

Federal Court



Cour fédérale

Date: 20100924

Docket: IMM-466-10

Citation: 2010 FC 953

BETWEEN:

ISMAEL GUZMAN HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

LUTFY C.J.

[1] It is common ground that the applicant, a citizen of Mexico, lives with mental illness. He is said to be psychotic and delusional. In the words of his family physician, "...after nearly three years of working with [the applicant], I have never heard a fully consistent version of his past."

[2] After a hearing spread over four days, the Refugee Protection Division member reached a similar conclusion: "...[the applicant] simply does not have the same contact with reality that other people do and that was evident throughout the hearing process...". In the words of the member, the applicant was "...willing to agree with virtually anything said to him", including contradictory statements.

[3] Against this background, it was open for the member to assert that the applicant's credibility could not be assessed in the usual manner.

[4] The member did make three findings. First, he determined the applicant was not heterosexual. He also found that the applicant's father, now in his late 60's, would not be motivated to harm his son on his return to Mexico City. Finally, he made this general determination:

While it is clear that something happened to the claimant in the past, given his current permanent mental condition, I doubt that we will ever truly know what that something was. I find on a balance of probabilities that all of these incidents mentioned by the claimant are merely manifestations of the claimant's psychiatric condition and that they never actually occurred.

[5] The suggestion that the related incidents "never actually occurred" is an overstatement which, in the context of this somewhat exceptional case, does not constitute a reviewable error. The member had concluded, correctly in my view, that he could not properly assess the applicant's story because of his mental condition. It was merely superfluous, in this context, to state whether the events occurred or not.

[6] In summary, the panel member's state protection analysis must be assessed in the context of a refugee claimant with a fear of homophobic attacks and the persecution as a consequence of his mental illness.

[7] It is true that a state protection analysis should be preceded by the decision-maker's determination of the refugee claimant's credibility concerning his subjective fear of persecution.

However, as I noted earlier, this is one of the exceptional cases where the member could not reasonably be expected to have made the usual credibility determination: *Jimenez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 727 at paragraph 15.

[8] Similarly, the member's finding that the applicant "...is fairly high functioning" and that he is able "to function and deal with others" is not unreasonable when assessed against the evidence of the applicant's designated representative. The member was sensitive to the applicant's ability to do certain things in the context of his compromised mental health situation. Unlike the facts in *Rigg v. Canada (Solicitor General)*, 2007 FC 1079 at paragraph 11, in this case the member did take into consideration the applicant's personal circumstances in his state protection analysis.

[9] For these reasons, I have found no reviewable error in the member's decision and this application for judicial review will be dismissed. The Court agrees with both counsel that this proceeding does not lend itself to the certification of a serious question.

[10] The panel member suggested that the applicant's dire personal circumstances should be addressed by the respondent's officials in the context of humanitarian and compassionate consideration. I concur.

ORDER

THIS COURT ORDERS that this application for judicial review be dismissed.

"Allan Lutfy"

Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-466-10

STYLE OF CAUSE: ISMAEL GUZMAN HERNANDEZ v. MCI

PLACE OF HEARING: Toronto

DATE OF HEARING: September 14, 2010

REASONS FOR ORDER: LUTFY C.J.

DATED: September 24, 2010

APPEARANCES:

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