

Date: 20090723

Docket: IMM-4128-08

Citation: 2009 FC 754

Toronto, Ontario, July 23, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**MANUEL FERNANDEZ ORTEGA
ANTONIA HERNANDEZ RIVERA
FLOR ANDREA FERNANDEZ HERNANDEZ
DANIEL FERNANDEZ ORTEGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Manuel Fernandez Ortega, a citizen of Mexico, arrived in Canada in December 2006. His wife, Antonia Hernandez Rivera, and their daughter, Flor Andrea Fernandez Hernandez, followed in January 2007. The family claimed protection in Canada on the basis of fear of persecution due to Manuel's membership in La Antorcha Campesina, a group that helps poor and indigenous peoples. Manuel's brother, Daniel, after one unsuccessful attempt to enter Canada in January 2007, arrived in Canada in June 2007 and made a separate claim for protection.

[2] The claims by Manuel and his family were heard together with that of Daniel, since the subject matter of the claims was similar for both. In a decision dated July 18, 2008, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) concluded that the Applicants were neither Convention refugees nor persons in need of protection. The sole reason for the rejection was the lack of credibility of Manuel and Daniel; the Board simply did not believe their stories. The Applicants challenge the Board's decision in this Application for Judicial Review.

[3] The standard of review of a decision of the Board is that of reasonableness. Unless the decision is one that is not within the range of possible outcomes, the Court cannot intervene.

[4] The Board's decision concerning Daniel is carefully considered. The Board, in its reasons, sets out numerous instances where Daniel's testimony was inconsistent in areas fundamental to his claim. Having reviewed the tribunal record and each of the inconsistencies, I am satisfied that Daniel's testimony supports the Board's conclusion that Daniel "simply could not tell a consistent story from one version of their story to the next". The Board's decision, with respect to Daniel, is reasonable and ought not to be disturbed.

[5] The situation with respect to Manuel is dramatically different. In its decision, the Board makes only three references to Manuel's testimony. Two of those references were in regard to explanations offered by Manuel about Daniel's story. Only one problem with Manuel's direct testimony was noted by the Board. That problem allegedly arose because Manuel incorrectly stated the name of a group as "Union of Indigenous Farmers" rather than "Union of Independent

Farmers”. Given that Manuel was more familiar with the acronym for the group, such an error is not only minor but inconsequential to his claim.

[6] As noted by the Respondent, the Board made it clear, at the commencement of the hearing, that “the testimony of one may affect the outcome of the others”. While this was a correct statement of principle, the Board was nonetheless obliged to decide each of the claims on its own merits. In other words, it was not open to the Board to reject Manuel’s evidence simply because it did not believe his brother. And yet, this is what the Board appears to have done. In my view, the decision does not reflect that a separate assessment of Manuel’s claim was made. The Board rejected Manuel’s claim solely on the basis of the problems with Daniel’s lack of credibility. Beyond one small, inconsequential error, nothing in the decision either highlights problems with Manuel’s story or explains how Daniel’s testimony could be linked to that of his brother such that Manuel’s story could be discredited.

[7] I conclude that the Board’s decision with respect to Manuel is not reasonable; it does not fall “within the range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[8] The claims of Manuel’s wife and daughter rest on those of Manuel. Thus, the judicial review application for Manuel, his wife and daughter will be allowed.

[9] Neither party proposed a question for certification. None will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review with respect to Daniel Fernandez Ortega is dismissed:

2. the application for judicial review with respect to Manuel Fernandez Ortega, Antonia Hernandez Rivera and Flor Andrea Fernandez Hernandez is allowed, the decision with respect to these three persons is quashed and the matter remitted to a different panel of the Board for re-determination; and

3. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4128-08

STYLE OF CAUSE: MANUEL FERNANDEZ ORTEGA, ANTONIA
HERNANDEZ RIVERA, FLOR ANDREA FERNANDEZ
HERNANDEZ, DANIEL FERNANDEZ ORTEGA
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 21, 2009

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

DATED: July 23, 2009

APPEARANCES:

Mr. D. Russ MakePeace FOR THE APPLICANTS

Ms. Suran Bhattacharyya FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Peter J. Wuebbolt FOR THE APPLICANTS
Barrister and Solicitor
Etobicoke, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario