

Federal Court



Cour fédérale

Date: 20100202

Docket: IMM-3247-09

Citation: 2010 FC 111

Ottawa, Ontario, February 2, 2010

PRESENT: THE CHIEF JUSTICE

BETWEEN:

JOSE RAMON BENITEZ HIDROVO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the determination by the Refugee Protection Division that he committed a serious non-political crime within the meaning of Article 1F(b) of the *United Nations Convention relating to the Status of Refugees*. His application for judicial review must fail.

[2] There was ample information before the tribunal member for her to conclude that the applicant was in possession of more than 200 grams of cocaine as charged. She properly understood the indictment. The applicant had been incarcerated for seven months when, through his counsel, he agreed to a deferred adjudication order subject to 10 years of probation, the payment of

a fine and related costs. In the words of the deferred adjudication order, the criminal court found that “it substantiates the defendant’s guilt”. Seven years later, apparently in view of the applicant’s good behaviour, the deferred adjudication of guilt was substituted by a dismissal of the charges.

[3] In his personal information form, the applicant acknowledged that he was in “possession of cocaine” with reference to this criminal charge. He acknowledged that the sentence, in his words, was “time served – probation”.

[4] On the basis of this information, it was open to the tribunal member to conclude that the applicant was in possession of a significant amount of cocaine. I attribute no material significance to her use of the word “convicted” to describe the deferred adjudication order and the related period of probation.

[5] Similarly, no reviewable error has been established in the tribunal member’s assessment of the seriousness of the criminal activity. She reviewed the criteria set forth in *Jayasekara v. Canada (Minister of Citizenship and Immigration)* (2008), 2008 FCA 404, 305 D.L.R. (4th) 630 at paragraphs 28, 44 and 55. The amount of the cocaine in issue, the time spent in detention, the term of probation and the absence of a mitigating factor were considered by the tribunal member. Furthermore, her determination was not inconsistent with one of the purposes of Article 1F(b) relied upon by the applicant. The tribunal member could properly conclude that his offence raised issues of “security and social peace” for the country of refuge: *Jayasekara*, above, at paragraph 28.

[6] This application for judicial review will be dismissed. Neither party was prepared to suggest the certification of a serious question during the hearing.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Allan Lutfy"
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3247-09

STYLE OF CAUSE: JOSE RAMON BENITEZ HIDROVO v. MCI

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: January 19, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** The Chief Justice

DATED: February 2, 2010

APPEARANCES:

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FOR THE APPLICANT

Edward Burnet

FOR THE RESPONDENT

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