

Federal Court



Cour fédérale

**Date: 20101022**

**Docket: IMM-761-10**

**Citation: 2010 FC 1031**

**Ottawa, Ontario, October 22, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ARACELLI ARELLANO LEMOINE  
SANDRA ALMAGUER ARELLANO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms. Araceli Arellano Lemoine fled to Canada from Mexico with her daughter in 2008. She sought refugee protection on the basis that she had been repeatedly assaulted and threatened by her husband after she reported his involvement in drug trafficking to the police.

[2] A panel of the Immigration and Refugee Board denied Ms. Arellano Lemoine's claim because it disbelieved her account of events and because she had failed to avail herself of state protection in Mexico. Ms. Arellano Lemoine argues that the Board applied the wrong standard of

proof to her evidence and erred in its analysis of state protection. She asks me to order a new hearing before a different panel.

[3] I have found no error in the Board's articulation of the applicable standard of proof. Its adverse credibility findings must stand. It is unnecessary, therefore, for me to address Ms. Arellano Lemoine's alternative argument about state protection.

[4] The sole issue, therefore, is whether the Board erred in respect of the standard of proof to be applied to the evidence before it.

## II. The Board's Decision

[5] Citing well known cases, the Board noted that testimony should be presumed to be true, unless there is reason to doubt its truthfulness. It went on to state that a witness's version of events should be measured by the preponderance of probabilities, which a practical and informed person would recognize as reasonable. To be satisfied that evidence is credible or trustworthy, the Board said, it must be satisfied that it is probably so, not just possibly so.

[6] In the next paragraph, the Board made the statement whose correctness Ms. Arellano Lemoine contests. The Board stated that it had found "contradictions, inconsistencies, omissions and implausibilities in the claimants' testimony" in areas central to the claim. And then it said that those problems "were not cleared up to my satisfaction." It is this latter phrase that is in issue.

III. Did the Board Apply the Wrong Standard of Proof?

[7] Ms. Arellano Lemoine argues that it is impossible to know what amount of proof would have cleared up the Board's concerns to its "satisfaction". Given that uncertainty, she suggests that the soundness of the credibility findings the Board went on to make is in doubt.

[8] For two reasons, I can find no error in the Board's statement of the burden of proof. First, in the face of contradictions and inconsistencies, the Board must consider whether a witness offered a satisfactory explanation for them. If the Board is not satisfied with the explanation, then it is entitled to draw an adverse inference about the witness's credibility. In general, the word "satisfied" connotes a standard of a balance of probabilities. Therefore, if the Board is not satisfied that a witness's explanation for having given contradictory evidence is reasonable, for example, it cannot be satisfied that the testimony is truthful. When the Board stated that the problems in the evidence had not been "cleared up to my satisfaction", it was merely stating an overarching basis for its ensuing adverse credibility findings.

[9] Second, it is clear that the Board understood the proper standard of proof to be applied to a witness's testimony. It set out well accepted expressions of that standard before it uttered the passage contested by Ms. Arellano Lemoine. Even if that passage had contained an error, I could not conclude, reading the reasons as a whole, that the Board misapplied or misstated the appropriate standard of proof.

IV. Conclusion and Disposition

[10] Having concluded that the Board did not state or apply the wrong standard of proof, its findings of fact, which led it to the conclusion that Ms. Arellano Lemoine's claim had not been made out, must stand. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**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”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-761-10

**STYLE OF CAUSE:** LEMOINE, ET AL v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** October 14, 2010

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

**DATED:** October 22, 2010

**APPEARANCES:**

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