

Federal Court



Cour fédérale

Date: 20100907

Docket: IMM-5953-09

Citation: 2010 FC 880

Ottawa, Ontario, September 7, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JOSE HENRY MONGE CONTRERAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Jose Henry Monge Contreras fears that if he is sent back to his native El Salvador he will be harmed by the Mara/Salvatrucha gang. The gang killed his brother, shot at his friends and his other brother, and shot Mr. Monge Contreras in the knee.

[2] Mr. Monge Contreras applied for a pre-removal risk assessment (PRRA) before being deported to El Salvador. The officer who conducted the PRRA concluded that Mr. Monge Contreras

had not rebutted the presumption that state protection was available to him in El Salvador and, therefore, that there were insufficient grounds on which to find that he would face torture or cruel and unusual treatment or punishment if returned.

[3] Mr. Monge Contreras argues that the officer erred by failing to afford him an oral hearing, by rendering an unreasonable decision on state protection, and by issuing inadequate reasons. He asks me to order another officer to reconsider his application.

[4] I cannot find any basis on which to overturn the officer's decision and must, therefore, dismiss this application for judicial review.

[5] There are three issues:

1. Was the officer obliged to hold an oral hearing?
2. Was the officer's conclusion on state protection unreasonable?
3. Were the officer's reasons inadequate?

II. The Officer's Decision

[6] Because Mr. Monge Contreras was ineligible for refugee protection, the officer only considered his application under s. 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (see Annex "A").

(1) Was the officer obliged to hold an oral hearing?

[7] Mr. Monge Contreras argues that the officer implicitly challenged his credibility by noting the absence of corroborating medical evidence to support his claim to have been shot in the knee. Accordingly, he says, the officer had a duty to hold an oral hearing.

[8] As I read the officer's decision, while he did note the absence of corroborating medical evidence, the main issue was state protection. In other words, the officer appeared to accept Mr. Monge Contreras's version of events and then considered whether the state of El Salvador was in a position to offer him protection. The officer's analysis did not turn on the issue of credibility and, accordingly, he was not obliged to convene an oral hearing (*Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27).

(2) Was the officer's conclusion on state protection unreasonable?

[9] Mr. Monge Contreras argues that the officer merely relied on a smattering of documentary sources and then declared his conclusion that he had not "rebutted the presumption of state protection in El Salvador with clear and convincing evidence". Further, Mr. Monge Contreras maintains that the officer failed to recognize that seeking protection would be futile under the prevailing conditions in El Salvador.

[10] Clearly, El Salvador has serious problems responding adequately to crime. The documentary evidence Mr. Monge Contreras relies on makes that clear. But the officer relied

mainly on one key document – a letter from an official of the El Salvador Civil National Police. In it, the official confirms the risk that would await Mr. Monge Contreras if he were to return to El Salvador. But he also notes that the police are currently providing protection from gang threats to Mr. Monge Contreras’s wife and three daughters under the Regimen of Urgent Protection for Victims and Witnesses.

[11] Given the evidence before him, I cannot conclude that the PRRA officer failed to consider relevant documentary evidence or unreasonably found that adequate state protection was available. Mr. Monge Contreras did not explain why he could not avail himself of the state protection El Salvador is currently providing the rest of his family.

(3) Were the officer’s reasons inadequate?

[12] Mr. Monge Contreras maintains that the officer failed to explain adequately his conclusion that state protection was available in El Salvador. The officer merely cited selected passages from the documentary evidence and then stated his conclusion.

[13] In my view, read in their context and in light of the record before him, the officer’s reasons are adequate. As mentioned, a key piece of evidence was the letter from the Civil National Police noting the availability of protection for victims of crime and the protection currently being provided to Mr. Monge Contreras’s family. The other documentary evidence was relevant but did not require extensive analysis to arrive at the conclusion that Mr. Monge Contreras had failed to discharge the evidentiary burden on him.

III. Conclusion and Disposition

[14] Given the evidence before him relating to state protection, the officer was not obliged to hold an oral hearing. Further, his conclusion was reasonable in the sense that it fell within the range of acceptable outcomes and his reasons were adequate. No question of general importance arises for certification.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex “A”

Immigration and Refugee Protection Act S.C.
2001, c. 27

*Loi sur l’immigration et la protection des
réfugiés, L.C. 2001, ch. 27*

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

- (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
- (ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,
- (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
- (iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5953-09

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 7, 2010

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