

Federal Court



Cour fédérale

**Date: 20120427**

**Docket: IMM-6627-11**

**Citation: 2012 FC 492**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Ottawa, Ontario, April 27, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**BRIGIDA DEL ANGEL CEDILLO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of the decision by the Immigration and Refugee Board (IRB), dated September 2, 2011, that Brigida Del Angel Cedillo

(the applicant) is not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[2] For the following reasons, this application for judicial review is dismissed.

## **II. Facts**

[3] The Applicant is a citizen of Mexico.

[4] On June 23, 1999, the applicant worked for the Municipality of Tampico in the State of Tamaulipas as an administrative assistant. She verified documents submitted to obtain passports.

[5] However, her overzealousness at work greatly displeased certain members of the Coyotes (smugglers).

[6] December 17, 2007, the applicant claimed that she advised her superiors that some smugglers were issuing passports using false documents. They allegedly told her not to worry about this situation, because they would take care of it.

[7] The applicant was transferred to another department, still with the Municipality, where she was given a cold reception by her new colleagues because of her disclosures.

[8] On January 7, 2008, the applicant reported the Coyotes' unlawful activities to the Deputy Minister of Foreign Affairs.

[9] One month later, on February 8, 2008, the applicant was mistreated by two individuals. She also started to receive death threats by telephone.

[10] On March 3, 2008, she left her job and took refuge in the home of a friend in San Luis Potosi.

[11] On March 23, 2008, the applicant was kidnapped by five men and held captive in a house in the area of San Luis Potosi. Two of the five men responsible for watching her assaulted her sexually. They untied the applicant and forced her to get undressed. However, the two men fell asleep because they took excessive amounts of drugs and alcohol. Thus, the applicant fled and reached a highway where she received help from a family.

[12] She returned to take refuge at her friend's home in San Luis Potosi before leaving Mexico for Canada on June 9, 2008. She filed a claim for refugee protection.

[13] She alleged that her brother was murdered in February 2011 in connection with events underlying her request.

[14] The IRB determined that the applicant was not credible since she failed to show, on a balance of probabilities, that she would be subjected to a risk of torture or to a risk to her life or to a

risk of cruel and unusual treatment or punishment were she to return to Mexico. The IRB found that the applicant is not a Convention refugee or a person in need of protection under the IRPA.

### III. Legislation

[15] Sections 96 and 97 of the IRPA specify the following:

#### **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,

(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.

#### **Person in need of protection**

**97.** (1) A person in need of protection is a person in

#### **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) 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.

#### **Personne à protéger**

**97.** (1) A qualité de personne à protéger la personne qui se

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

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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(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.

(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.

#### **IV. Issue and standard of review**

##### **A. Issue**

[16] This application for judicial review raises only one issue:

- ***Did the IRB err in finding that the applicant lacked credibility?***

##### **B. Standard of review**

[17] A credibility finding is a question of fact, which is reviewable on the standard of reasonableness (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673, at para 11).

[18] It has been clearly established that questions of fact and assessment of evidence are within the Board's expertise and are reviewable on a standard of reasonableness (see *Theophile v Canada (Minister of Citizenship and Immigration)*, 2011 FC 961, [2011] FCJ No 1177, at paras 16 and 17; *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51 and 53 (*Dunsmuir*)). The reviewing Court must determine whether the decision "falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, cited above, at para 47).

## **V. Positions of the parties**

### **A. Applicant's position**

[19] The applicant submitted that the IRB's credibility finding was unfounded. She also argued that the IRB disregarded some of the evidence in support of her application.

[20] She also criticized the IRB of having overlooked a part of her story (see *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 531).

[21] According to the applicant, the IRB erred in finding, without any valid reason, that she lacked credibility.

## **B. The respondent's position**

[22] The respondent alleged that the IRB takes into account all of the relevant evidence in support of the applicant's refugee claim.

[23] The IRB recognized that part of the applicant's account is credible. However, the Board found that the elements central to the refugee claim are "incredible" and "implausible". The respondent noted that it is settled that "[t]he Board is the trier of facts and is entitled to make reasonable findings regarding the credibility of a claimant's story based on implausibilities, common sense and rationality", relying on *Khaira v Canada (Minister of Citizenship and Immigration)*, 2004 FC 62, at para 14. It also argued that it is not sufficient to mention that the IRB could have reached a different decision (*Lin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 183, at para 19).

[24] The respondent also noted the principle that the Court does not have to re-examine all the evidence and findings of the Board unless there is a clear error (*Castaneda v Canada (Minister of Citizenship and Immigration)*, 2010 FC 393, at para 14).

## **VI. Analysis**

- ***Did the IRB err in finding that the applicant lacked credibility?***

[25] The IRB made the following findings in support of its decision:



[31] The panel finds this part of the story hard to believe and implausible. How did a young woman, who was sought and found by a gang of criminals who entrusted five men to kidnap her and forcibly confine her in a remote house, and who was guarded by two men who tried to sexually assault her, manage to escape because her captors both fell asleep? (See the IRB decision at para 31.)

[37] The claimant did not demonstrate that Enrique Angel del Cedillo was her brother. She also failed to demonstrate that his murder had any connection to her story. (See the IRB decision at para 37.)

[26] The IRB found it implausible that the applicant escaped such a situation.

[TRANSLATION]

BY THE PRESIDING MEMBER (to the claimant)

- One other thing—one other thing that seems implausible to me, there are two bandits—(inaudible) you say that there were three that left—you stayed with two. They drank, they took drugs, okay?

- You (inaudible) here: “one of them started to kiss me”. And they just let you go.

- They were men or not men?

BY THE CLAIMANT (to the presiding member)

- Yes, there were two men.

BY THE PRESIDING MEMBER (to the claimant)

- So, you don't find that implausible?

BY THE CLAIMANT (to the presiding member)

- No, that's what happened.

BY THE PRESIDING MEMBER (to the claimant)

- Yes, but you don't find it strange that two bandits held you captive, started kissing you and then just left you?

- I would have understood if one fell asleep that (inaudible) maybe (inaudible).

BY THE CLAIMANT (to the presiding member)

- The two of them, they fell asleep, they started taking drugs. They did not assault me (inaudible).

BY THE PRESIDING MEMBER (to the claimant)

- They did not assault you after they started to kiss you? What was it that made them start to kiss you, they stopped suddenly?

BY THE CLAIMANT (to the presiding member)

- It's what they did. Started to touch me, then...

BY THE PRESIDING MEMBER (to the claimant)

- And suddenly, just like that, both stopped...

BY THE CLAIMANT (to the presiding member)

- That's right, Madam.

[27] The Court wishes to point out that the IRB is “entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole” (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (*Aguebor*)). This is what it did in this case.

[28] The IRB, following an assessment of the circumstances of the case, made a reasonable finding that the applicant's story is partly implausible. The Court does not see an error in the Board's findings with respect to the events surrounding the applicant's kidnapping. This finding is within the “range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir*, above, at para 47).

[29] The IRB also found that the death of Enrique Del Angel Cedillo is not related to the applicant's refugee claim. The Board noted that the applicant provided no evidence to establish that Enrique Del Angel Cedillo was her brother.

[30] The IRB considered the newspaper articles covering the death of Mr. Cedillo. However, these articles do not show that Mr. Cedillo is the applicant's brother and, more importantly, that the facts surrounding his death are related in any way to the applicant's story. The case law of this Court is clear—refugee protection claimants must provide all the evidence required to establish the truth of the facts underlying their claim.

[31] It is also well settled that it is up to the IRB to assess the evidence and the testimony and to attach probative value to them (see *Aguebor*, above; and *Romhaine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 534, [2011] FCJ No 693, at para 31). In this case, the IRB's finding on the assessment of the applicant's evidence is reasonable. There are no grounds for the intervention of this Court.

## **VII. Conclusion**

[32] The IRB's findings that the story surrounding the applicant's kidnapping is implausible and that the evidence does not establish that the late Mr. Cedillo is her brother or that his death is related to the applicant's claims are reasonable. Therefore, the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

**JUDGMENT**

**THE COURT DISMISSES** the application for judicial review and **FINDS** that there is no question of general interest to certify.

“André F.J. Scott”

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Judge

Certified true translation  
Catherine Jones, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-6627-11

**STYLE OF CAUSE:** BRIGIDA DEL ANGEL CEDILLO  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 28, 2012

**REASONS FOR JUDGMENT  
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