Federal Court

CANADA

Cour fédérale

Date: 20060406

Docket: IMM-5498-05

Citation: 2007 FC 437

Ottawa, Ontario, the 6th day of April 2006

PRESENT: THE HONOURABLE MR. JUSTICE SHORE

BETWEEN:

Carlos Alejandro GUICHON FERRAZAN
Maria Del Angeles GARCIA SEGOVIA
Ignacio Gabriel GUICHON GARCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] When providing reasons in support of a decision, it is essential for the Board to show that not only does the end justify the means but that the means justify the end. The Board must enunciate the means it chose to arrive at a specific end.

In *Isse v. Canada (Minister of Citizenship and Immigration),* [1998] F.C.J. N° 1020 (QL), Mr. Justice Andrew McKay stated:

> In the absence of some evidence, cited by the CRDD and weighed against the evidence to the contrary to support its "feeling", I conclude that the CRDD here resorted to a speculative and conjectural conclusion which was clearly central to its decision. In so doing, it committed a reviewable error.

NATURE OF JUDICIAL PROCEEDING

[2] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board ("the Board") dated August 23, 2005, wherein the applicants were determined not to be Convention refugees.

FACTS

[3] The applicants, Carlos Alejandro Guichon Ferrazan, his wife, Maria Del Angeles Garcia Segovia and their minor son, are citizens of Uruguay and have a well-founded fear of persecution for reasons of membership in a particular social group: Mister Guichon Ferrazan was a member of a news dealers' union, and had been the subject of assaults, telephone threats and attacks on the part of other members of his union.

[4] Mr. Guichon Ferrazan has a well-founded fear of persecution, because having to return to Uruguay would put him and his family at risk of cruel treatment endangering their lives or their physical or mental health, and the state authorities would not be able to adequately protect them.

[5] Mr. Guichon Ferrazan was threatened and harassed by members of his union because of conflicts originating from the fact that he opposed some union measures, and the authorities were unable to take effective measures and could therefore not protect him and his family in Uruguay.

ANALYSIS

[6] The Refugee Protection Division's findings must be given a second look in the light of the conditions in the countries referred to in the evidence given by the three applicants.

[7] Since the applicants were found to be credible, all oral and documentary evidence as to the issue of the availability of state protection must be taken into account.

[8] Given the explanations provided in the principal applicant's affidavit, the Board took for granted that Uruguay is a State that enforces the rule of law throughout its territory and that it is able to protect citizens who are victims of threats and criminal offences.

[9] The Board did not take the opportunity to do an in-depth analysis of the issue and to focus specifically on at least some key aspects of the evidence that it wanted to consider regarding the conditions in countries related to the applicants' case. That does not mean that the Board's finding is necessarily erroneous, but the Board, in its reasoning, should have provided further details in support of its findings.

[10] The Board has not provided sufficient arguments in support of its inferences; for this ground, this application for judicial review must be allowed.

[11] The Board allowed the applicants' oral evidence but did not express its views in concrete terms, not even briefly, and did not refer specifically to the documentary evidence relating to corruption in Uruguay. The Board's refusal to give the claimants the benefit of the doubt in this case is strictly based on unsubstantiated reasoning. When providing reasons in support of a decision, it is essential for the Board to show that not only does the end justify the means but that the means justify the end. The Board must set out the means it chose to arrive at a specific end.

[12] In the above-quoted *Isse* decision, Mr. Justice MacKay stated:

> In the absence of some evidence, cited by the CRDD and weighed against the evidence to the contrary to support its "feeling", I conclude that the CRDD here resorted to a speculative and conjectural conclusion which was clearly central to its decision. In so doing, it committed a reviewable error.

[13] In addition, *Ayad v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. N° 568, *Dumitru v. Canada (Minister of Citizenship and Immigration)* (1994), 76 F.C. 116, [1994] F.C.J. N° 239 (QL); *Parizi v. Canada (Minister of Citizenship and Immigration)* (1994), 90 F.C. 186, [1994] F.C.J. N° 1977 (QL); *Canada (Minister of Citizenship and Immigration) v. Satiacum* (1989), 99 N.R. 170, [1989] F.C.J. N° 505 (QL).

[14] Regarding the ability of the State to provide protection to its citizens, in *D'Mello v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. N° 72 (QL), Mr. Justice Frederick Gibson stated:

> The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection . . . Where such an admission [of the state's inability] is not available, . . . clear and convincing confirmation of a state's inability to protect must be provided . . .

. . .

> The same might be said here. The principal applicant's fear did not rest on the lack of a legislative and procedural framework in India to protect women abused by their husbands or agents of their husbands, but rather on the lack of police support to such women and the difficulty, given the lack of such support, in effectively taking advantage and having recourse to the existing legislative and procedural framework of state protection in India
>
> On the basis of the foregoing, I conclude that, while the CRDD's conclusions with respect to the applicants' claims might have been reasonably open to it, and I make no determination in that regard, it erred in a reviewable manner in reaching those conclusions on the basis of an entirely inadequate analysis of the totality of the evidence before it and the applicable law. For the foregoing reasons, this application for judicial review will be allowed, the decision of the CRDD will be set aside and the matter will be referred back to the Immigration and Refugee Board for rehearing and redetermination by a differently constituted panel.

[15] As to the Board's finding that the State of Uruguay is able to protect its citizens, see *Moya v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. N° 1594 (QL):

> Here again, I agree with the Applicant's memorandum of argument, paragraph 34: "Given that the Tribunal stated that the Applicant's testimonial evidence was without major contradictions and inconsistencies and that credibility was not a live issue, it is patently unreasonable for the Tribunal to find that the Applicant's aforementioned assertion that he could not obtain effective state protection in Mexico non-credible."

CONCLUSION

[16] For these reasons, the application is allowed.

JUDGMENT

THIS COURT ORDERS THAT

1. The application for judicial review be allowed;

2. The matter be referred back to the Commission for redetermination by a newly constituted panel.

"Michel M.J. Shore"
Judge

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5498-05
STYLE OF CAUSE:	Carlos Alejandro GUICHON FERRAZAN Maria Del Angeles GARCIA SEGOVIA Ignacio Gabriel GUICHON GARCIA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montreal, Quebec
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REASONS FOR ORDER BY:	The Honourable Mr. Justice Shore
DATED:	April 6, 2006

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