

Federal Court



Cour fédérale

**Date: 20150827**

**Docket: IMM-7174-14**

**Citation: 2015 FC 1019**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, August 27, 2015**

**Present: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**SARAI RAMIREZ ESTRADA  
SHARON NICOLE SINNING RAMIREZ**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION OF CANADA**

**Respondent**

**ORDER AND REASONS**

**I. Introduction**

[1] The applicants, Sara Ramirez Estrada and her minor daughter, Sharon Sinning Ramirez (Sharon), are Venezuelan. They arrived in Canada on June 1, 2014, accompanied by Ms. Ramirez's spouse and Sharon's father, Jorge Eliecer Sinning Contretas. Fearing persecution

by government agents if they were to return to Venezuela, in Mr. Sinning's case because of his political opinions, in the case of Ms. Ramirez and her daughter Sharon, because of their membership in a particular social group, a family, all three claimed refugee protection on their arrival.

[2] Mr. Sinning's refugee claim, on which applicants' claim relied, specified that:

- a. Since 2010, Mr. Sinning was involved in a party opposing the regime in place;
- b. He allegedly participated, in this capacity, in several protests denouncing this regime;
- c. In doing so, he allegedly used a part of the material from his company that sold and imported medical equipment and products to help injured protesters during the said protests;
- d. In April 2014, in the space of a few days, the family residence was allegedly vandalized and he was attacked by three soldiers in the parking area of the residence;
- e. In particular, the three soldiers allegedly suggested that he was under surveillance and that if he continued to help the protesters and protest himself, they would make him and his family disappear;
- f. Following this attack and these threats, he attempted unsuccessfully to file a complaint against his attackers, the police officers who were even threatening him with retaliation if he would continue to denounce his attackers; and
- g. He then took refuge with a friend and consulted a lawyer, who advised him to leave the country, which he did, with Ms. Ramirez and his daughter Sharon, on May 29, 2014.

[3] On October 28, 2014, the Refugee Protection Division (the RPD) of the Immigration Refugee Board allowed Mr. Sinning's refugee claim, but rejected those of Ms. Ramirez and her

daughter Sharon. In that case, the RPD found that the applicants were neither Convention refugees, nor persons in need of protection within the meaning of sections 96 et 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), on the grounds that:

- a. It was implausible that the three soldiers who attacked Mr. Sinning allegedly could have made threats against them and Mr. Sinning in the manner that he reported them;
- b. That Ms. Ramirez was of no interest for the government agents since, contrary to Mr. Sinning, she was not politically involved;
- c. That the fact that she is co-owner, with Mr. Sinning, of the company that sold and imported medical equipment and products was not sufficient to find that she was at risk of retaliation from government agents since Mr. Sinning's sister, who was the owner of the space in which the company is located, had not been harassed in connection with the events that led the applicants to leave Venezuela or contacted by the said agents so as to find Mr. Sinning and his family; and
- d. Nothing in the documentary evidence, specifically that describing the treatment by the authorities of members of the political party in which Mr. Sinning was involved, addressed the treatment to which the members of the families of political members could be subjected.

[4] The applicants argued that the RPD committed two errors in so concluding. First, they alleged that it unreasonably set aside the evidence that the three soldiers who attacked Mr. Sinning in April 2014 allegedly threatened them with retaliation. Second, they alleged that it had erroneously generally analyzed the risk that they would face if they were to return to Venezuela, particularly given its finding that Mr. Sinning, the husband and father, was at risk if he were to return to Venezuela.

## **II. Issue and standard of review**

[5] The question here is whether the RPD committed, in concluding as it did, an error justifying the Court's intervention in accordance with the provisions of section 18.1 of the *Federal Courts Act*.

[6] It is well established that the issue of whether a refugee claimant is a refugee or a person in need of protection within the meaning of sections 96 and 97 of the Act is a finding of mixed fact and law within the RPD's specialized expertise and that, consequently, it is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47; *Olvera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1048, 417 FTR 255, at para 28; *Malvaez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1476, 423 FTR 210, at para 10; *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678, 409 FTR 290, at para 26).

[7] According to this standard of review, the Court must show deference to the findings made by the RPD and will not intervene unless the reasons given in the impugned decision, first, are not justified, transparent or intelligible and, second, fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above at para 47).

## **III. Analysis**

[8] At the outset, it is important to specify that, in the current state of the law, although membership in a family may take the place of membership in a particular social group for the purposes of a refugee claim, the fact that a member of the family was persecuted does not give to all the other members of the family a refugee status. In other words, the concept of "indirect persecution", which allows granting refugee status to the members of a refugee's family who would otherwise not be able to individually prove a well-founded fear of persecution, does not work in Canadian law (*Canada (Citizenship and Immigration) v Tobar Toledo*, 2013 FCA 226, at para 55; *El Achkar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 472, at paras 40-41; *Musakanda v Canada (Citizenship and Immigration)*, 2007 FC 1300, at para 23; *Pour-Shariati v Canada (Minister of Employment and Immigration)*, [1997] FCJ No 810; *Casetellanos v Canada (Solicitor General)* (TD), [1995] 2 FC 190; *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (C.A.)).

[9] I think Justice Mosley, in *Ndegwa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 847, summarized the situation well:

[9] That the family is a valid social group for the purposes of seeking refugee protection is well established. Where membership in a family group is the basis for the claim, a personal nexus must be established between the claimant and the alleged persecution on Convention grounds: *Pour-Shariati*. It is not enough to point to the persecution suffered by family members if it is unlikely to affect the claimant directly.

[10] The family, as a group, must therefore be subjected to retaliation and revenge to hope to be granted the protection of Canada. In this case, that means that the applicants must have been targeted and singled out because they are members of Mr. Sinning's family, although they never got involved in politics themselves and never will (*Canada (Minister of Citizenship and*

*Immigration) v Bakhshi*, [1994] FCJ No 977 (FCA) (QL); *Granada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766, at para 16).

[11] That said, in my view, what is problematic in this case, is the categorical rejection of Mr. Sinning's evidence that the three soldiers who attacked him in April 2014 also made threats toward his family. As the applicants recalled, there is a presumption of truthfulness of testimony given under oath before the RPD. When they are plausible and consistent, the RPD, to disregard them, must provide a reasonable explanation (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, at para 5).

[12] As the only ground for rejection of this evidence, the RPD essentially found here that the threat could not have been worded as Mr. Sinning reported. The explanation given—orally—by the RPD, is not the clearest. It appears as follows in the hearing transcript:

[TRANSLATION]

Considering the implausibility that soldiers stated and announced to Mr. Sinning as they did, as quoted in the allegations, stating 'you are threatened by the revolutionary government', I find that, although I believe that Mr. Sinning was a victim that day, I do not believe that soldiers could have used these words and threatened his family.

[13] The RPD did not explain how it found Mr. Sinning's testimony sufficiently credible to allow his refugee claim, but on this specific point, directly involving the safety of applicants whose residence had also been vandalized a few days earlier, it had found that the story was implausible. This finding is even more surprising in that it is perfectly plausible to think that the

soldiers were able to utter threats of retaliation so as to deter Mr. Sinning from pursuing his political activities.

[14] In sum, I have difficulty understanding why this evidence was set aside on the mere basis of the wording, translated from Spanish, used to describe the threat—[TRANSLATION] “you are threatened by the revolutionary government”—which could be understood in many ways. In any event, Mr. Sinning reiterated several times during his testimony, in unequivocal terms, the threats to which he and his family were subjected (see p. 494, 514, 517 and 518 of the Certified Tribunal Record).

[15] There is a break in the assessment of the plausibility of Mr. Sinning’s story, which is not easily explained. In the RPD’s thinking, from the time that the applicants had not been personally targeted and singled out by the government agents, it became easy for the RPD to justify the dismissal of the applicants’ refugee claims, to rely on the fact that Mr. Sinning’s sister was not harassed by government authorities since he left Venezuela or even refer to the fact that the documentary evidence disregarded the treatment by the government authorities of the families of members of opposition parties.

[16] The central link of the RPD’s decision—that of the credibility of the evidence linking the applicants directly to the persecution experienced by Mr. Sinning and to which he will be exposed if he returns to Venezuela—does not meet, in my opinion, the requirements of *Dunsmuir*, above, in that it does not have the attributes of justification, transparency or intelligibility. In other terms, I cannot understand how the RPD arrived at the conclusion that it did on this point. The level of justification simply fails.

[17] Therefore, the application for judicial review was allowed and the applicants' refugee claim was referred to a differently constituted panel of the RPD for judgment.

[18] Neither of the parties requested that a question be certified for the Federal Court of Appeal, as allowed in paragraph 74(d) of the Act. I am also of the view that it is not appropriate to certify a question.



**ORDER**

**THE COURT ORDERS AND ADJUDGES that**

1. The application for judicial review is allowed;
2. The matter is referred back to a differently constituted panel of the Refugee Protection Division of the Immigration Refugee Board for reconsideration;
3. No question is certified.

“René LeBlanc”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-7174-14

**STYLE OF CAUSE:** SARAI RAMIREZ ESTRADA, SHARON NICOLE  
SINNING RAMIREZ v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 26, 2015

**ORDER AND REASONS:** LEBLANC J.

**DATED:** AUGUST 27, 2015

**APPEARANCES:**

Camille Clamens FOR THE APPLICANTS

Daniel Latulippe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Camille Clamens Counsel FOR THE APPLICANTS  
Counsel  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec