

**Date: 20081106**

**Docket: IMM-2152-08**

**Citation: 2008 FC 1245**

**Toronto, Ontario, November 6, 2008**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**ALFREDO SOLIS BOTELLO, MARIA ISABEL OERTEGA BALTIERRA  
ALFREDO ANTONIO SOLIS ORTEGA, RODRIGO SOLIS ORTEGA and  
MARITZA MONTSERRATT SLOIS ORTEGA by their litigation guardian  
MARIA ISABEL OERTEGA BALTIERRA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicants are a family consisting of the father (Botello), the mother (Baltierra) and three minor children. All are Mexican citizens. They fled Mexico in 2006 and came to Canada where they made refugee claims. A hearing was held in respect of those claims on April 15 and 17, 2008 and, in a written decision dated April 24, 2008 those claims were rejected. This is a judicial review of that decision.

[2] For the reasons that follow, I find that the application is dismissed. No question requires certification. There is no Order as to costs.

[3] The Applicants, by their counsel, raise a number of issues with respect to the decision under review namely:

1. Whether the Board completely failed to assess the children's claim and denied the minor claimants the right to a fair hearing?
2. Whether the Board made perverse findings without evidence, and in disregard to the evidence, in that the Board:
  - a. Ignored documentary evidence based on "expert" conclusions without expert testimony/evidence?
  - b. Ignored documentary evidence and wife's corroboration?
  - c. Did not weigh evidence not found to be non-credible?
3. Whether the Board erred in its implausibility findings?
4. Whether the board was nit-picking on irrelevant considerations as a basis to undermine overall credibility?
5. Whether the Applicants were denied the right to a fair hearing?

#### **Issue # 1 – Children's Determination**

[4] The Applicants argue that the Reasons of the Member, whose decision is under review, do not make specific mention of any claim or individual circumstances of the children. However at the outset of the Reasons, the Member states that he rejects the claims of the Applicants naming them

all individually and, at the conclusion of his Reasons, the Member states that he is satisfied that the principal claimant was not a credible witness and that the claimants have failed to establish that there is a serious possibility that they will be persecuted or that, on a balance of probabilities, that they will be subjected personally to a risk to life or risk of cruel and unusual treatment or punishment or danger of torture in all parts of Mexico.

[5] A review of the record, including the tribunal record, indicates that the children made no independent claim. Their PIFs (Personal Information Form) simply refer to their father's PIF: "See narrative in my father's PIF". At the outset of the hearing, the Applicants' counsel made a request on behalf of the Applicants that the children be excused and wait outside, their mother was designated to protect their interests. No separate submissions were made in respect of the children. No evidence was led that would link any event that may have occurred to the children such as a minor automobile accident to matters raised by the parents as supporting a credible claim for refugee status.

[6] The circumstances here are quite different from those set out by Kelen J. in his reasons in *Gonsalves v. Canada (MCI)*, 2008 FC 844 at paragraph 27 to 29, a case relied upon the Applicants' counsel. In that decision, Kelen J. was careful to state that there was extensive evidence as to the ill-treatment and harm experienced by the children including a threat of sexual assault.

[7] I find no reviewable error in respect of the manner in which the Applicant's children's claim was dealt with by the Member.

**Issues 2, 3 & 4: Findings of the Member**

[8] Issues 2, 3 and 4 as articulated by Applicants' counsel are essentially the same issue, namely: were the evidentiary findings of the Member reasonable.

[9] As stated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 190, where a tribunal has made evidentiary findings in the area of its expertise, those findings are to be reviewed on the basis of reasonableness with deference given to the tribunal whose expertise lies in the particular area under review. In *Aguebor v. Canada (MCI)* (1993), 160 N.R. 315 the Federal Court of Appeal held that evidentiary issues including those of credibility lie within the particular expertise of the tribunal at issue here and should not easily be displaced.

[10] Time and again, the Member in his reasons stated that he found that the evidence led was implausible, could not be accepted and lacked credibility. There has been nothing pointed out by counsel in the evidence or apparent to me in reviewing the Tribunal Record, that such findings were not reasonable.

[11] Counsel for the Applicants argue that the Member improperly dealt with the psychologists report as to the Applicant mother. Here is what the Member said:

*I accept the female claimant has psychological problems as outlined in the psychology report. Due to the lack of credible evidence, I do not accept these problems are a result of the events described to the author of the report. Counsel submitted the facts in the psychology report were based on the original narrative that was provided to the author of the report.*

*Again, I give this report insufficient weight to offset my credibility concerns or to advance the claim on its own.*

[12] What the Member said was that he accepted that the Applicant mother has psychological problems but he was not persuaded that the problems were caused by the alleged events upon which the refugee claim was based. He gave the psychologists report little weight since it was based in respect of the events alleged to have occurred in Mexico, in respect of which he had no direct knowledge.

[13] I find, therefore, in respect of these issues, 2 to 4, that no reviewable error has been made.

#### **Issues # 5 – Fair Hearing**

[14] The Applicants argue in their written argument but not orally, based on an affidavit of the Applicant mother filed with this Court, that they were denied a right to a fair hearing first on the basis that the Spanish/English interpreter in attendance on the first day failed to translate accurately and completely.

[15] Second, in the written argument but not raised orally, it is alleged that the Member determined the hearing on the first day without soliciting the Applicants' preference and needs. The Applicants allege that the Member was "fixated on denying our claim" and was accusatory and hostile and ultimately appeared disinterested.

[16] First, as to the Spanish/English interpreter present at the first day of the hearing, there is no indication that, at the time of the hearing or at any time before the Member's decision was released, was any objected raised by or on behalf of the Applicants as to this interpreter. Counsel for the Applicants was unable to point to any errors in the transcript that would raise any concern as to the interpretation. I find no reviewable error or reason to set aside the Member's decision in this regard.

[17] Second, as to the conduct of the Member, again no objection was raised at the time of the hearing or at any time before the Member's decision was given, as to any concern that the Applicants might have had in this regard. As to the adjournment at the end of the first day of the hearing, it is entirely clear, particularly at pages 60 and 61 of the transcript, that the member clearly discussed with Applicants' counsel the matter of the adjournment and asked how much time Counsel needed at the next hearing. Counsel asked that the matter be adjourned to another date and that an hour would be sufficient to conclude the matter. The Applicants and their Counsel were properly and adequately consulted. I find no reviewable error or other reason to set aside the Member's decision.

### **Conclusion**

[18] For the reasons given, I find no basis upon which to set aside the Member's decision dated April 24, 2008. The matters are fact specific and no general question of law arises such as would require certification on an issue. There is no Order as to costs.

**JUDGMENT**

**For the Reasons provided:**

**THIS COURT ORDERS that:**

1. The application is dismissed;
2. There is no question for certification;
3. No Order as to costs.

“Roger T. Hughes”

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Judge

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

**DOCKET:** IMM-2152-08

**STYLE OF CAUSE:** ALFREDO SOLIS BOTELLO, MARIA ISABEL OERTEGA BALTIERRA ALFREDO ANTONIO SOLIS ORTEGA, RODRIGO SOLIS ORTEGA and MARITZA MONSTSERRATT SLOIS ORTEGA by their litigation guardian MARIA ISABEL OERTEGA BALTIERRA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 6, 2008

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

**DATED:** NOVEMBER 6, 2008

**APPEARANCES:**

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