

Federal Court



Cour fédérale

Date: 20120501

Docket: IMM-8216-11

Citation: 2012 FC 502

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 1, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LOPEZ ESPINOZA, ESTEBAN FELIPE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant's credibility is at the heart of this application for judicial review. As the Federal Court of Appeal stated in *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381:

[3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and

credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence. [Emphasis added].

II. Legal proceeding

[2] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dated October 18, 2011, which determined that the applicant is neither a Convention refugee as defined in section 96 of the IRPA nor a person in need of protection under section 97 of the IRPA.

III. Facts

[3] The applicant, Esteban Felipe Lopez Espinoza, is a Mexican citizen.

[4] The applicant alleges that he fears Rodrigo Sanchez, the ex-spouse of his ex-spouse, Erendira Campos Palomo, with whom he has a daughter.

[5] The applicant and his ex-spouse left Mexico for Canada on December 28, 2008, the date on which they claimed refugee protection.

[6] The morning of the hearing, the applicant changed his narrative to allege that he feared a criminal group named Los Pelones [LP], which had forced him to take drugs and drink for a number of years.

IV. Decision that is the subject of this judicial review

[7] The RPD rejected the refugee claim primarily because of the applicant's lack of credibility. The RPD noted that the applicant was not a reliable witness because his testimony was peppered with hesitations, contradictions and inconsistencies. The RPD also criticized the applicant for the lack of evidence corroborating his narrative.

[8] The RPD drew an adverse inference regarding the applicant's credibility from the fact that he substantially amended his Personal Information Form [PIF] the morning of the hearing by adding facts that he did not mention to the immigration officer when he entered Canada. The RPD found that there was no credible basis for the refugee claim under subsection 107(2) of the IRPA because the applicant had not adduced any credible evidence.

V. Issue

[9] Is the RPD's decision reasonable?

VI. Relevant statutory provisions

[10] The following provisions of the IRPA apply to this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

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

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,

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.

(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.

Person in need of protection

(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

Decision

107. (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

Personne à protéger

(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.

Décision

107. (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que The applicant a ou non la qualité de réfugié ou de personne à protéger.

No credible basis

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

Preuve

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

VII. Position of the parties

[11] The applicant is primarily disputing the RPD's credibility findings. He contends that the RPD could not question the truthfulness of his narrative with respect to his fear of Rodrigo Sanchez because another RPD member accepted his ex-spouse as a refugee on the same ground. The applicant's testimony, however, focused on this fact during the hearing. The applicant is also disputing the RPD's failure to give reasons for its no credible basis finding.

[12] The respondent takes the position that the RPD's findings on the applicant's credibility are justified and that the RPD was not bound by findings made in the context of the refugee claim of the applicant's ex-spouse. With respect to the finding that there was no credible basis for the refugee claim, the respondent submits that the RPD is not required to provide reasons for this finding.

VIII. Analysis

[13] Assessing credibility based on the facts falls within the RPD's expertise. Accordingly, a high level of judicial deference is required with respect to this type of finding, and the appropriate

standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

[14] It is well established in the jurisprudence that differences between statements at the port of entry and testimony at the hearing may affect credibility where these contradictions bear on elements that are central to the narrative (*Gomez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 578).

[15] In this case, a number of factors diminished the applicant's credibility in the RPD's view:

- (a) The applicant stated that he had seen Rodrigo Sanchez three times but was unable to specify the dates of these encounters.
- (b) The applicant was unable to describe Rodrigo Sanchez because his ex-spouse had not given him any information.
- (c) The applicant admitted that Rodrigo Sanchez had not lived with his ex-spouse but that she had dated him for two months, contrary to what he stated in his PIF.
- (d) The applicant contradicted himself by testifying that he had lived with his maternal aunt before leaving for Canada while his PIF states that he had lived with his parents.
- (e) The applicant amended his narrative the morning of the hearing to allege that he feared the LP gang, which had persecuted him in the city of Leon for years. He justified this omission in his port-of-entry statement by saying that he was ashamed of his past.

- (f) The applicant contradicted himself during his testimony on the issue of the complaint he filed with the Public Ministry against Rodigo Sanchez. He did not have a copy of the complaint with him at the hearing.
- (g) The applicant contradicted himself on his relationship with his family members in Canada.

[16] The applicant challenges in particular the credibility findings with respect to his ex-spouse's narrative, which the RPD accepted in another case. In the applicant's view, since the RPD was in possession of this information, it could not doubt that the persecutor existed.

[17] In this regard, it is important to mention that each case turns on its own facts. Since the subjective fear analysis is based on the facts, the RPD is not bound by a decision made in another claim (*Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111; *Rahmatizadeh v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 578 (QL/Lexis)).

[18] Concerning the no credible basis finding, the Court refers to the reasoning of Justice Yvon Pinard in *Kouril v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 728:

[15] The respondent argues, on the other hand, that there is case authority for the proposition that the Board is not required to give reasons for its "no credible basis" finding. However, in each case which the respondent cites, the Board had found the claimant's testimony not to be credible before concluding that there was no credible basis for the claim. In such cases, there may be no requirement for a further explanation other than that given on the question of the claimant's personal credibility, as I have stated in *Nizeyimana v. Minister of Citizenship and Immigration* (March 30, 2001), IMM-1789-00, 2001 FCT 259 . . .

[19] In this case, the RPD gave sufficient reasons concerning the applicant's credibility to support its no credible basis finding.

IX. Conclusion

[20] For all the aforementioned reasons, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review is dismissed.

No question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8216-11

STYLE OF CAUSE: LOPEZ ESPINOZA, ESTEBAN FELIPE
v MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

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