

Date: 20080128

Docket: IMM-1460-07

Citation: 2008 FC 103

Ottawa, Ontario, January 28, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

JOHN WILLIAM RIVERA PENA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] Mr. Rivera Pena (Rivera) was an officer in the Colombian National Police (CNP). The Immigration and Refugee Board (Board) found that he had a basis for a refugee-protection claim but that he was inadmissible because there were “serious reasons for considering” that he was complicit in crimes against humanity.

II. BACKGROUND

[2] The Board accepted that given his assignment to an area of guerrilla activity and his knowledge of police informants in the area, he had an objectively well-founded fear of the FARC. The Board also found that there was no state protection or internal flight alternative available to him.

[3] However, the Board also found that during the Applicant's period of service, the CNP engaged in crimes against humanity (for example, murder, torture, and/or inhumane acts against detainees, demonstrators, peasants, union leaders, indigenous leaders and minors). These activities were serious, widespread and systemic. The Applicant, while not a principal actor, was an accomplice because there existed a shared common purpose and knowledge on his part regarding these activities.

[4] In rendering its decision, the Board considered the Applicant's direct involvement in arrests and detentions and his assistance to those directly involved in torture and murder. The Board carefully canvassed such issues as the Applicant's knowledge of crimes against humanity, the shared common purpose as encompassed by consideration of the nature of the CNP, methods of its recruitment, the Applicant's position/rank in the CNP, his time of service and his opportunity to leave the organization.

[5] The Board found that there were grounds to believe that Rivera had personally and knowingly participated in crimes against humanity and that he shared this common purpose with the CNP.

[6] Although Rivera had counsel at the Board hearing, for purposes of the Leave Application, he chose to represent himself.

III. ANALYSIS

[7] The Applicant seemed to be at pains to challenge the Board's conclusion that, in respect of knowledge of crimes against humanity, he was not forthcoming nor candid. He made frequent references to the transcript of the Board's hearing in an effort to establish that the conclusion was not justified.

[8] As this was an attack on a credibility finding, the standard of review has generally been accepted as patent unreasonableness. Whether it is reasonableness or patent unreasonableness is of no consequence.

[9] The Board heard the witness, and it was in a far better position than the Court to assess the credibility of this witness. A transcript is a "dry stick" devoid of much that leads to credibility findings based on the manner in which a person testifies. Given the fair and balanced manner in which the Board addressed the documentary evidence, there is no basis for the Court to conclude that the assessment of personal credibility was in any way different.

[10] As to the documentary evidence, Rivera challenged the Board's reliance on reports and documents published after he had left the CNP. As counsel for the Respondent helpfully pointed out, there was more than sufficient documentary evidence from the period of service upon which the Board could rely.

[11] Further, documentary evidence after Rivera left the CNP was relevant in that they address issues of systemic abuse which included the period of his service and beyond.

[12] The Applicant's argument that complaints against the CNP about inhumane treatment, murder and torture declined from time to time and that the army was worse than the police is disingenuous and irrelevant. This is not an exercise in competitive crimes against humanity.

[13] While there may have been minor discrepancies in the evidence and findings, they do not affect the weight of the evidence or the fairness of the process. The Board's decision is detailed, thorough and balanced. It addresses all the relevant legal principles and applies them to clear and supported factual findings. There is no basis for criticizing and "nit-picking" this decision or justifying Court review.

IV. CONCLUSION

[14] Therefore, this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1460-07

STYLE OF CAUSE: JOHN WILLIAM RIVERA PENA

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 23, 2008

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

DATED: January 28, 2008

APPEARANCES:

Mr. John William Rivera Pena FOR THE APPLICANT

Mr. Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

SELF-REPRESENTED FOR THE APPLICANT

MR. JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario