Federal Court Cour fédérale

Date: 20140624

Docket: IMM-5491-13

Citation: 2014 FC 609

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 24, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEEN:

WILFREDO GONZALES HORTA
GLADYS VERDECIA PENA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] **CONSIDERING** the application for judicial review of the decision by the Refugee Protection Division [RPD] dated July 24, 2013, refusing the application to be recognized as refugees or persons in need of protection under sections 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [the Act]; the application for judicial review was made under section 72 of the Act;

[2] **CONSIDERING** the memoranda that the parties filed in support of their arguments;

[3] **AND CONSIDERING** the review that the Court conducted of the memoranda and the representations made at the hearing on May 8, 2014. The Court, for the following reasons, dismisses the application for judicial review.

[4] The facts of this case are simple. The applicants, who are spouses and are both Cuban citizens, seek protection under sections 96 and 97 of the Act. They submit that their political opinions resulted in them being harassed to the point where it constituted persecution against them.

[5] The difficulties they allegedly experienced in Cuba began with the attempts made by their daughter, who is a doctor, to leave Cuba for Canada. Since it was taking a long time for her exit visa to be granted, the principal applicant attempted to expedite the matter with his national government. The visa was granted in November 2008, allowing her to come to Canada.

[6] Less than two years later, the principal applicant was able to visit Canada as a result of the visa and exit authorization he had obtained. At the end of his stay, he returned to his country. On his return to Cuba, he obtained a new exit visa, this one for the United States, and he left Cuba on December 27, 2010. The same day, the female applicant left Cuba, but for Canada,

using a visa she had obtained. The principal applicant crossed the border between Canada and the United States on January 9, 2011, and both the husband and wife sought Canada's protection in January 2011.

[7] To justify their claim for refugee status and protection, the applicants allege that they suffered harassment following their daughter's departure for Canada. They were expelled from Cuba's Communist Party. However, the evidence establishes that, other than some verifications about them, none of which would qualify as harassment, they did not suffer any inconvenience as a result of their expulsion from the Communist Party. Thus, they were able to continue operating the craft shop, they received medical care and their housing was not affected.

[8] In my view, the RPD properly found that this treatment did not constitute persecution, which was defined by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, as "sustained or systemic violation of basic human rights demonstrative of a failure of state protection". Indeed, after they were expelled from the Communist Party, the principal applicant was allowed to leave Cuba twice in the same year, and during the same period of time the female applicant was also able to obtain a visa permitting her to go to Canada. There seems to me to be no doubt that the level required for us to talk about persecution was not reached in this case. Therefore, this disposes of the question of whether the applicants could avail themselves of these sections by reason of their past life in Cuba.

[9] But the RPD went farther. It considered the applicants' situation if they had to be returned to Cuba in view of the fact that they exceeded the period for which they had been

authorized to be outside Cuba and the possibility that the authorities could know that they sought refugee protection.

[10] The applicants have not satisfied me that the RPD's analysis was deficient in any way, let alone that it was unreasonable. The only allegation made by the applicants is that if they return to Cuba they will be punished. It is one thing to be punished; it is quite another to be persecuted. Indeed, the evidence tends to show that the possible fine could be less than Can$100. A prison sentence appears to be completely unlikely. Such a penalty cannot in any way be equated to persecution.

[11] I add that it appears to me that the jurisprudence suggested by the respondent, according to which a person cannot validly rely on their own violations of the laws of general application of their country of nationality to attempt to create a ground under sections 96 and 97 of the Act, apply perfectly in this case (*Valentin v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 390 (FCA); *Zandi v Canada (Minister of Citizenship and Immigration),* 2004 FC 411, 35 Imm LR (3d) 273; *Del Carmen Marrero Nodarse v Canada (Citizenship and Immigration)*, 2011 FC 289; *Perez v Canada (Citizenship and Immigration),* 2010 FC 833). There may be some exceptions to this rule where the evidence supports a finding of clearly excessive or extra-judicial punishment for an illegal exit (*Donboli v Canada (Minister of Citizenship and Immigration)*, 2003 FC 883). No such evidence exists in this case.

[12] Indeed, the facts of this case appear to show that the applicants were attempting to join their daughter who has established Canada as her home. The principal applicant visited her in

2010, and barely three months later visas had been obtained, with respect to him, for the United States and with respect to his wife, for Canada, permitting them to leave Cuba the same day, December 27, 2010. Refugee claims followed once they arrived in Canada. The issue is not that the applicants can be criticized for wanting to join their daughter; rather, it is that sections 96 and 97 are reserved for cases that deserve such treatment. The words of Justice Hugessen when he was a member of the Federal Court of Appeal seem completely appropriate to me:

> The appellant's position is based on a fundamental misconception of Canada's refugee determination system; the purpose of that system is to provide safe haven to those who genuinely need it, not to give a quick and convenient route to landed status for immigrants who cannot or will not obtain it in the usual way (*Urbanek v Canada (Minister of Employment and Immigration)*, [1992] 17 Imm LR (2d) 153).

[13] Accordingly, the application for judicial review must be dismissed. There is no question to certify.

ORDER

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question to certify.

"Yvan Roy"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5491-13
STYLE OF CAUSE:	WILFREDO GONZALES HORTA, GLADYS VERDECIA PENA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 8, 2014
ORDER AND REASONS:	ROY J.
DATED:	JUNE 24, 2014

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