

Federal Court



Cour fédérale

Date: 20080606

Docket: IMM-4935-07

Citation: 2008 FC 707

Ottawa, Ontario, June 6, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**JOSE ALFREDO OCAMPO GARCIA
MANUEL OCAMPO RUIZ**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 29, 2007, determining that the applicants are not “Convention refugee[s]” or “person[s] in need of protection” as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (the Act).

[2] The applicants, Jose Alfredo Ocampo Garcia and his cousin, Manuel Ocampo Ruiz, are citizens of Mexico. They are alleging that, on March 18, 2006, four officers of the judicial police arrested them and threatened their lives. They were eventually set free and warned not to cause problems for government leaders again. That same evening, they tried to complain to the Office of the Public Prosecutor, but it did not want to register their complaint. The applicants are also alleging that, on April 19, 2006, they gave a statement to the Attorney General of Justice of the Federal District of Mexico. The next day, they were intercepted by the same officers of the judicial police who had threatened their lives. In the meantime, the applicants had obtained passports and bought plane tickets to Canada. They left Mexico on April 21, 2006, and claimed refugee protection in Canada on the same day.

[3] First, the Board is of the opinion that, at the hearing, the applicants gave answers that did not correspond to what they had written in their respective Personal Information Forms (PIFs) or in the documents that were completed as soon as they arrived in Canada (port-of-entry notes). According to the impugned decision, the applicants' credibility is seriously compromised for the following reasons:

- In their PIFs, the applicants stated that, on March 18, 2006, the four officers of the judicial police intercepted them particularly because they were defending an aunt and that they had complained to 37 federal government leaders. Yet, before the Board, they stated that they had merely been witnesses in proceedings instituted by their aunt in a matter involving a real estate transaction;
- In their PIFs, the applicants stated that they had not seen the four officers of the judicial police on March 18, 2006. However, they wrote that, on April 20, 2006, they had been

intercepted by the same officers. At the hearing, one of the applicants stated that he had recognized their voices, which the Board found to be implausible;

- The applicant Ocampo Garcia wrote in his PIF that, on March 18, 2006, the four officers of the judicial police stopped him also because his father had defended taxi drivers and had obtained refugee status in Canada. However, at the hearing, he claimed that the four officers had started beating him on March 18, 2006, while asking him where his father was. Confronted with this contradiction, the applicant replied that the police officers in question knew that his father was abroad, but did not know where exactly;
- The applicant Ocampo Garcia also claimed at the hearing that he had been arrested on the pretext that he had been mixed up in his aunt's affairs, but that the real reason for his arrest was that he belonged to the Partido Revolucionario Democratico (PRD) [democratic revolution party]. Yet, in the information that he provided on his arrival in Canada, the applicant made no reference to his membership in this party or to the persecution that he had apparently suffered because of this membership. Confronted with this omission, he stated that he had forgotten to mention those facts;
- In their PIFs, the applicants indicated that, after discussing their situation with members of the PRD on April 19, 2006, they had given a statement to the Attorney General of Justice of the Federal District of Mexico. Yet, at the hearing, one of the applicants claimed that it was after a long discussion with their aunt that they had decided to make a complaint on April 19, 2006.

[4] In the impugned decision, the Board then alternatively analyzed the issue of Mexican state protection. In light of the credibility issues of the applicants' narrative and of the fact that they had taken their only action with the Mexican authorities two days before they left, the Board found that

the applicants had not discharged their burden of proving that the Mexican state is incapable of protecting them.

[5] The applicants allege that today they have a valid explanation for every contradiction and implausibility raised by the Board in the impugned decision. In this regard, the applicants' counsel referred this Court to the specific answers that they gave to the Board (see particularly pages 337–338, 345–348, 350, 353–354 and 358 as well as pages 24 and 278 of the Tribunal Record). In this case, those are only the obvious contradictions. The applicants are also challenging the legality of the finding with respect to the ability of the Mexican state to protect them, claiming that the Board read the evidence selectively (see particularly pages 233–234 and 246–247 of the Tribunal Record).

[6] For the purposes of these reasons, the finding that the applicants are not credible is determinative. In this case, the standard of review applicable to decisions of the Board based on a refugee claimant's lack of credibility is reasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.); *Dunsmuir v. New-Brunswick*, 2008 SCC 9).

[7] After analyzing the panel's decision and reviewing all of the evidence, I find the lack of credibility finding to be reasonable. A lack of credibility finding, as in this case, can be based on implausibilities, contradictions, irrationality and common sense. The Board gave reasons for its overall finding of a lack of credibility. It has not been demonstrated to this Court's satisfaction that the finding was "based . . . on an erroneous finding of fact that [the Board] made in a perverse or capricious manner or without regard for the material before it" (subsection 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended; *Anjete v. Canada (Minister of Citizenship and*

Immigration), 2008 FC 644, at paragraphs 3 and 4; and *Bielecki v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 442, at paragraphs 16 through 23). In fact, it seems that, dissatisfied with the decision obtained, the applicants are requesting today, in the hope that their application would be allowed, that this Court reassess the evidence and substitute its opinion for that of the Board.

[8] Let us recall that the Court must not examine in fine detail the examples of the lack of credibility in the impugned decision, but must rather consider them as a whole and interpret them in context and in light of all the evidence on the record. In addition, the errors attributed to the Board must be determinative for the Court to refer the matter back for a new hearing. In this case, even though some of the Board's interpretations of the applicants' answers may be questionable, I cannot say that they were perverse or capricious in this case, or that they affected the Board's overall finding of a lack of credibility.

[9] The reasonableness of the Board's lack of credibility finding is sufficient in order to uphold the impugned decision. Consequently, it is not necessary to examine the issue of the Mexican state protection alternatively raised by the applicants.

[10] The application for judicial review is dismissed. The parties did not submit a question to be certified, and this case does not raise one.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4935-07

STYLE OF CAUSE: JOSE ALFREDO OCAMPO GARCIA ET AL.
v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 3, 2008

REASONS FOR ORDER: MARTINEAU J.

DATED: June 6, 2008

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