Ottawa, Ontario, May 16, 2008

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

NICOLAS JOSE QUIMBAY DIAZGRANADOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1]   The applicant is a Columbian citizen who claims to fear persecution at the hands of the

FARC guerrillas. He alleges a series of contacts between 1997 and 2005 from FARC members

demanding money and the contribution of his professional services as a software engineer. He states

that he was forced to move with his wife and son several times within Columbia to get away from

their demands. Mr. Diazgranados came to Canada on a visitor's visa on April 11, 2005.

[2]   During his two week planned stay in Canada, he phoned his parents and learned that they had been approached in Bogotá and told that FARC would find and kill him wherever he was. The applicant's mother reported this threat to police. Mr. Diazgranados made the decision to seek refugee protection and filed his claim on April 26, 2005.

Impugned Decision

[3]   In an oral decision at the close of the hearing, the Refugee Protection Division (RPD) member found several points of the applicant's story implausible and thus dismissed his claim. The Panel noted the lack of evidence from his parents or wife. The Panel also held that Mr. Diazgranados could not adequately explain how the incident which he claims caused him to seek refugee protection was different from those previous, which had not caused him to flee Columbia. He had reavailed himself of Columbia's protection after a prolonged stay in Peru. The Panel also found it implausible that the applicant would not apply for visas for his wife and child to go to Canada with him if he believed that they were at risk.

[4]   Finally, the RPD found that the applicant separated from his wife in March 2005 and left the country a few weeks later. He found that the separation was the reason the applicant was in Canada.

Issue

[5]   The only issue is whether the RPD member erred in his assessment of the applicant's credibility or came to an unreasonable decision on the evidence.

Standard of Review

[6]   In the aftermath of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, decisions

on matters other than pure questions of law outside the central jurisdiction of a tribunal are to be

assessed on a standard of reasonableness. The question of reasonableness of a federal tribunal's

decision on credibility and other factual findings is constrained by the statutory requirements of

paragraph 18.1(4)(*d*) of the Federal Courts Act, R.S., 1985, c. F-7. The Court may intervene where

findings of fact have been made which are perverse or capricious or without regard to the material

before the tribunal.

Analysis

[7]   The applicant submits that the RPD member was perverse in drawing a negative inference

from his failure to provide evidence from his parents and wife in spite of his testimony that he felt

that objective evidence would carry more weight. He noted that the member did not attack the

credibility of any of his evidence. He also noted several points at which he claimed that the member

mischaracterized the evidence. Finally, the applicant submits that the RPD member was perverse in

finding that that the applicant was separated from his wife and that that separation was the impetus

for his choice to claim status in Canada.

[8]   The respondent counters that the weighing of evidence is central to the jurisdiction and

expertise of the RPD and that the member did not make any decisions which were not open to him

on the evidence.

[9]   I would agree that the RPD member was entitled to draw an adverse inference from the failure of the applicant to provide evidence from his family members in support of his claim of persecution. While Mr. Diazgranados is correct that the member did not question the validity of his mother's denunciation of the threat against him allegedly made to his parents while he was in Canada, it remained open to the member to draw the inference he did. He addressed the issue with the applicant and gave him the opportunity to respond to his concerns. The inference drawn was within the range of reasonable findings which could have resulted and this Court will not put it aside.

[10]   The member's finding on the issue of Mr. Diazgranados' separation from his wife was similarly open to him. While the applicant had submitted an amended Personal Information Form to delete a reference to separation from the description of his marital status, in testimony he stated that he was separated from his wife, although not legally. The RPD member noted that there was no evidence from Mr. Diazgranados' wife corroborating his statements about the status of their relationship. The member assessed the evidence as a whole and came to the conclusion that the timing of the separation and subsequent departure for Canada and request for protection was not indicative of a person who fears serious harm. Such a conclusion was available to him on the evidence before him and the Court will not intervene.

[11]   The application is dismissed. No questions of general importance were submitted by the parties, and I find none on the facts of this case.

<u>JUDGMENT</u>

IT IS THE JUDGMENT OF THIS COURT that the application for judicial review is dismissed.

No questions are certified.

"Richard G. Mosley"
Judge

DOCKET: IMM-1882-07

STYLE OF CAUSE: NICOLAS JOSE QUIMBAY DIAZGRANADOS

                       and

                       THE MINISTER OF CITIZENSHIP
                       AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 8, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:**   MOSLEY J.

DATED: May 16, 2008

APPEARANCES:

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