

**B E T W E E N:**

**MARIA CECILIA ABARCA CORRALES**

Applicant

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

Respondent

**REASONS FOR ORDER**

**REED, J.:**

The applicant seeks to have a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board set aside. That decision found her not to be a convention refugee.

The applicant comes from Costa Rica. She claims refugee status on the ground that the state is unwilling or unable to protect her from spousal abuse. The Board found she had been the victim of spousal abuse. The interpretation of its reasons, after that finding, is the source of this appeal. Counsel for the applicant argues that the Board found that the claimant had had a well-founded fear of persecution, that the state was unable or unwilling to protect her when she left Costa Rica in May of 1995, but that there had been changed country conditions after that date and before the Board hearing on July 3, 1996 (or the decision on December 2, 1996).

The Board summarized the applicant's evidence, concluded that she had been a victim of spousal violence, and stated that it, next, must determine to what extent there had been a failure of state protection. It referred to the documentary evidence before it, drawing the following conclusions of fact:

- women's police stations have been in place in order to prevent family violence since 1987;
- women's offices within government have existed since 1990 to promote actions and programs for confronting violence against women;
- there is recourse for victims to police bodies, judicial bodies, institutions such as PANI and the *Delegacion de la Mujer* (women's office);
- the Costa Rican women-and-violence movement is by far the most sophisticated in the region;
- the law of Real Social and Economic Equality provides the framework and supportive political climate for the burgeoning public sector and NGO initiatives that combat violence against women;
- women may take their initiative: seek family's help; file charges with the women's police, seek police intervention and receive referrals for legal services, psychotherapy, couple counselling and women's support groups;
- victims can obtain a restraining order;
- there are projections for children's rights; and alimony and support laws on March 26, 1996, a law was enacted against domestic violence which considered at the forefront of steps to solve the problem.

While counsel for the applicant, in his written memorandum, raised the argument that the Board's decision was not supported by the documentary evidence, in oral argument, he focussed on the fact that the Board had not considered whether compelling reasons existed for not returning the applicant to Costa Rica. The applicable law is found in section 2(3) of the *Immigration Act*. See, also, *Yong-Gueico, et al. v. Minister of Citizenship and Immigration* (IMM-3413-96, July 14, 1997) and *Minister of Employment and Immigration v. Obstoj*, [1992] 2 F.C. 739 (F.C.A.).

A review of the documentary evidence explains why the Board's decision seems to be somewhat one sided and why factors such as the existence of support groups,

psychotherapy, and women against violence organizations are included as relevant to the consideration of the state's ability to protect. Much of the documentary evidence on the file is self-congratulatory description of the progress that has been made by those attempting to combat the tolerance of violence against women. Also, much of the documentary evidence is very general in nature. The Board did not refer to the negative passages in the documentary evidence but I could not find that the conclusions it drew, overall, were not supported by that documentary evidence.

I turn then to counsel's "compelling reasons" argument. In order for an inquiry under section 2(3) to be made, one must first find changed country conditions in the absence of which the applicant would be a convention refugee. The Board did not make such a determination in this case. It proceeded as the Federal Court of Appeal indicated in *Yusaf v. Minister of Employment and Immigration* (1995), 179 N.R. 11:

A change in the political situation in a claimant's country of origin is only relevant if it may help in determining whether or not there is, at the date of the hearing, a reasonable and objectively foreseeable possibility that the claimant will be persecuted in the event of return there.

Since the Board never made a determination that the applicant was a Convention refugee, there was no need for it to consider section 2(3). I must note that, in any event, I am not persuaded that the harm and trauma suffered by the applicant could by any stretch be considered to constitute "compelling reasons".

For the reasons given the application will be dismissed.

"B. Reed"  
Judge

Toronto, Ontario  
October 3, 1997

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

COURT NO: IMM-4788-96

STYLE OF CAUSE: MARIA CECILIA ABARCA CORRALES

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

DATE OF HEARING: OCTOBER 2, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: REED, J.

DATED: OCTOBER 3, 1997

**APPEARANCES:**

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**FEDERAL COURT OF CANADA**

Court No.: IMM-4788-96

Between:

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