

Date: 20091029

Docket: IMM-356-09

Citation: 2009 FC 1091

Ottawa, Ontario, October 29, 2009

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Selvin Manrique VILLEDA MEJIA

Applicant

and

**THE 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 (Act), of a decision delivered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board on January 5, 2009, dismissing the applicant's refugee protection claim.

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[2] Selvin Manrique Villeda Mejia (the applicant) is a citizen of Honduras. He is claiming protection under section 96 and paragraph 97(1)(b) of the Act.

[3] He left Honduras on June 5, 2007, and travelled through Guatemala, Mexico and the United States before he arrived in Canada on September 30, 2007, and claimed protection in Canada on the same date.

[4] The applicant is alleging that his life is in danger in Honduras. He claimed that when he returned home after a day of work on May 29, 2007, he was brutally attacked and beaten by three men he said he did not know. The applicant maintained that these men are connected to the Maras (a gang) and that they allegedly demanded that he give them money, which he apparently did not do.

[5] His brother-in-law purportedly accompanied him to the police station to file a complaint. A police officer apparently falsely accused the applicant of personally being a member of the Maras. The officer allegedly questioned him at length on his activities and let him leave without doing anything for him.

[6] Later, around 6:30 p.m. the same day, the applicant was at his cousin's house when three armed men apparently showed up at his sister's house looking for him. These men allegedly stayed outside until after 9 p.m. The applicant's sister purportedly told him not to go back home. That same night, he apparently left for Masica, where his parents live.

[7] On June 2, 2007, these same men apparently arrived in Masica looking for him. Because they did not know where his parents lived, a childhood friend was eventually able to inform them of this. The applicant then purportedly left the house and hid.

[8] The men purportedly found the house and told the applicant's mother that he was already a dead man. According to the applicant, filing a complaint against them was apparently considered treason against the "Organization", which would not be forgiven.

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[9] In its decision, the RPD noted the following anomalies in the applicant's version of the facts:

- The applicant testified that he did not know the individuals who attacked him during his May 29, 2007, assault. Furthermore, the applicant could not explain why in his Personal Information Form ("PIF") he stated that the date of the assault was rather March 29.
- The applicant mentioned in his PIF that he was brutally beaten, but he testified that he only had some bruises.

[10] As the panel had not received any document corroborating the applicant's allegations, it found that he had not demonstrated that his account was true on a balance of probabilities.

[11] Even if the panel did not specifically state that the applicant was not credible, it clearly did not believe him; it found that he had not discharged his burden of demonstrating a well-founded fear of persecution in Honduras or that he would be subject to the alleged risks and threats.

[12] In addition, the panel found that this was a case of criminality, that the applicant was not personally targeted, that there is a generalized risk of criminality in Honduras and that the applicant had not established that he was exposed to a different risk from the risk faced by other Hondurans. Therefore, the panel found that this was not a case of an imputed political opinion.

[13] Finally, the panel did not make a finding on the state's ability to protect the applicant because he had not discharged his burden of demonstrating the grounds for his fear.

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[14] Where the question is one of fact established in the exercise of discretion, the standard of review is reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 53). Credibility findings are generally not open to judicial review. According to the Federal Court of Appeal in *Aguebor v. Canada (M.E.I.)*, 160 N.R. 315, at paragraph 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. . . .

[15] The applicant's counsel stated that the applicant drew the panel's attention to the fact that there was a clerical error in his PIF and that it should have read "mai" (TRANSLATION: May) and not "mas [sic]" 2007. However, the RPD noted the following at paragraph 11 of its decision:

The claimant testified that he does not know the individuals who attacked him during his May 29, 2007, assault. Furthermore, the claimant could not explain why in his PIF he stated that the date of the assault was rather March 29. . . .

(Emphasis added.)

[16] For this reason, the applicant maintains that the panel made a finding without considering the facts presented at the hearing, The applicant's statement cannot be verified as the transcript of the hearing before the panel has not been filed.

[17] In any case, there are other reasons to support the finding that the applicant was not credible. In fact, the panel also noted a contradiction between the applicant's allegations in his testimony and in his PIF with respect to the intensity of the assault he claims to have suffered. Additionally, it noted that no document or other evidence had been filed to justify the applicant's allegations.

[18] The presumption that a claimant's sworn testimony is true is always rebuttable. The panel cannot require corroborating documents for a claimant's submissions, but it can raise the absence of relevant documentary evidence if it finds contradictions or inconsistencies in the claimant's testimony. In this case, the panel was justified in raising the absence of evidence, be it a medical report confirming the alleged injuries or a copy of the complaint filed with police.

[19] The applicant also alleged that the panel did not observe the principles of natural justice or procedural fairness because its reasons are not sufficient. I do not accept this submission.

[20] First, the panel did not accept the argument that the applicant has an imputed political opinion. The panel wrote: “the panel’s analysis was conducted in relation to section 97” and “that this is a case of criminality and that the claimant was not personally targeted.” Furthermore, the panel did not disregard the applicant’s statement in his affidavit that he had been personally threatened; the panel simply did not believe the applicant’s account. The finding of a lack of credibility in a claimant’s testimony may extend to all submissions emanating from this testimony; in *Singh v. The Minister of Citizenship and Immigration*, 2001 FCT 472, at paragraph 19, Justice Edmond Blanchard accepted the following:

Since credibility is at the root of testimony before the Refugee Division, this Court has repeatedly taken the position of MacGuigan J.A. in *Sheikh v. Canada (M.E.I.)*, [1990] 3 F.C. 238 (F.C.A), that a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony.

[21] The panel thus rejected the applicant’s allegation that he was subject to a different risk from the risk faced by other Hondurans. The panel also accepted the alleged event that occurred on May 29, 2007, as a generalized risk of criminality.

[22] Therefore, I accept the respondent’s argument that the reasons provided by the panel, although succinct, are clear and intelligible and make it possible for the applicant to understand why his refugee claim was rejected.

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[23] For all of these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision dated January 5, 2009, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-356-09

STYLE OF CAUSE: Selvin Manrique VILLEDA MEJIA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 13, 2009

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

DATED: October 29, 2009

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