peru supports that there are gangs that operated in the vicinity where the claimant lived. It is clear from the evidence that there are risks associated with living in Honduras [sic] and particularly with being perceived as prosperous. Extortion is part of the gang culture, according to the documentary evidence, and unfortunately violence accompanies this. The risk that the principal claimant faces is as a consequence of his departure from Peru and his failure to accede to the extortion demands and the fact that he reported the perpetrators to the police.

[12] The RPD cited several cases from this Court – including *Paz Guifarro v Canada (Citizenship and Immigration)*, 2011 FC 182 [*Paz Guifarro*], *Ventura De Parada v Canada (Citizenship and Immigration)*, 2009 FC 845 [*De Parada*], *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331 [*Prophète (FC)*], *Ramirez Aburto v Canada (Citizenship and Immigration)*, 2011 FC 1049, *Chavez Fraire v Canada (Citizenship and Immigration)*, 2011 FC 763, and *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772 – and found that these cases supported the view that the Applicant faces a generalized risk. The Board found that:

[24] The act of criminality is established on the demand of payment and implicit or explicit threat of reprisal for failure to pay. The fact that the threat is implemented or the victim reports the extortion does not bring them outside of the operative words of subsection 97(1)(b)(ii), namely whether the threat they face is generalized. The preponderance of caselaw follow the foregoing cases. Though certain groups may be targeted more frequently or repeatedly [emphasis in original] because of their perceived wealth, occupation, or business ownership, for example, everyone

tin the country is deemed at risk because of the general conditions there.

## CONCLUSION

[25] The Board concludes that the claimant had extortion demands placed on him as he was perceived to have money. Moreover, what transpired as a consequence was directly related to the fact that he did not accede to those demands, and also reported the criminality to the police.

[13] In light of these findings, the Board found that the Applicant was not eligible for protection pursuant to s. 97(1)(b)(ii), “as his fears of the above noted gang, as a business owner, is a risk faced generally by others in Peru.”

## ISSUES

[14] The sole issue in this proceeding is whether the Board erred in its interpretation and application of the concept of “generalized risk” under s. 97 of the Act.

## STANDARD OF REVIEW

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[16] While there is mixed jurisprudence on this point (see *Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 [*Portillo*]), I think the preponderance of authority is that the RPD's interpretation and application of s. 97(1)(b) of the Act regarding whether a claimant faces a "generalized risk" is subject to review on a standard of reasonableness: see *Paz Guifarro*, above, at paras 18-19; *Lozano Navarro v Canada (Citizenship and Immigration)*, 2011 FC 768 at paras 15-16; *Garcia Vasquez v Canada (Citizenship and Immigration)*, 2011 FC 477 at paras 13-14; contra *Innocent v Canada (Citizenship and Immigration)*, 2009 FC 1019 at paras 36-37 [*Innocent*].

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

## STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

### Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### Person in need of protection

97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would

### Persone à protéger

97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence



subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

## ARGUMENT

### *Applicant*

[19] The Applicant argues that the Board erred in its interpretation of the concept of generalized risk, particularly in light of this Court's most recent decisions on this issue.

[20] The Applicant notes that the Board specifically accepted that the risks he faces are a consequence of his departure from Peru, his failure to accede to extortion demands, and the fact that he reported the perpetrators to the police (Decision at para 18), but found nevertheless that the risk was generalized (Decision at para 24). He argues that this is precisely the type of reasoning that has been rejected by this Court in a number of recent cases, where the Court has found that it is problematic to find that an individual has been specifically targeted and then go on to conclude that they face a generalized risk: see *Kaaker v Canada (Citizenship and Immigration)*, 2012 FC 1401 at paras 47-49 [*Kaaker*]; *Malvaez v Canada (Citizenship and Immigration)*, 2012 FC 1476 at paras 12, 16, 23 [*Malvaez*]. The Applicant says these cases are more recent than those relied upon by the Board, none of which was more recent than 2011.

[21] The Applicant says that the Board made no negative credibility findings, and accepted that he was targeted and was at risk. He argues that according to the cases cited above, an interpretation of s. 97 that would deny him protection despite these facts is not in keeping with the intent of that provision, empties it of any application in the criminal context, and is simply wrong.

*Respondent*

[22] The Respondent argues that the Board reasonably concluded that the risk of extortion the Applicant faces is a generalized one in Peru. In the Respondent's view, it is well-established at law that in a country where crime is prevalent, victims of crime are usually deemed to be at "generalized risk" and do not qualify for protection: *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 at para 10; *Innocent*, above, at paras 66-67.

[23] Contrary to the Applicant's submissions, the Board did not find that he was specifically targeted by the gang, the Respondent says. Rather, it found that he was extorted because he was a business owner who was perceived to have money, which is a risk faced generally by others in Peru, and that the incidents that consequentially occurred were directly related to his refusal to accede to the extortion demands as well as his reports to the police. Thus, the Board did not find that he was being specifically or personally targeted as was found in *Portillo*, *Kaaker*, or *Malvaez*, all above. It found that he refused to pay an extortion amount, reported his perpetrators to the police, and faced risk as a consequence of doing so. As found in *Wilson v Canada (Citizenship and Immigration)*, 2013 FC 103 at paras 5-8 [*Wilson*], the Applicant's refusal to pay and the subsequent violence he experienced is "part of the ongoing criminal act of extortion" (at para 5). It was reasonable for the Board to find that the Applicant faces a generalized risk since anyone who refuses extortion demands would be subject to reprisals. Moreover, even if an applicant has been "personally and directly targeted" on occasion, this does not by itself mean that the risk is not generalized in nature: see *Fernandez Ramirez v Canada (Citizenship and*

*Immigration*), 2012 FC 69 at para 20 [*Ramirez*]; *Olmedo Rajo v Canada (Citizenship and Immigration)*, 2011 FC 1058 at paras 34-36 [*Olmedo Rajo*].

[24] The Respondent argues that a determination under s. 97(1)(b)(ii) is highly dependent on the particular facts of the case. In the Respondent's view, it is apparent that the Board understood the facts of the claim and reasonably found that the Applicant faced a generalized risk faced by others in Peru: *Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 11 at para 77 [*Rodriguez*]; *Innocent*, above, at paras 38-42.

#### *Applicant's Reply Submissions*

[25] The Applicant argues that, contrary to the Respondent's assertions, the Board did find that he had been personally targeted. This was inherent in the Board's finding that the Applicant faces a risk because he did not accede to the gang's extortion demands and reported the perpetrators to police. The only way for the RPD to have found that the Applicant was not specifically targeted would have been to make negative credibility findings, which it did not do.

[26] The Applicant says it is absurd to find that a refugee claimant has been personally targeted, and is at risk, but yet should be denied protection. He quotes Justice Shore's observation that "[t]he risk of an individual who is being targeted is qualitatively different from the risk of an individual who has a strong likelihood of being targeted" (*Balcorta Olvera v Canada (Citizenship and Immigration)*, 2012 FC 1048 at para 40 [*Balcorta Olvera*], quoted in *Kaaker*, above, at para 49). The Applicant submits that the Board's Decision is contrary to the case law and the intention of s. 97, and should therefore be set aside.

## ANALYSIS

### *Background*

[27] This application raises a difficult issue that the Court has had to deal with many times: under s. 97(1)(b)(ii) of the Act, when is a risk faced personally by an applicant a risk that is “not faced generally by other individuals” in or from the applicant’s country of former habitual residence?

### *Former Divergence*

[28] As several members of the Court have observed, two “lines” or “branches” of cases have emerged with respect to whether, or in what circumstances, individuals targeted by criminal gangs for extortion or forced recruitment will qualify for protection under s. 97(1)(b) of the Act: see *Portillo*, above at paras 37-39 (Gleason); *De Jesus Aleman Aguilar v Canada (Citizenship and Immigration)*, 2013 FC 809 at paras 61-62 (Strickland) [*Aleman Aguilar*]; *Kaaker*, above at para 46 (Shore).

[29] In *Portillo*, above, Justice Gleason observed at paras 38-39:

[38] On one hand, in several cases similar to the present, the Court has overturned RPD decisions where the claimant had been personally targeted for violence by one of the criminal gangs operating in Central or South America (see e.g. *Pineda (2012)*; *Lovato v Canada (Minister of Citizenship and Immigration)*, 2012 FC 143 at para 7, [2012] FCJ No 149 (Rennie) [*Lovato*]; *Guerrero v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1210, [2011] FCJ No 1477 (Zinn) [*Guerrero*]; *Dias v Canada (Minister of Citizenship and Immigration)*, 2011 FC 705, [2011] FCJ No 914 (Beaudry); *Gomez v Canada (Minister of Citizenship*

*and Immigration*), 2011 FC 1093, [2011] FCJ No 1601 (O'Reilly) [Gomez]; *Uribe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1164, [2011] FCJ No 1431 (Harrington); *Vasquez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 477, [2011] FCJ No 595 (Scott) [Vasquez]; *Barrios Pineda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 403, [2011] FCJ No 525 (Snider) [Barrios Pineda]; *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2011 FC 62, [2011] FCJ No 144 (Noël) [Zacarias]; *Munoz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 238, [2010] FCJ No 268 (Lemieux) [Munoz]; *Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 365, [2007] FCJ No 501 (de Montigny) [Pineda (2007)].

[39] Opposite conclusions were reached in the other group of cases, where the Court upheld the RPD's decisions in situations where gangs made threats of future harm to the claimants but the threats were found to be insufficient to place the claimant at any greater risk than others in the country (see e.g. *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 11, [2012] FCJ No 6 (Russell); *Rajo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1058, [2011] FCJ No 1277 (Kelen); *Chavez Fraire v Canada (Minister of Citizenship and Immigration)*, 2011 FC 763, [2011] FCJ No 967 (Zinn); *Baires Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 993, [2011] FCJ No 1358 (Crampton); *Guifarro*; and *Carias v Canada (Minister of Citizenship and Immigration)*, 2007 FC 602, [2007] FCJ No 817 (O'Keefe)). In several of these cases, however, the RPD did not make a determination like it did in the present case to the effect that the applicant had been personally targeted and was at risk of death. Thus, the two lines of cases do not necessarily conflict with each other.

[30] One could add the following to the first list: *Castaneda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 724 (Hughes); *Portillo*, above; *Malvaez*, above (Martineau); *Balcorta Olvera*, above (Shore); *Tomlinson v Canada (Citizenship and Immigration)*, 2012 FC 822 (Mactavish); *Escamilla Marroquin v Canada (Citizenship and Immigration)*, 2012 FC 1114 (Rennie); *Kaaker*, above; *Roberts v Canada (Citizenship and Immigration)*, 2013 FC 298 (Gagné); *Hernandez Lopez v Canada (Citizenship and Immigration)*, 2013 FC 592 (Roy);

*Aleman Aguilar*, above; *De La Cruz v Canada (Citizenship and Immigration)*, 2013 FC 1068 (de Montigny), among others.

[31] The following cases, among others, could be added to the second list: *Vickram v Canada (Citizenship and Immigration)*, 2007 FC 457 (de Montigny); *Prophète (FC)* (Tremblay-Lamer); *Cius v Canada (Citizenship and Immigration)*, 2008 FC 1; *Rodriguez Perez v Canada (Citizenship and Immigration)*, 2009 FC 1029 (Kelen) [*Perez (2009)*]; *Acosta v Canada (Citizenship and Immigration)*, 2009 FC 213 (Gauthier); *De Parada*, above (Zinn); *Perez v Canada (Citizenship and Immigration)*, 2010 FC 345 (Boivin); *Palomo v Canada (Citizenship and Immigration)*, 2011 FC 1163 (Harrington); *Ascencio Ventura v Canada (Citizenship and Immigration)*, 2011 FC 1107 (Near) [*Ventura*]; *Ramirez*, above (Shore); *Triqueros Ayala v Canada (Citizenship and Immigration)*, 2012 FC 183 (Hughes); *Wilson*, above (Simpson); *De Munguia v Canada (Citizenship and Immigration)*, 2012 FC 912 (O’Keefe) [*De Munguia*]; *Neri v Canada (Citizenship and Immigration)*, 2013 FC 1087 (Strickland).

[32] As I recently pointed out in *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252 at para 45 [*Correa*], the differences between these two lines of cases arise both from different facts and different approaches to interpreting and applying the language of s. 97(1)(b)(ii). I agree with Justice Gleason that whether or not personal targeting is found to have occurred has been an important and even decisive factor in many cases, but there have also been cases where a denial of the claim has been upheld despite a finding of personal targeting or circumstances that clearly demonstrate it. The Respondent in the present matter cites several

examples, including *Rodriguez*, *Wilson*, *Ramirez*, and *Olmedo Rajo*, all above. I rely here upon the analysis provided in *Correa*, above, for the assessment of the relevant jurisprudence.

[33] My conclusion in *Correa*, above, was that while a full consensus has yet to emerge, I think that there is now a preponderance of authority from this Court that personal targeting, at least in many instances, distinguishes an individualized risk from a generalized risk, resulting in protection under s. 97(1)(b). Since “personal targeting” is not a precise term, and each case has its own unique facts, it may still be the case that “in some cases, personal targeting can ground protection, and in some it cannot” (*Rodriguez*, above, at para 105 quoted with approval in *Pineda v Canada (Minister of Citizenship and Immigration)*, 2012 FC 493 at para 16. However, in my view, there is an emerging consensus that it is not permissible to dismiss personal targeting as “merely an extension of,” “implicit in” or “consequential harm resulting from” a generalized risk. That is the main error committed by the RPD in this case, and it makes the Decision unreasonable.

#### *Application to the Facts of this Case*

[34] There were no adverse credibility findings and the Board accepted that the Applicant had:

- (a) Been extorted and robbed at gunpoint in the taxi;
- (b) Made denunciations to the police;
- (c) Been extorted again with the threats to take his children;
- (d) Gone to the police again; and
- (e) Been assaulted on July 30, 2011 and had escaped from his assailants who tried to put him into a car.



[35] The Board also accepted that the extortionists knew he had gone to the police.

[36] The core of the Board's analysis is found in paragraphs 24 to 26 of the Decision:

[24] The act of criminality is established on the demand of payment and implicit or explicit threat of reprisal for failure to pay. The fact that the threat is implemented or the victim reports the extortion does not bring them outside of the operative words of subsection 97(1)(b)(ii), namely whether the threat they face is generalized. The preponderance of caselaw follow the foregoing cases. Though certain groups may be targeted more frequently or repeatedly because of their perceived wealth, occupation, or business ownership for example, everyone in the country is deemed at risk because of general conditions there.

#### CONCLUSION

[25] The Board concludes that the claimant had extortion demands placed on him as he was perceived to have money. Moreover, what transpired as a consequence was directly related to the fact that he did not accede to those demands, and also reported the criminality to the police.

[26] The following general principles apply. A generalized risk need not be experienced by every citizen in the county. The word "generally" is commonly used to mean "prevalent" or "widespread." Other general principles that have been accepted by the Federal Court include repeated victimization, continued pursuit for not complying with the demands, and retaliations after reporting the perpetrators to the police.

[emphasis in original] [footnotes not produced]

[37] It is clear that the Board classifies the risk that the Applicant faces as "general" because the Applicant was initially extorted as someone perceived to have money, and goes on to find that "what transpired as a consequence was directly related to the fact that he did not accede to those demands, and also reported the criminality to the police."

[38] This line of reasoning has been rejected by the Court. See *Correa*, above.

[39] As the transcript makes very clear, the risk that the Applicant fears is death at the hands of the gang who extorted and attacked him. He does not fear extortion. The Board does not question the objective basis for the Applicant's fear of death but appears to accept this as a general risk. The threat to the Applicant's life has moved well beyond the general to the specific threat of death. The Board fails to appreciate this and the matter needs to be reconsidered in light of the more recent jurisprudence of the Court.

[40] Counsel agree that there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The Decision is quashed and the matter is referred back for reconsideration by a different Board member in accordance with these reasons; and
2. There is no question for certification.

"James Russell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-12646-12

**STYLE OF CAUSE:** MARIO SALVATORE BOZZETA ORE v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 10, 2014

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**DATED:** JULY 2, 2014

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