Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-2667-96

BETWEEN:

RAUL HORACIO ACEVEDO VASQUEZ,

Applicant,

- and -

MINISTER OF CITIZENSHIP
AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

PINARD J.

This is an application for judicial review of a decision of the Refugee Division dated July 10, 1996, determining that the applicant is not a Convention refugee as defined in subsection 2(1) of the *Immigration Act*. The tribunal preferred the documentary evidence indicating that [TRANSLATION] "fundamental and lasting changes have occurred in Chile since 1989" to the testimony of the applicant. The tribunal based its decision on that evidence, which was that the social and political situation has been normalized in Chile, to the point that the U.N. High Commission for Refugees and the Office français de protection des réfugiés et apatrides no longer recognize Chilean refugees. The tribunal found that [TRANSLATION] "these changes make [the applicant's account] implausible".

Essentially, the applicant alleges that the tribunal based its rejection of his testimony, which was not otherwise contradicted, on a superficial and selective analysis of the documentary evidence. In *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315, Mr. Justice

Décary, writing for the Federal Court of Appeal, described the restraint that must be applied in respect of a finding of credibility by this sort of tribunal, at page 316:

> There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who better than the Refugee Division is in a position to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the Refugee Division are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

In *M.E.I. v. Zhou* (July 18, 1994), A-492-91, Mr. Justice Linden, writing for the Federal Court of Appeal, confirmed that it is open to the tribunal to place greater weight on the documentary evidence submitted than on the applicant's testimony:

> We are not persuaded that the Refugee Division made any error that would warrant our interference. The material relied on by the Board was properly adduced as evidence. The Board is entitled to rely on documentary evidence in preference to that of the claimant. There is no general obligation on the Board to point out specifically any and all items of documentary evidence on which it might rely. The other matters raised are also without merit. The appeal will be dismissed.

Mr. Justice Noël, of this Court, has written two decisions to the same effect, in *Victorov v. M.C.I.* (June 14, 1995), IMM-5170-94, and *Andrade et al. v. M.C.I.* (May 5, 1997), IMM-2361-96, the latter decision being quite recent. In *Victorov*, the Court observed:

> I also reject the applicants' argument that the panel should have confronted them with the documentary evidence used to diminish their credibility. The documents used by the panel were included among those submitted by the refugee hearing officer when the hearing began and were listed in the index to the file on the state of Israel received by the applicants before the hearing. The applicants adduced their own documentary evidence. Among this evidence, the panel was entitled to rely on that which it considered most consistent with reality. This is what it did.

In *Andrade*, in which both applicants were citizens of Chile, Mr. Justice Noël wrote:

> The applicants have not questioned the facts as recounted by the tribunal. However, they contend that the tribunal rejected their claims on the sole basis of the documentary evidence. According to the applicants, the tribunal should have accepted the uncontradicted testimony of the principal applicant.
>
> I am not of this opinion. The tribunal's decision is not based solely on the documentary evidence. It was the events recounted by the principal applicant, when considered having regard to the documentary evidence, that led the tribunal to conclude that his account was implausible. After considering the testimony of the principal applicant, I conclude that the tribunal was entitled to draw that conclusion.
>
> The applicants also contend that the tribunal ignored the documentary evidence that could have confirmed the events they stated they had experienced. I am rather of the view that the tribunal responded to the invitation extended to them by the officer responsible for verification to assess the logic of the principal claimant's account in light of the conditions suggested by the weight of the documentary evidence. There is nothing to suggest that in so doing the tribunal did not lend an attentive ear to all the evidence that was before it.

In the instant case, I am of the opinion that the applicant has not discharged his burden of showing that the inferences drawn by the Refugee Division, which is a specialized tribunal, could not reasonably have been drawn. It appears from the evidence as a whole, including the transcript of the hearing before the tribunal, that it based its decision on significant evidence in the record and that it could therefore have reasonably concluded as it did. Although the documentary evidence on Chile, as a whole, does not always portray as "rosy" a situation as the one described in the tribunal's decision, nonetheless that facts set out in that evidence are sufficiently serious to support that decision. It is well known that in the area of credibility and assessment of the facts, it is not up to this Court to substitute itself for a tribunal where, as in the instant case, the applicant fails to show that the tribunal made a decision based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Accordingly, since the applicant has not satisfied me that the tribunal committed such an error as would warrant the intervention of this Court, the application for judicial

review must be dismissed. Like counsel for the parties, I find that there is no question here to be certified.

OTTAWA, Ontario
June 4, 1997

YVON PINARD

JUDGE

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE PINARD

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