

Federal Court



Cour fédérale

**Date: 20130819**

**Docket: IMM-7839-12**

**Citation: 2013 FC 882**

**Ottawa, Ontario, August 19, 2013**

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

**BETWEEN:**

**ARNOLDO ALFREDO CAMPOS  
DAISY MARGARITA BATRE DE CAMPOS  
CHRISTOPHER MAURICIO CAMPOS  
BATRE (AKA CHRISTOPHER MAU CAMPOS  
BATRES)  
ARNOLDO ALFREFO CAMPOS BATRES  
JENNIFER MARGARITA CAMPOS BATRE  
(AKA JENNIFER MARGAR CAMPOS  
BATRES)  
LEOPOLDO MAURICIO CAMPOS RIVAS  
(AKA LEOPOLDO MAURIC CAMPOS RIVAS)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection

72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicants' claims for refugee protection, concluding that they were not convention refugees or persons in need of protection under sections 96 and 97 of the Act.

I. Background

[2] The Applicants consist of Arnaldo Alfredo Campos [the PA], his wife and three children [the Family], and his brother [the PA's Brother]. They are all citizens of El Salvador. The PA's Brother's claim is distinct from the collective claim of the PA and the PA's Family.

[3] The PA, who was employed as a lawyer in El Salvador, alleges he was approached by Jesus Antonio Guzman Navarrete and his lawyer, Mr. Avelar, on April 27, 2010. Mr. Guzman wished to retain the PA's services to obtain new identity documents. The PA claims in his Personal Information Form [PIF] narrative that he practiced criminal, family, labour, civil, commercial, transit and tenancy law. During the hearing, the PA produced a brochure for his practice which advertises immigration services. However, he claims in an affidavit dated August 31, 2012 that he does not practice immigration law, and the immigration services advertised concerned a colleague who worked in his office.

[4] The PA accepted a retainer of \$1,000 from Mr. Guzman on April 27, 2010. The next day he commenced work on Mr. Guzman's file. Two days later, he received a document from Mr. Avelar which indicated that Mr. Guzman had been detained on criminal charges. In his PIF narrative, the PA states that this document made him realize that Mr. Guzman was a member of a criminal gang.

[5] On June 30, 2010, Mr. Avelar telephoned the PA on behalf of Mr. Guzman. During that call, Mr. Avelar said that Mr. Guzman wished to cancel the retainer and have his money returned. The PA refused, and asked for Mr. Guzman to attend his office. Mr. Avelar hung up the phone. The same day, Mr. Avelar called back, and threatened consequences if the money was not repaid. Mr. Avelar also warned the PA that Mr. Guzman was a dangerous gang member. Under questioning by the Board, the PA stated that he tried three times to call Mr. Avelar back and offer to refund the money, but received no response. He does not describe these attempts in his PIF narrative.

[6] The PA alleges he received two threatening but unspecific text messages from an unknown number on July 6, 2010. On July 19, 2010, he received ten text messages directed specifically to him from a different unknown number, threatening to kill his secretary if \$3,000 was not deposited to a specified bank account. He told no one about these text messages.

[7] On July 20, 2010, the PA received five more text messages from the same number as the day before. They re-iterated the request for money and threatened violence against his family. Later that day he told his wife and older children about the threats.

[8] On July 22, 2010, the PA received an additional text message threatening his family. It was at this point he decided to go to a special extortion unit of the El Salvadorian national police. He alleges that the police tried to call the number that had been sending him messages, but after the calls went unanswered they refused to open an investigation.

[9] On July 24, 2010, the PA returned and argued again for the police to open an investigation. They did so, issuing him a false identity for protection. He did not tell the police about the interactions with Mr. Guzman and Mr. Avelar, only the text messages.

[10] On August 26, 2010, the PA was at his office when someone attempted to break in. He escaped unharmed.

[11] On August 28, 2010, the PA and his Family left El Salvador and came to Canada, filing for refugee status on October 12, 2010.

[12] The PA's Brother is a restaurateur, and on December 27, 2004, two men claiming to belong to the Mara Salvatrucha gang attempted to extort him for \$300.

[13] On January 3, 2005, two men held him at gunpoint at his restaurant, took \$80, and threatened to kill him if he did not pay the remainder. The next day, he went to report his crime, but believed he saw the same two men outside the police station and returned home.

[14] On January 6, 2005, he received a note which threatened him with death. He closed his business and stayed with family in another city. Shortly after, he moved to the United States, but returned within a month because he missed his family.

[15] On March 22, 2005, he returned to the United States, and stayed until February 2, 2011, when he applied for refugee status in Canada. He claims he did not apply for asylum in the United States because he did not know how.

[16] The determinative issue for the Board in denying the Applicant's claim was credibility, or, in the alternative, state protection.

[17] The Board disbelieve the claims of the PA and the PA's Brother in their entirety. The Board's credibility findings can be summarized as follows:

- A. The PA was an immigration lawyer, which would have made him aware of the documents necessary to immigrate to Canada. This allegedly tainted the PA's explanation for many of his actions;
- B. According to his PIF narrative, the PA refused to return the money to Mr. Guzman on June 30, 2010. This is implausible, given that the PA was aware Mr. Guzman was a dangerous gang member. This implausibility is compounded by the PA's subsequent testimony that he did attempt to return the money on several occasions and omitted this fact from his PIF Narrative only because he was facing time constraints when it was being written;
- C. The PA stated that he feared he would be murdered the next day if he made a police report which included the names of Mr. Avelar and Mr. Guzman, and as a result, he did not mention his interactions with them in his police report. This is implausible, as the PA was protected by a code name, and during the course of the investigation the text messages would presumably be traced to Mr. Guzman and Mr. Avelar in any event;

- D. It is implausible that a sophisticated criminal organization would leave numbers that could be traced back to them;
- E. It is implausible that the police unit specializing in extortion would refuse to take the PA's complaint on July 22, 2010, given the quality of the police report that was subsequently prepared;
- F. The PA claimed the police were not doing their job because they would not include the phone numbers that sent the threatening text messages because they were concerned about maintaining the PA's anonymity. The police's position is reasonable and demonstrates they were doing their job, as such information would have served to identify the PA;
- G. It is implausible that the PA did not make an additional police report after men tried to break into his office on August 26, 2010, especially since he apparently had witnesses to the break-in;
- H. The PA asked for a copy of his police report on July 22 and 24, 2010, before receiving one on August 13, 2010. This eagerness shows that immigration to Canada was the PA's primary motive;
- I. The psychologist's report on the PA states he is "very fearful" of the police, yet he reports to the police several times. As such, very little weight should be ascribed to the psychologist's report.

[18] The Board also disbelieved the PA's Brother's story of persecution in El Salvador. The reasons for this are based on the following:

- A. He was evasive when he was asked if he had any problems with the Mara Salvatrucha from February 14, 2005 and March 23, 2005;
- B. He stated that he did not seek asylum in the United States because the system confused him. This, given the fact that the PA is an immigration lawyer, that the PA's Brother admitted there were El Salvadorian community groups available to assist him, and that he started working in the United States almost immediately after arriving, makes his decision not to seek asylum in the United States unbelievable.

## II. Issues

[19] The issue raised in the present application are as follows:

- A. Were the Board's credibility findings with regards to the PA reasonable?
- B. Were the Board's credibility findings with regards to the PA's Brother reasonable?
- C. Were the Board's findings on state protection with regards to the PA reasonable?
- D. Were the Board's findings on state protection with regards to the PA's Brother reasonable?

## III. Standard of review

[20] The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12).

IV. Analysis

A. *Were the Board's Credibility Findings with Regards to the PA Reasonable?*

[21] The Applicants dispute the Board's adverse credibility findings. The most pertinent objections are as follows:

- A. The PA does not practice immigration law – the brochure from which the Board likely drew that assumption was referring to another lawyer;
- B. The PA tried to return money to Mr. Guzman but was unsuccessful in doing so. The PIF narrative does not reflect this fact because the PA was under time pressure to complete it with his interpreter;
- C. It is reasonable that the PA did not include information about Mr. Guzman and Mr. Alevar in his police report because of his ongoing fear of persecution. The PA was not afforded protection beyond anonymity and the psychologist's report and the documentary evidence of violence in El Salvador contribute to the fact that he had a well-founded fear of being killed;
- D. The Board's assumption that the police would have taken his initial complaint because the police report appeared to be professional is not rational. A corrupt police unit is just as capable as a serious one of producing reports that appear professional;
- E. When the PA requested his police report on July 22, 2013, he had not yet finalized his decision to leave the country. As such, it is inappropriate to draw an inference about his motive for seeking it;
- F. The Board asserts that the high level of general violence in El Salvador underlies the PA's motive for leaving the country, not the recent threats he faced. This is



inappropriate, as the documentary evidence indicates that in the past, violence in the country was much more prevalent;

- G. The Applicants also allege that the psychologist's report was unreasonably discounted, suggesting that the Board's reasoning is false logic in that it puts the PA in a "no-win" situation: the PA's claim can't succeed unless he take steps to go to the police, but if he goes to the police he can't be found to be fearful of them.

[22] There are three key considerations which make the Board's reasoning process with respect to credibility concerning. First, the Board's credibility finding is rooted primarily in the notion that the story told by the Applicants is implausible. Basing a credibility finding on implausibility alone requires a high threshold of certainty. In *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, the Court states:

However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

Emphasis added

[23] There was no contradictory evidence identified by the Board, and the Board in its decision acknowledged that the PA was, at times, a sincere witness in testimony. Other than the omission of the fact that he attempted to call Mr. Guzman back and return the money, this finding on credibility is based on the implausibility of the PA's story alone.

[24] Second, the Board failed to explicitly consider six affidavits submitted by the Applicants which are broadly corroborative of the persecution faced by them. While the Board stated that it considered the totality of the evidence and there is no duty for the Board to mention every piece of evidence, failure to address evidence that goes to the centrality of the issues in a case makes it more likely for a court to rule that the Board did not give due regard to the evidence (*Cepeda Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[25] As the plausibility of the PA's version of events is corroborated by the affidavit evidence provided by the PA, the central issue of credibility would be directly impacted by this evidence and as such, the affidavit evidence ought to have been addressed.

[26] Third, the cases cited by the Respondent are not particularly useful to the instant application. *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 and *Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 11 are one-paragraph decisions devoid of factual context which assert a general right of the Board to use rationality and common sense in assessing implausibility. *Nadaraja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1204 is quite factually distinct: the credibility findings in that case included inconsistencies and a finding by the Board that the applicant was an untrustworthy witness. In addition, the case involved deference to the implausibility finding by the Board owing largely to the Board's expertise in relation to human smuggling. No such expertise is at issue here. *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] 160 NR 315 (FCA) and *Gonzalez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 805 reiterate that implausibility findings are within the jurisdiction of a board, which is not disputed.

[27] While it is concerning that the PA did not tell the police about the interactions he had with Mr. Guzman and Mr. Alevor or the August 26, 2010 break-in, his fear of the police does mitigate this omission.

[28] However, on the whole, the Board's credibility analysis is mostly speculative, and often bases its logic in rhetorical questions. The approach taken by the Board to deal with the Applicant's credibility is similar to that in *Valtchev*, and this factor, in combination with the Board's failure to consider the additional affidavits and the Respondent's failure to provide a convincing legal argument to support the Board's findings, makes the Board's reasoning insufficiently intelligible and justifiable to meet the *Dunsmuir* standard of reasonableness.

[29] I find the Board's credibility findings unreasonable with respect to the PA.

*B. Were the Board's Credibility Findings With Regards to the PA's Brother Unreasonable?*

[30] The Board's finding on the credibility of the PA's brother was reasonable. Simply put, it is beyond what could reasonably be believed that someone who feared for their safety would spend six years in a foreign country without applying for asylum. While he stated that the American immigration system is confusing, there is no evidence that it is more confusing than Canada's, nor is it likely that he could not have obtained assistance from community groups if he tried. Based on this implausibility alone, the PA's Brother's story is not credible.

C. *Were the Board's Findings on State Protection with Regards to the PA Reasonable?*

[31] The Applicants allege that the Board failed to take into account that Mr. Guzman was a dangerous gang leader of the Mara Salvatrucha in determining that the PA did not take reasonable steps to obtain state protection. What is reasonable depends on an applicant's individualized context (*Doreitha Codogan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 739). By not taking into account the fact that this individual was a dangerous gang member who had previously been charged with a criminal offence, they did not appropriately consider the reasonableness of his actions.

[32] The Applicants further submit that police efforts to protect him were non-existent from the start, and given the immediate nature of the threats against him, the Applicants were not obligated to seek the assistance of other government agencies (*Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491).

[33] Moreover, the Board's failure to adjust its expectations of the PA's burden to rebut the presumption of state protection in relation to the degree of democracy and corruption in El Salvador, its failure to take into account the personal circumstances of the PA, its lack of acknowledgment of the behaviour of the police and their failure to help the Claimant, and the unsupported finding that the Applicant was being placed in a witness protection program, rendered the Tribunal's finding on state protection as unreasonable.

[34] Given the testimony of the PA and the Tribunal's own documentary evidence, I find that it was unreasonable of the Tribunal to find that state protection was available for the PA.

D. *Were the Board's Findings on state Protection with Regards to the PA's Brother reasonable?*

[35] The PA's brother did not provide evidence to rebut the presumption of state protection in his particular case. In particular, the failure to provide a police report or any other corroborative evidence is telling. While he may have been scared after seeing two men who he believed had previously mugged him, there was no subsequent attempt to contact police, even during the period after he returned from his initial one-month stay in the United States.

[36] He has not provided sufficient evidence to show that he sought state protection nor has he provided sufficient evidence that shows he was not required to seek state protection on the account of his fear.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application of Arnaldo Alfredo Campos, his wife and their three children is allowed, and the decision of the Immigration and Refugee Protection Board of Canada dated June 20, 2012 is set aside, and their application for refugee protection is to be re-determined by a differently constituted Board;
2. The Applicant's (Leopoldo Mauricio Campos Rivas) application is dismissed; and
3. No question is to be certified.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7839-12

**STYLE OF CAUSE:** Campos et al. v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 15, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MANSON J.

**DATED:** August 19, 2013

**APPEARANCES:**

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