

Federal Court



Cour fédérale

Date: 20120106

Docket: IMM-2336-11

Citation: 2012 FC 6

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 6, 2012

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

**Leopoldo Francico CORONEL ARCHUNDIA
Guillermo CORONEL VERDIN
Sandra Maria VERDIN Y SOLIS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by Aimable Ndejuru of the Refugee Protection Division of the Immigration and Refugee Board (panel), submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act). The panel rejected the refugee protection claims of Leopoldo Francico Coronel Archundia (principal

applicant), his spouse Sandra Maria Verdin Y Solis and their son fils Guillermo Coronel Verdin (applicants), finding that they were not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the Act.

[2] The applicants are citizens of Mexico. The principal applicant worked as a prison guard at La Palma, a maximum security prison. He was fired during the guards' strike in 2005 when the guards demonstrated against the insecurity of their work environment.

[3] On October 20, 2004, the principal applicant, when he was still working at the prison, allegedly heard the prison warden, Mr. Montoya, agree to murder a man (Arturo Guzman Loera, "El Pollo") in exchange for a sum of money, at the request of an inmate, Mr. Benjamin Arrellano Félix. The warden then allegedly threatened to kill the principal applicant if he repeated what he had heard.

[4] On December 31, 2004, El Pollo, the brother of a drug trafficker, was apparently murdered by an inmate named Jose Ramirez Villanueva. On January 2, 2005, the warden of the penitentiary apparently sent the principal applicant to watch over the murderer in order to see whether he would admit to the murder. Eventually, the murderer reportedly confessed that he had killed El Pollo at the request of the warden, Mr. Montoya.

[5] On January 6, 2005, the warden reportedly asked to meet the principal applicant at his office, where he struck him and offered him 3,000,000 pesos in exchange for his silence. The principal

applicant apparently refused this offer. After this refusal, the warden allegedly said:

[TRANSLATION] “If you talk, you die.”

[6] The guards’ strike then took place, which led to the firing of the principal applicant, among others.

[7] From August 2005 to November 2006, the principal applicant allegedly worked as a taxi driver. During this period, there is no evidence that the applicants received any threats. On March 3, 2006, by chance, the principal applicant was apparently accosted by a former work colleague from the penitentiary, Gaspar Alegria. During their conversation, the principal applicant reportedly repeated what he heard in 2004 about the murder of El Pollo. During second meeting on August 30, 2006, the principal applicant allegedly confessed to Alegria that it was the warden who was paying the murderers. Then, on November 20, 2006, Alegria and another former work colleague, Jorge Bravo, allegedly asked the principal applicant to murder the warden, Mr. Montoya, for 5,000,000 pesos in order to avenge the death of El Pollo; these men were supposedly part of a drug cartel. They reportedly told the principal applicant that if he did not kill the warden, they would kill him.

[8] The principal applicant and his son Guillermo claim that, on November 21, 2006, two men and a woman took Guillermo out of school, put a gun to his head and threatened to kill his family because of the principal applicant’s involvement in this murder.

[9] The principal applicant and his family contend that they fear for their lives, believing that members of the cartel are everywhere. In December 2006, the principal applicant and his son

Guillermo left Mexico to file a refugee protection claim in Canada. Following their departure, the principal applicant's spouse apparently left their home to go live with a friend and then with her sister. Some strangers apparently asked her where her husband was. When she refused to answer, they allegedly beat her.

[10] In April 2007, the spouse of the principal applicant went to Montréal for two weeks, and then returned to Mexico. In July 2007, she visited Montréal a second time, and returned to Mexico the following August. On October 22, 2007, after learning of the murder of a musician who was allegedly mistaken for Guillermo, she left Mexico with her other son, her daughter-in-law and her two grandchildren, all of whom claimed refugee protection in Canada on the same day. However, her son, her daughter-in-law and her grandchildren subsequently withdrew their refugee claims and returned to Mexico.

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[11] The panel found the applicants' allegations not to be credible. In its decision, the panel noted the inconsistencies and contradictions that led it to find that the applicants' account was fabricated.

[12] The only real issue raised by this matter is whether the panel erred in finding that the applicants were not credible. Since this is purely a question of weighing the evidence, the applicable standard of review is reasonableness (*Chen v The Minister of Citizenship and Immigration*, 2005 FC 767 at para 18; *Zavalat v The Minister of Citizenship and Immigration*, 2009 FC 1279 at para 18;

Afonso v The Minister of Citizenship and Immigration, 2007 FC 51 at para 22; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47 (*Dunsmuir*)).

[13] After reviewing the relevant evidence and hearing counsel for the parties, the applicants have not convinced me that the panel based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (see paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC (1985), c F-7). On the contrary, the panel's decision is based on the important evidence of the applicants' statements and the documentary evidence.

[14] Suffice it here to note the reasonableness of the negative inference drawn by the panel with respect to the principal applicant's inability to explain the reason for the contradiction concerning the date of his alleged meeting with Mr. Montoya, in view of the documentary evidence which specifies that on January 4, 2005, Mr. Montoya had been replaced. This inference goes to the very heart of the decision and is determinative, since if the meeting between the principal applicant and Warden Montoya never took place, then the threats alleged in support of the applicants' fears are pure fiction.

[15] It must be remembered that in such cases, this Court must demonstrate great deference and can intervene only if the panel's findings are not based on the evidence in the record. In the case at bar, the inferences drawn by the panel are reasonable in light of the evidence before it (see *Aguebor v The Minister of Employment and Immigration* (1993), 160 NR 315).

[16] In addition, the finding of a lack of credibility on the part of a refugee claimant may extend to all evidence emanating from his or her testimony (see *Sheikh v Canada (Minister of Employment and Immigration)* (CA), [1990] 3 FC 238).

[17] In the circumstances, it is therefore not up to this Court to substitute its assessment of the facts for that of the panel, whose decision appears to me to be justified and transparent and to meet the standard of reasonableness as defined in *Dunsmuir*.

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[18] For all these reasons, the application for judicial review is dismissed.

[19] I agree with counsel for the parties that there is no question for certification arising.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated March 18, 2011, is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2336-11

STYLE OF CAUSE: Leopoldo Francico CORONEL ARCHUNDIA, Guillermo CORONEL VERDIN, Sandra Maria VERDIN Y SOLIS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 7, 2011

REASONS FOR JUDGMENT AND JUDGMENT: Pinard J.

DATED: January 6, 2012

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