

Federal Court



Cour fédérale

**Date: 20140205**

**Docket: IMM-1269-13**

**Citation: 2014 FC 128**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, February 5, 2014**

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

**BETWEEN:**

**NESTOR MARTIN OTERO ANAZCO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) dated March 11, 2013, to

reject the applicant's refugee claim. The applicant is seeking to have the decision set aside and referred back to a differently constituted panel.

## **II. Facts**

[2] The applicant is a citizen of Peru. His entire family lives in Lima except for his sister, who lives in Canada.

[3] The applicant testified that he worked in an inn in the northern part of the country and witnessed an exchange of weapons by clients of that inn on the beach in front of the establishment. He apparently called his friend, who is a police officer, and told him about the situation and the police purportedly came and arrested some people. The applicant maintains that those people were linked to the Shining Path group. After that event, the police allegedly told him that he would be safer if he returned to live in Lima. He alleges that, during that time, his former boss told him that strangers came looking for him to give him a prize he had apparently won and his parents received threatening phone calls from people who said they were looking for him.

[4] The applicant alleges that he listened to the police and returned to Lima, where he lived with a friend. On April 5, following the threatening phone calls received by his parents, he decided to leave his country. He left Lima on April 25, 2009, and travelled through Nicaragua, Honduras, Guatemala and Mexico, before arriving in Montréal on May 16, 2009.

**III. Issue**

1. Did the RPD err in assessing state protection and the availability of an internal flight alternative (IFA)?

**IV. Standard of review**

[5] Case law has held that the standard of review that applies to findings of fact concerning the availability of state protection or an IFA is reasonableness (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 (*Khosa*) at paragraph 58 and *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 261 at paragraph 32).

**V. Impugned decision**

[6] The RPD found the applicant not credible. While he maintains that his problems started at an inn he supposedly worked at, he did not submit pay stubs or other banking documents that could prove that he worked there. Only an affidavit was produced in support of that claim.

[7] The applicant testified that he does not trust the police and is in danger throughout Peru. However, the RPD noted that in his testimony of the triggering event he explained that he spoke to a friend in the police force and that, after that telephone call, the police apparently came and made arrests. Therefore, the police took the complaints seriously. The RPD also noted that the applicant did not avail himself of protection from the Peruvian authorities following his problems. Furthermore, regarding his allegation that he is not safe

anywhere in Peru, the RPD pointed out that he testified that he lived with a friend in Lima without any problems.

[8] Finally, the RPD noted that the evidence shows that Shining Path members are especially present in the jungle and that it has been more than three years since the supposed events. There was thus no evidence of subjective, credible and probative fear of persecution.

## **VI. Position of the parties**

### Applicant

[9] The applicant alleges that the RPD failed to take into account a large part of his testimony on his identification of the persecutors as being members of the Shining Path. The documentary evidence was clear that the persons arrested were identified as being members of that group. Thus, contrary to the RPD's finding, there was no contradiction or confusion on that point. The applicant contends that this ground is important because it influenced the RPD's finding with respect to his credibility.

[10] The applicant argues that the RPD erred in assessing his credibility in that it should not have required additional proof of his employment unless there was evidence of contradictions in the document submitted (employer's affidavit) or in his testimony on the subject. The applicant notes that the RPD did not explain why it rejected his testimony and the evidence submitted. Thus, it was unreasonable for the RPD to determine that it had serious doubts about his employment. The applicant argues that the RPD cannot require documentary evidence to corroborate his testimony unless it has valid grounds to doubt his

credibility; he relies namely on *Ovakimoglu v Canada (Minister of Employment and Immigration)*, [1983] FCJ No 937 (FCTD).

[11] Furthermore, the applicant alleges that the RPD erred in assessing state protection and the availability of an IFA. The applicant argues that the police clearly admitted that they were unable to protect him when they suggested that he leave the region and return to Lima, where he is from. The fact that he has a Peruvian friend can have no affect upon his fear of the authorities because his friend does not represent the Peruvian police.

[12] Regarding the RPD's claim that he could return to live in Lima, the applicant submits that his family received threatening telephone calls in Lima, so his persecutors had the means to find him. Furthermore, when he was at his friend's place, he was not established in Lima and did not work there so that could not be used to show that he would be safe in Peru if living in Lima.

[13] The applicant concludes by arguing that the RPD's decision is incomplete and did not take into account his testimony or the documentary evidence submitted in support of his claim.

#### Respondent

[14] The respondent maintains that the applicant is attacking the probative value that the panel attached to the evidence before it. The applicant is challenging the RPD's assessment of his credibility and its finding regarding an internal flight alternative. In these matters, the

Court must verify whether the decision falls within the range of reasonable, acceptable outcomes which are defensible in fact and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at paragraph 47 and *Khosa*, above, at paragraph 58).

[15] The respondent also states that it was reasonable for the RPD to find that the applicant had an IFA and that, when an IFA is available to a claimant, the Court cannot allow an application for judicial review (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 709 at paragraph 18).

[16] The respondent concludes by pointing out that it is not up to the Court to substitute its assessment of the credibility and the facts for that of the RPD. Relying on *Khosa*, above, the respondent states that the applicant did not demonstrate that the panel rendered a decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

## **VII. Analysis**

[17] There are two key issues in this case: the availability of state protection and the existence of an IFA.

[18] The applicant is trying to rebut the RPD's finding regarding the availability of state protection by arguing that the police admitted that they were unable to protect him when they suggested that he leave the region and return to Lima, where he is from. However, there is a presumption of state protection and a claimant seeking to rebut it must adduce "...

relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate” (see *Canada (Minister of Citizenship and Immigration) v Carrillo*, 2008 FCA 94 at paragraph 30). The applicant did not discharge that burden.

[19] When the applicant allegedly witnessed the exchange of weapons, he called a friend in the police force to tell him about the situation. Police arrived on the scene in an appropriate amount of time.

[20] When the police suggested that the applicant go live in Lima, he listened to them and went to live in Lima, which shows that the applicant has a degree of trust in the police.

[21] Furthermore, the applicant did not take all necessary measures to seek protection from the police. When he started to have fears in Lima, he did not file a complaint with the police. It was only his father who filed a complaint, so the applicant cannot then allege that the police were unable to protect him.

[22] The RPD’s finding that Lima would be a valid IFA is not unreasonable. There was insufficient evidence in the record to show that Lima was not an IFA, especially given that the applicant’s employer at the inn was obligated to move to Lima after the exchange of weapons and did not have any problems once he was there. Furthermore, the fact that the police suggested that the applicant go live in Lima supports the finding that Lima is a valid IFA.

[23] The RPD's decision is reasonable and the applicant's application should be dismissed.



**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES** that the application is dismissed.

“Peter Annis”

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Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-1269-13

**STYLE OF CAUSE:** ANAZCO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 16, 2014

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

**DATED:** February 5, 2014

**APPEARANCES:**

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Lynne Lazaroff FOR THE RESPONDENT

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