

Federal Court



Cour fédérale

Date: 20100427

Docket: IMM-4794-09

Citation: 2010 FC 461

Toronto, Ontario, April 27, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

MARIA LUISA PADILLA GAMEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In the present Application, the Applicant, who is a citizen of Honduras, contests the RPD's finding that she failed to prove her subjective fear of persecution should she be required to return to Honduras. The Applicant's claim for protection is based on her fear that, should she be required to return to Honduras, she will be killed at the hands of her extremely violent husband.

[2] I accept Counsel for the Applicant's argument that the decision under review is fundamentally flawed on the central issue of the Applicant's credibility. At paragraph 8 of the decision, the RPD sets out the issue for determination as follows:

The determinative issue is credibility, specifically with respect to subjective fear, and state protection. The panel has considered the application of the *Gender Guidelines*.

However, the following statement is made by the RPD at paragraph 12:

That is, assuming without deciding that the claimant's allegations of severe domestic abuse are true, Ms. Padilla has not demonstrated that she is in need of refugee protection. This is for two reasons: that she never sought assistance prior to leaving her own country, and she delayed seeking protection or asylum for more than two years.

[Emphasis added]

[3] The Applicant gave evidence with respect to her subjective fear while in Honduras and after she fled; this evidence was apparently not believed by the RPD because it was not accepted. The Federal Court of Appeal has set stringent requirements for the making of credibility findings. In *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at page 305 the point is made that, when a refugee claimant swears to tell the truth about certain features of her or his claim, a presumption is created that that evidence is true unless there are reasons to doubt its truthfulness. With respect to such reasons, the decision in *Hilo v. Canada (M.E.I.)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.) at paragraph 6 sets the standard:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms.

[Emphasis added]

[4] Indeed, in the decision presently under review, no credibility finding is made in accordance with the principles just outlined. As a result, I find that the negative finding of subjective fear was made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4794-09

STYLE OF CAUSE: MARIA LUISA PADILLA GAMEZ
v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 27, 2010

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: April 27, 2010

APPEARANCES:

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