

Federal Court



Cour fédérale

Date: 20170124

Docket: IMM-2983-16

Citation: 2017 FC 86

[ENGLISH TRANSLATION]

Montréal, Quebec, January 24, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DANIEL ORALDO SIERRA ESTRADA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA), of the decision dated February 29, 2016, in which the Refugee Protection Division (RPD) of the Immigration and Refugee Board found that

the applicant was not a refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

II. Facts

[2] The applicant, age 27, is a citizen of Cuba and of Yoruba faith. He has a seven-year-old son, who lives in Cuba. He also has a spouse and a three-year-old daughter, who are both Canadian citizens.

[3] The applicant alleges that he faces political persecution in Cuba. Since 2005, his mother has been involved with the Ladies in White, a peaceful movement opposing the imprisonment of Cuban political dissidents. His problems allegedly began in 2007, when he reportedly defended his mother when police officers came to arrest and harass her at her home. He says he was arrested as well, detained for 24 hours, and questioned.

[4] In December 2008, the applicant reportedly lost his job as a physical education teacher in a school in due to his opposition to the Cuban regime. Ostracized by the government, he was never again able to work in his field and was unable to find another job. In April 2015, a short period of employment in a factory with difficult working conditions ended in the applicant being dismissed without having been paid, for political reasons. He was living off the food bank and an illegal food and cold drink business, since he was unable to obtain a permit. This business was often discovered by the authorities, who would confiscate his property and cash, in addition to charging fines.

[5] On January 1, 2010, the applicant says he attempted to escape Cuba by boat, in vain, as he was intercepted by the coast guard. He was allegedly detained for over a month, then released under strict surveillance.

[6] The applicant and his spouse have known each other since childhood. They began a romantic relationship during one of her stays in Cuba in 2012, and they had a daughter in 2013. The applicant was allegedly questioned by the authorities after each visit by his spouse to Cuba.

[7] The applicant apparently got a passport and left Cuba for Ecuador a few months later, on October 21, 2015, with the help of his spouse. After crossing eight countries, he reached Canada on December 9, 2015, and claimed refugee protection. He was taken in by his spouse's family.

[8] The applicant attempted suicide on December 30, 2015, feeling alone and fearing he would be deported to Cuba. He was released from hospital on January 4, 2016, and found himself on the streets, isolated, unable to return to his in-laws. His first attorney stopped representing him on Friday, February 12, 2016. The hearing before the RPD was held with a new attorney representing the applicant on February 16, 2016.

III. Decision

[9] On February 29, 2016, the RPD refused the applicant's claim for refugee protection on the grounds that he was not a refugee or a person in need of protection. The RPD found that the applicant was not credible, noting several omissions, contradictions, and inconsistencies in his testimony. It found that the applicant was unable to identify the human rights organization with

which his persecutors allegedly associated him, that he left certain information out of his Basis of Claim (BOC) form, and that he contradicted himself on the number of times he was detained and the number of jobs he held in Cuba. The panel was not convinced that the applicant was under close surveillance by the Cuban authorities, as he claims, since he was able to obtain a passport and leave Cuba for Ecuador without being inconvenienced. To summarize, the RPD found that the applicant did not have the profile of a dissident or a counter-revolutionary persecuted by the Cuban authorities.

IV. Submissions of the parties

A. *Submissions of the applicant*

[10] The applicant argues that the RPD's analysis of his credibility is unreasonable. Although he admits his testimony may have had omissions and contradictions, he argues the RPD focused on the presentation rather than the merits of the case and ignored his explanations. He says the RPD misinterpreted his story and was unaware of the misunderstandings that can occur in translation and simultaneous interpretation. The applicant also claims the RPD lacked openness and sensitivity, considering that he was psychologically unstable when he filled out his BOC form and that his first attorney withdrew from the case a few days before the hearing.

B. *Submissions of the respondent*

[11] The respondent argues that the RPD's finding that the applicant lacks credibility is reasonable. Given the omissions, inconsistencies, and contradictions in the evidence, the RPD was fully within its rights in making negative inferences about the applicant's credibility. As for

the applicant's psychological state, the respondent argues that he presented a hospitalization statement indicating that he was fit to appear at the hearing. The RPD argues that it demonstrated openness and sensitivity by allowing the attorney to file additional documents and written submissions after the hearing.

V. Issue

[12] The issue in this case is as follows: did the RPD err in finding that the applicant lacked credibility? This is a question of fact subject to the reasonableness standard of review. The Court must show deference to the assessment of the applicant's credibility by the specialized panel that is the RPD (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 SCR 339, 2009 SCC 12, at paragraph 89).

VI. Analysis

[13] Based on a study of the file and a close reading of the hearing transcript, it appears that the RPD erred in its assessment of the applicant's credibility and that it rendered an unreasonable decision concerning him.

[14] The RPD questioned the applicant's claims that he was targeted by the Cuban authorities, who associate him with the Ladies in White and a human rights organization whose name he does not know. In the applicant's testimony, it was clear that there was a communication problem: [TRANSLATION]

Q. So I asked you why would the Cuban authorities put you in prison, do you think?

A. Because they say I belong to human rights.

Q. Does this organization have a name?

A. No, human rights.

Q. So, do you—what are being accused of, concretely?

A. Belonging to human rights.

Q. So, human rights is an organization with no name?

A. Just human rights, I know them as human rights.

Q. Who are these people?

A. They are people who are fighting for human rights in Cuba.

Q. Do they have names?

A. Human rights.

Q. That's rights; that's the official name, human rights?

A. I don't know. I just know it as human rights.

Q. And how many of them are there?

A. I don't know. A lot of people.

Q. Do you know these people?

A. No.

[...]

Q. So the Ladies in White are not a human rights organization?

A. They're also related to human rights.

Q. But it's not the organization you were talking about earlier?

A. I don't understand.

Q. You told me you were being associated with an organization called human rights.

A. Yes.

Q. So they are not the Ladies in White?

A. Well, the Ladies in White are the Ladies in White, and human rights are human rights. Just the Ladies in White are associated with human rights people.

[...]

(Excerpts from the transcription of the February 16, 2016, hearing, at pages 24–25.)

[15] While the applicant says he was targeted by the Cuban authorities because they associate him with the human rights movement in general, the RPD requires him to name a specific organization. But the applicant is not a member of such an organization, which he repeats many times. At most, he says the authorities target him because his mother belongs to the Ladies in White. In making a negative inference about the applicant's credibility based on this aspect of his testimony, the RPD made a decisive error of fact, based on his psychological situation (see also a document from Quebec emergency social services that was to be read in its entirety, which stated that the applicant was homeless for some time and described his situation as precarious).

[16] Otherwise, the other omissions and contradictions found by the RPD in the applicant's story do not excessively undermine his credibility. Seen in isolation, the applicant's faults are of little importance and can be explained by his exhaustion after travelling across the continent for approximately two months before filling out his BOC form in Canada and by the loss of information in translation.

[17] Consequently, the RPD's decision should be set aside and returned to a differently constituted panel.

VII. Conclusion

[18] The application for judicial review is allowed and the RPD's February 29, 2016, decision is set aside.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the RPD's February 29, 2016, decision is set aside. The matter is returned to the RPD before a differently constituted panel for reconsideration. There are no questions of general importance to be certified.

"Michel M. J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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