

**Date: 20080219**

**Docket: IMM-3133-07**

**Citation: 2008 FC 213**

**Ottawa, Ontario, February 19, 2008**

**Present: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**RITA ELISABETH AYALA AYALA,  
TANIA ALEXANDRA PERDOMO AND  
TAMARA ADRIANNA PERDOMO**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) dated July 13, 2007, concluding that Rita Elisabeth Ayala Ayala (the principal applicant) is not a “Convention refugee” or a “person in need of protection”. The refugee claim of the applicants Tania Alexandra Perdomo and Tamara Adrianna Perdomo, the applicant’s daughters, who were born in Virginia, in the United States on February 12 and 13, 2006, was also rejected. The principal applicant told the RPD that her daughters were not alleging any risk of return to the United States and did not fear persecution there. The father of the children also applied for asylum but in another file.

**I. Issue**

[2] Did the RPD err in fact or in law by determining that the applicant lacked credibility?

[3] The Court notes that the RPD decision contains no reviewable error; accordingly, the application for judicial review will not be allowed.

**III Facts**

[4] A Salvadorean citizen, the principal applicant claims that she has a well-founded fear of persecution at the hands of her former boyfriend, Pedro Alvarado, a leader of the Maras. He allegedly attacked her and fired shots at her house when she left him, and she filed a complaint about him with the police.

[5] According to her written narrative, she left El Salvador on June 14, 2005, transited via a number of Central American countries where she met the man who would become the father of her two daughters. The couple lived in the United States for seven months before arriving by truck in Lacolle, Canada, on September 1, 2006; she claimed refugee protection at the border.

**IV. Decision under review**

[6] After considering the Chairperson of the Immigration and Refugee Board's Guideline 4 entitled *Women Refugee Claimants Fearing Gender-Related Persecution*, the RPD found that the conditions for granting refugee status to the principal applicant were not met. This finding was

based on multiple contradictions and implausibilities regarding significant aspects of the principal applicant's narrative, which damaged her credibility.

[7] For example, the RPD noted that in paragraph 7 of her narrative, in answer to question 31 of her Personal Information Form (PIF), the applicant wrote the following:

[TRANSLATION]

Towards the end of April 2005, when we were at his parents' home, I noticed tattoos on his forearm and shoulders for the first time.

However, when she testified, she persisted in saying that the incident at the home of her ex-boyfriend's parents occurred in May 2004. She later testified that he was a member of two gangs, the MS and the Mara 18 and that he was the leader of the latter group. However, the *modus operandi* of both these gangs was to kill each other. It would therefore be implausible that he could be a member of both gangs.

[8] Regarding the allegation that her ex-boyfriend fired shots at her house, the applicant gave three different versions of what she had written in her narrative. When the RPD asked her which of the three versions was the truth, the transcript reveals the following:

[TRANSLATION]

BY THE MEMBER (addressing the claimant)

Q. Madam, we have three different versions. Now, can you tell us which one is true?

A. I am telling you the truth, I am a bit confused, but before God, I am telling you the truth.

Q. You were sworn, it isn't necessary to repeat "before God", you were sworn. Then . . . then, were you inside the house, outside the house or had you not yet arrived at the house?

A. I was almost at the house.

...

Q. Why did you say something different a few minutes ago?

A. But it's pretty much the same thing, you just have to use a little logic and it amounts to the same thing.

[9] The RPD determined that in this particular case, the applicant's allegations were completely implausible and contradicted the documentary evidence.

## V. Analysis

[10] After reviewing the entire record, it should be noted that the facts as stated by the applicant were sometimes completely out of chronological order. Moreover, the contradictions and inconsistencies in the narrative together with the omissions in her Personal Information Form leave the reader perplexed.

[11] Faced with such contradictions and inconsistencies, the RPD member who presided at the hearing asked the applicant several times to take her time before answering the questions. The questions were repeated and rephrased to ensure that they were clear and understandable. The applicant had an interpreter and was also represented by counsel. In spite of these efforts to ensure that the applicant had understood the questions and the contradictions or inconsistencies between her answers and her narrative, the RPD could only conclude that the applicant lacked credibility.

[12] It is settled law that a tribunal such as the RPD is in a better position than the Court to observe the actions of a witness and to analyze his or her demeanour. The Court should not interfere or substitute its opinion for that of the RPD (see *Rosta v. Thiel*, [1986] N.S.J. No. 555 at paragraphs 18, 19 and 20). In this case, the facts are indisputable; the decision under review is not patently unreasonable.

[13] The parties were invited to submit questions for certification, but they did not do so.

**JUDGMENT**

**THE COURT ORDERS AS FOLLOWS:**

- The application for judicial review is dismissed;
- There is no question to be certified.

**“Simon Noël”**  
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**Judge**

Certified true translation  
Mary Jo Egan, LLB

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

**DOCKET:** IMM-3133-07

**STYLE OF CAUSE:** RITA ELISABETH AYALA AYALA ET AL v. MCI

**PLACE OF HEARING:** MONTRÉAL

**DATE OF HEARING:** February 13, 2008

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

**DATED:** February 19, 2008

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