

Federal Court



Cour fédérale

Date: 20101110

Docket: IMM-1902-10

Citation: 2010 FC 1126

Ottawa, Ontario, November 10, 2010

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

VICTOR ISABEL ORTEZ VILLALTA

Applicant

et

**CANADA (MINISTER OF CITIZENSHIP AND
IMMIGRATION)**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision of the Immigration and Refugee Board (“the Board”) denying the applicant refugee protection. The Board member Roxanne Cyr determined that the applicant was not a Convention refugee or a person in need of protection, in file MA8-08117.

[2] The assessment of the applicant's credibility is central to the Board's reasons. The applicant submitted that the Board unfairly assessed his credibility. He alleged that the Board failed to consider the application on its merits, namely, the existence of persecution.

[3] The proceeding before this Court is an application for judicial review. In the context of the Board's assessment of credibility, the Court must show considerable deference and analyze the Board's decision according to the standard of reasonableness (see, for example, *Shen v. Canada (Citizenship and Immigration)*, 2007 FC 442). A new analysis of the applicable standard of review is not necessary whenever the standard has been established by case law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 57). The use of the standard of reasonableness is also supported by paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as construed in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12.

[4] The Court is therefore inquiring into "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes". The Supreme Court specified the following: "But [a court conducting a review for reasonableness] is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

[5] The Board noted significant omissions in the applicant's PIF and port of entry interview. As the applicant did not amend his PIF, despite having had the opportunity to do so, the Board did not accept his justification for these omissions, which were nevertheless key elements of his claim (that is, the telephone calls to his home, threatening him). It is well established that, while

it does not need to be encyclopedic, the PIF must nonetheless contain the important and determinative elements of a claim for refugee protection (*Basseghi v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15189). A negative credibility finding regarding a significant element of the claim may warrant dismissing the claim for refugee protection (*Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (F.C.A.); *Obeng v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 636).

[6] Thus, the Board found that the applicant had been the victim of a random attack and that there had been no threats or persecution. In the Board's opinion, the risk posed by gangs in El Salvador was the same for the applicant as for the general population and was unrelated to the applicant's innate characteristics (*Prophète v. Canada (Citizenship and Immigration)*, 2008 FC 331, affirmed on appeal in 2009 FCA 31). The Board also assessed the risk of forced recruitment, relying on a 2007 DOS report.

[7] The applicant argued that the Board's arbitrary, even overly fastidious, assessment of his credibility amounted to a failure to exercise its jurisdiction over the merits (*Attakora v. Canada (Minister of Employment and Immigration)*, (1989) 99 N.R. 168; *Djama v. Canada (Minister of Employment and Immigration)*, 1992 CarswellNat 1136 (F.C.A.)). However, the Board clearly looked beyond the credibility analysis. The denial of refugee protection to the applicant was also justified by the absence of persecution and the risk shared by the general population. The Board therefore properly exercised its jurisdiction.

[8] The Board's decision, as a whole, is reasonable and supported by law and fact. There is no need to interfere with its assessment of the applicant's credibility. A careful reading of the transcript of the hearing before the Board shows that the Board questioned the applicant several times regarding the omissions on record. The Board's findings on the applicant's credibility, far from being arbitrary, are based on a proactive attitude on its part that is worth noting. The Board's decision will therefore remain undisturbed.

[9] The parties made no request for certification of any question.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

- this application for judicial review be dismissed;
- no question be certified.

“Simon Noël”

Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1902-10

STYLE OF CAUSE: VICTOR ISABEL ORTEZ VILLALTA
v.
MCI

PLACE OF HEARING: Montréal

DATE OF HEARING: November 5, 2010

REASONS: Noël J.

DATED: November 10, 2010

APPEARANCES:

(Absent)

FOR THE APPLICANT

Thi My Dung Tran

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Brodeur

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT