

Date: 20070924

Docket: IMM-527-07

Citation: 2007 FC 910

Ottawa, Ontario, September 24, 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

ANA YOLANDA MARTINEZ DE QUIJANO

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by the Immigration and Refugee Board, Refugee Protection Division (the panel) dated January 9, 2007. The panel determined that the applicant was excluded from the refugee protection system.

ISSUE

[2] Did the tribunal err so as to warrant this Court's intervention?

[3] For the following reasons, the answer to this question is in the negative, and this application for judicial review will be dismissed.

FACTUAL CONTEXT

[4] The applicant is a citizen of El Salvador and was born in San Salvador on September 17, 1960.

[5] In 1978, she joined the Revolutionary Brigade of Students (BRES), the student wing of a political-military movement affiliated with the Farabundo Marti National Liberation Front (FMLN), which was known for its armed guerrilla struggles before the movement became a legal political party in 1992.

[6] The applicant collaborated with the FMLN from 1978 to 1994, supported the revolutionary ideology and worked for many years as a volunteer in the movement. She helped the FMLN organize protest marches and meetings. She handled the funds and the accounting, took attendance at meetings and distributed the minutes, coffee, pens and paper.

[7] She became involved again with this organization in January 2003. She was responsible for auditing and monitoring election campaign funds. It was then she discovered that funds were being misappropriated to secretly purchase weapons. Given the risks to her if she revealed that information to anyone, the applicant resigned a month later.

[8] She began receiving death threats in the form of telephone calls and anonymous letters. She was subsequently harassed and some of her property was destroyed. In March 2004, she was threatened at gunpoint, and on July 29th of that year she was raped. On August 5, 2004, she fled to the United States and then to Canada where she requested refugee protection the day she arrived, i.e. August 18, 2004.

IMPUGNED DECISION

[9] The panel considered the issue of exclusion under sections 1F(a) and 1F(c) of Article 1 of the Convention. The Minister's representative contended that the applicant was complicit in human rights violations because of her membership in the FMLN, a party guilty of committing crimes against peace, war crimes, crimes against humanity and acts contrary to the principles and purposes of the United Nations. The request for exclusion was based on the following facts:

- (a) She voluntarily joined the FMLN;
- (b) She participated in the movement for 16 years and returned to work with them in January 2003;
- (c) She was a member of the party's elite;
- (d) She had knowledge of the nature of the organization and the abuses committed as shown by Exhibit M-4 (*United States Institute of Peace Library, Truth Commissions: Reports: El Salvador* (pages 46 to 77 of the applicant's record); and
- (e) She never disassociated herself from the ideology of the group.

[10] The applicant had an opportunity to be heard and to file documents at the three hearings held on April 20, September 14 and October 20, 2006. The panel found that the two factors on which complicity is based, knowledge and shared common purpose, were present in this case.

[11] The panel was satisfied that the applicant was indeed complicit by association in the commission of crimes against humanity by the FLMN. The applicant's voluntary participation in this movement (as she herself admitted) and her knowledge of the organization's goals and the methods used to achieve them were central to the decision-maker's analysis.

[12] Furthermore, the applicant's position gave her access to privileged information. She admitted knowing about the FMLN's abuses, crimes and political violence but said that, in spite of everything, she was a pacifist. Last, the panel did not accept the applicant's claim that she feared reprisals since she never sought asylum in the United States despite several visits throughout those years.

[13] On the issue of a shared common purpose, the panel ruled that the requirements for complicity were present: the applicant's personal and direct involvement for 16 years in a revolutionary and insurgent movement known for its acts of violence, and her knowledge of atrocities that occurred not only during the Salvadorean civil war but also after the peace agreement was signed in 1991.

[14] Although the applicant never personally took part in acts of violence, it is clear that the FMLN leaders had great confidence in her, allowing her to prepare leaflets for protest marches, draft agendas for meetings and access secret financial documents. The decision-maker believed that the applicant shared the FMLN ideology.

RELEVANT LEGISLATION

[15] Section 98 of the Act excludes a person referred to in section F of Article 1 of the Convention and reads as follows:

Exclusion — Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Exclusion par application de la Convention sur les réfugiés

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[16] Section F of Article 1 of the Convention, and in particular paragraphs 1F (a) and 1F (c), deal with exclusion. These passages read as follows:

**SCHEDULE
(Subsection 2(1))
SECTIONS E AND F OF
ARTICLE 1 OF THE
UNITED NATIONS
CONVENTION RELATING
TO THE STATUS OF
REFUGEES**

...

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

...

**ANNEXE
(paragraphe 2(1))
SECTIONS E ET F DE
L'ARTICLE PREMIER DE
LA CONVENTION DES
NATIONS UNIES
RELATIVE AU STATUT
DES RÉFUGIÉS**

[. . .]

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser:

a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;

[. . .]

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

ANALYSIS

Standard of review

[17] I reiterate here the analysis in *Canada (Citizenship and Immigration) v. Molebe*, 2007 FC 137, [2007] F.C.J. No. 187 (QL), which deals with exclusion under paragraphs 1F(a) and 1F(c) of Article 1 of the Convention. The case before us involves findings of fact based on all the evidence. To succeed, the applicant must establish that the panel's decision is patently unreasonable.

Is the Court's intervention warranted?

[18] With respect, I do not believe that the intervention of the Court is warranted. The applicant criticizes the panel for failing to sufficiently explain his decision with respect to the FMLN as an organization known to have committed crimes against humanity. She adds that the panel erred in drawing an unreasonable inference from the evidence that she had knowledge and a shared common intention. She disputes the panel's finding that she was complicit in the violent acts committed by the FMLN.

[19] After analyzing all the evidence and the parties' written and oral representations, I am satisfied that the panel's decision does not meet the test of patent unreasonableness. For 16 years, according to the panel (but 25 years according to the evidence), the applicant freely and actively participated in an organization known for its anti-human rights activities and did not denounce the organization although she knew that it was guilty of abuses and crimes.

[20] The panel's analysis of the facts that led to a finding of complicity cannot be characterized as patently unreasonable. Even if the applicant were not one of the leaders of the organization, she enjoyed the confidence of the movement, as shown by her access to confidential documents, namely, those dealing with financial management and distribution of information.

[21] The parties did not submit a question for certification, and there is none in the docket.

JUDGMENT

THE COURT ORDERS that:

1. The application for judicial review be dismissed.
2. There is no question for certification.

“Michel Beaudry”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-527-07

STYLE OF CAUSE: ANA YOLANDA MARTINEZ DE QUIJANO and
MINISTER OF CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** The Honourable Mr. Justice Beaudry

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