

Federal Court



Cour fédérale

Date: 20140430

Docket: IMM-1579-13

Citation: 2014 FC 389

Ottawa, Ontario, April 30, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ROBERTO ROMAN G DIAZ
(a.k.a. ROBERTO ROMAN GUEVARRA DIAZ)
ZENIROSE APPLE DIAZ
(a.k.a. ZENIROSE APPLE ESTEBAN DIAZ)
CAMERON ESTEBAN DIAZ
BARON CROSS EST DIAZ
(a.k.a. BARON CROSS ESTEBAN DIAZ)**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the reasons that follow, the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada denying the Applicants' claim for refugee protection on the basis that the Applicants were not credible, must be set aside.

[2] The Applicants, Roberto Roman G Diaz, his wife, Zenirose Apple Diaz, and their two minor children, Cameron Esteban Diaz and Baron Cross Est Diaz, are citizens of the Philippines. The family owned two businesses in San Jose, Nueva Ecija (a glassware business and an internet café).

[3] As business owners, they were approached by the New People's Army [NPA] to pay a "revolutionary tax." They complied for some time (2007-2011) when the tax was only \$10 on holidays. In 2011, the tax increased to \$150 which the family had to pay twice, in addition to the \$10 amounts on holidays.

[4] There was an incident where three drunken men came into their internet café and destroyed some of their computers, and attacked Mr. Diaz and his brother. It was this incident which caused the family to flee to Canada. They fled the Philippines out of fear of the NPA and the military and came to Canada in 2012.

[5] The family did not report the extortion to the police at any time because it was understood that this type of extortion happened all over the country and the NPA was strong so the state authorities would be unable to protect them. They also feared that they would be regarded as supporters of the NPA by the military and would be considered enemies of the state. Ms. Diaz' uncles, who were also businessmen, were beaten and tortured by the Philippine military for being suspected NPA sympathizers.

[6] The Board rejected their claims for protection on the basis of credibility. Specifically, its credibility determination was based on its finding that:

- i. the incident with the three drunken men was not in the Applicants' Personal Information Form [PIF];
- ii. it was implausible that the family would flee simply because of the increase in the amount payable to the NPA; and
- iii. the affidavits from Ms. Diaz' sister made no mention of the increase in the extortion rate.

In the Board's view, the affidavits were "invented for the sole purpose of the refugee hearing and for no other reason. Indeed this is so central to the claim that it causes the panel to doubt the veracity of all of the claimant's evidence, including the identification of the agents of persecution."

[7] First, the Board erroneously held that the Applicants had not described the incident relating to the three drunkards vandalizing their internet café or the reporting of that incident to the police in their PIF, as it is explicitly stated therein.

[8] Counsel for the Respondent may be correct when she submits that the Board intended to say that other incidents of vandalism (bricks being thrown through windows) that the Applicant described at the hearing, were not listed in the PIF despite the incident involving the drunkards being listed. However, this is not what the Board stated in its Reasons and it would be mere speculation to provide reasons other than those which the Board did provide.

[9] Second, the Board found that it was implausible that the Applicants would leave the Philippines solely because of the increase in the extortion fee. However, this is not the sole reason the family left. Ms. Diaz testified:

Q. And you came to that decision why, because of the request for the \$150 dollars, the 5,000 pesos?

A. No, it is more of the repeated disturbances they've been causing us.

[10] Ms. Diaz' evidence was that the disturbances, the first of which was the incident involving the drunkards, were what precipitated the Applicants to flee to Canada. The Board ignores Ms. Diaz' testimony and unfairly imputes that it was the increase in the extortion fee that caused them to move, and then finds that this is an implausible reason for leaving. Moreover, even if it was the increased extortion fee that caused the Applicants to move, the Board does not refer to any evidence in determining that such actions were implausible. This Court has frequently cautioned against such determinations and instructed that implausibility findings only be made in the clearest of cases: *Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131 (QL); see also *Ismaili v Canada (Minister of Citizenship and Immigration)*, 2014 FC 84, [2014] FCJ No 78 (QL), at para 21. This is not such a case.

[11] Third, the Board noted that the affidavit from Ms. Diaz' sister was not credible because it was "invented for the sole purpose of the refugee hearing." The Board, however, totally ignores the affidavits from Ms. Diaz' uncles which corroborate the treatment of suspected NPA sympathizers by the military. Moreover, as the Applicants submit, it is an error to draw a negative inference based on what a document does not say, when there is nothing in the document that contradicts the other evidence: *Njeru v Canada (Minister of Citizenship and*

Immigration), 2009 FC 1281, 358 FTR 160 at para 73. There was nothing in the sister's affidavit that contradicted any other evidence. The Board's finding as to the credibility of the sister's affidavit is therefore unreasonable, as was its complete failure to address the affidavits from the uncles.

[12] In sum, the Board's credibility determination is unreasonable. The transcripts from the hearing make clear that an error was made in the decision which went to credibility, the implausibility finding respecting the sister's affidavit was legally impermissible, and the failure to consider the supporting affidavits of Ms. Diaz' uncles was unreasonable. As a consequence the result the Board arrived at was unreasonable and must be set aside.

[13] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision of the Board denying the Applicants' claim for protection is set aside, their claims for protection are referred to a different Member of the Board for determination, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1579-13

STYLE OF CAUSE: ROBERTO ROMAN G DIAZ ET AL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 10, 2014

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

DATED: APRIL 30, 2014

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