

Federal Court



Cour fédérale

Date: 20130402

Docket: IMM-5765-12

Citation: 2013 FC 325

Ottawa, Ontario, April 2, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

JORGE ROJAS MARQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, Mr. Jorge Rojas Marquez, is a citizen of Mexico who initially claimed protection in Canada due to risks that he faces from a criminal organization. In addition, the Applicant also asserted, for the first time at his hearing, that he is at greater risk because of his indigenous identity. In a decision dated May 1, 2012, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the Applicant was neither a

Convention refugee, pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), nor a person in need of protection, pursuant to s. 97 of *IRPA*.

[2] Quite simply, the Board did not believe the Applicant. In its decision, the Board's overall conclusion was that there was no credible basis for the claim. In reaching this overarching conclusion and rejecting the claim, the Board made a series of key findings:

- The 18-month delay in making his refugee claim demonstrated a lack of subjective fear;
- The Applicant's claim with respect to his indigenous identity was rejected due to his failure to identify this risk earlier and a failure to produce any reliable evidence in support of this particular aspect of his claim;
- The Applicant's claim under s. 96 of *IRPA* fails because, as a victim of crime, the Applicant had no nexus to a Convention ground;
- With respect to his s. 97 claim, the Applicant failed to provide "clear and convincing evidence" that his uncle was involved with a criminal gang that would have made the Applicant a target of revenge; and
- The Applicant failed to rebut the presumption that state protection was adequate.

II. Issues

[3] The Applicant seeks to overturn that decision, alleging the following reviewable errors:

1. The Board did not make clear credibility findings. The Board failed to outline why it rejected particular elements of the Applicant's explanation for his delay in claiming refugee status.
2. The Board's "no credible basis" finding is unreasonable since the evidence on the file was enough to support a positive determination.
3. The Board refused to receive relevant case specific documents without considering the factors listed in Rule 30 of the *Refugee Protection Division Rules*, SOR/2002-228 (the *RPD Rules*).
4. The Board ignored relevant evidence with regard to state protection in Mexico.

III. Analysis

A. *Credibility Findings*

[4] The key issue raised by the Applicant is that the Board provided inadequate reasons for its credibility findings, and for its decision as a whole. Although all parties acknowledge that the

decision is not well written, bad writing does not make a decision unreasonable. Having reviewed the decision and the record, including the transcript, I am satisfied that the Board's decision as a whole was reasonable.

[5] The Board provided many concrete examples of problems with the Applicant's credibility. For example:

- The Board commented generally that the Applicant's testimony was vague and he failed to provide documents to support his allegations.
- The Board drew a negative inference from the Applicant's delay in claiming of a year and a half. The Board drew a second negative inference based on the Applicant's explanation that he delayed to obtain documents, given his own admission that he was not able to substantiate certain aspects of his claim. The Board found that the Applicant's behaviour was not consistent with a subjective fear.
- The Applicant claimed at the hearing not to understand Spanish, when he stated in his Personal Information Form (PIF) that this was the language he understood the best. The Applicant initially alleged at the hearing that Nahuatl was the dialect he understood, but later admitted that he could speak English. The Board drew negative inferences from this inconsistent evidence.

- The Applicant attempted to present a number of documents at the hearing, stating that the documents were “his whole life”. The Board noted that the Applicant’s explanation why the documents were late was vague. The Board also formed a negative inference regarding the Applicant’s credibility from his embellishment and argumentative behaviour.
- The Board drew a negative inference from the Applicant’s outburst in the middle of the hearing that he was not listened to because of his physical appearance, linked to his indigenous race. The Board noted that the outburst was an attempt to avoid a question relating to whether the Applicant had contacted the police and the Applicant was overly dramatic. The Board concluded that this incident portrayed the Applicant as not trustworthy.
- The Board drew a negative inference from the Applicant’s testimony and lack of corroborating evidence concerning his claim based on his indigenous ethnicity, which was not brought up in his PIF or in the point-of-entry (POE) notes.

[6] In my view, the Board provided unmistakable reasons for its finding that the Applicant lacked of credibility.

[7] In particular, the Board’s analysis of the Applicant’s delay in claiming is reasonable. I acknowledge that the Board misstated the evidence when it noted that the Applicant had relatives in Canada – this is inconsistent with his PIF which states that his relatives all reside in the United

States. Further, the Board misstated the law when it characterized the risk to the Applicant on the basis of his indigenous heritage as a *sur place* claim. Neither of these errors is material to the relevant conclusion, which was simply that the Applicant's delay in claiming is inconsistent with a subjective fear of persecution. The Board drew a negative inference with respect to the 18 month delay, which the Applicant primarily attributed to his need to gather evidence, given the Applicant's submission of late documents and failure to substantiate parts of his claim. This conclusion was within the range of possible, acceptable outcomes.

[8] The Board's statement, at paragraph 11 of its reasons, that "the claimant failed to provide any documents to support his allegations" is not entirely accurate. However, this one sentence is not sufficient to render the whole credibility finding unreasonable. In any event, in the body of the decision, the Board does refer to some of the documents that were submitted (for example, Dr. Pilowsky's report and a medical report relating to the Applicant's brother). This demonstrates that the Board was aware that the Applicant did submit certain documents to support his claim. Although the Board should have outlined exactly which allegations were unsubstantiated, which would likely have explained this comment, the credibility finding was not made without regard to the evidence submitted by the Applicant.

[9] Therefore, given the significant credibility concerns clearly outlined by the Board, most of which are undisputed by the Applicant and all of which are supported on the record, the credibility finding as a whole is reasonable. The Board's credibility findings were sufficiently supported and were within the range of possible, acceptable outcomes.

B. *No Credible Basis*

[10] The Applicant also submits that the Board's conclusion that there was no credible basis for his claim is unreasonable, given that the Board appears to have accepted as credible the Applicant's identity as an indigenous person and some of the events described in the testimony of the Applicant.

[11] Justice Rennie recently stated that, "If there is *any* credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities" (*Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314 at para 19, 9 Imm LR (4th) 198 [*Levario*], emphasis in the original). In *Levario*, Justice Rennie found that the Board's no credible basis finding was unreasonable because the Board accepted the applicant was bisexual, a risk which was supported by extensive documentary evidence (*Levario*, above at paras 17-21).

[12] The situation in the present case differs from that discussed in *Levario*. In *Levario*, the Board accepted certain evidence of the claimant, which evidence clearly demonstrated a risk posed and was supported by the documentary evidence. However, in this case, the credibility of Applicant's risk as a result of his indigenous heritage and as a result of revenge at the hands of the Los Zetas and his uncle was reasonably questioned by the Board.

[13] The Applicant did submit country documentation, death certificates and medical information; however, without any evidence linking these documents to a particular risk the Applicant faces, these documents are arguably not relevant. The death certificates and the medical notes do not provide any information aside from the nature of the injuries, which could have been caused in many different ways. Without the Applicant's account to connect these documents to a possible risk that he faces, these documents could reasonably be seen to have no probative value.

[14] In sum, I cannot conclude that the decision on the Applicant's lack of credibility or its finding of "no credible basis" is unreasonable. The Board rendered a decision that falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). There is no reviewable error.

C. *Late Documents*

[15] The Applicant also asserts that the Board erred by rejecting the documents advanced for the first time at the hearing without proper consideration of Rule 30 of the *RPD Rules*. This raises a question of procedural fairness. Contrary to the Applicant's submission, there were substantial grounds for refusing the documents aside from the fact that the documents were late.

[16] Each request to admit late documents must be considered in its particular factual context. In my view, the Board did not breach the duty of procedural fairness on the facts of this case.

Although not clearly written, I am satisfied that the Board considered more than the question of the lateness of the documents. In particular, the Board referred to a number of the documents in the decision, demonstrating that their nature and purpose was considered. The Board also considered that the Applicant was unable to provide a sufficient explanation why the documents were late and that he had plenty of time to gather them.

[17] There is no reviewable error.

D. *State Protection*

[18] The Applicant argues that the Board ignored relevant evidence related to the adequacy of state protection. I note first that, the lack of credible basis finding by the Board is dispositive of this case. Having made no reviewable error on that aspect of the Applicant's claim, the issue of state protection is not determinative. Nevertheless, having reviewed the record, I am not persuaded that the Board erred as alleged.

[19] Viewed as a whole, the Board's state protection analysis is reasonable. It is the role of the Board to weigh the evidence. Although the Board's analysis of state protection is brief and not ideally organized, it is clear that the Board turned its mind to the relevant considerations to the Applicant's case. The Applicant's account includes many incidents of violence which caused the family to fear for their lives and to relocate. In this context, the Applicant made relatively few attempts to seek protection and demonstrated a lack of diligence to determine what actions the police took after the deaths of his father and his uncle. Therefore, the conclusion that the

Applicant did not take all reasonable steps and failed to rebut the presumption of state protection is within a range of possible outcomes.

III. Conclusion

[20] In sum, the Board's decision is reasonable and there was no breach of procedural fairness that would warrant the Court's intervention. The Application for Judicial Review will be dismissed. Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5765-12

STYLE OF CAUSE: JORGE ROJAS MARQUEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 6, 2013

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

DATED: APRIL 2, 2013

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