**Date: 20080227**

**Docket: IMM-1671-07**

**Citation: 2008 FC 254**

**Ottawa, Ontario, February 27, 2008**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**CARMEN ALICIA MANTILLA CORTES**
**CARLOS ADOLFO VELILLA DE LA ESPRIEL**
**JUAN DAVID VELILLA MANTILLA**
**CARLOS ADOLFO VELILLA MANTILLA**
**LAURA DANIELA VELILLA MANTILLA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Carmen Alicia Mantilla Cortes, her husband, Carlos Adolfo Velilla Dela Espriel (also known as Carlos Adolfo Velilla de la Espriella), and their three children (collectively, the Applicants) from a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) issued on March 23, 2007 whereby their claims to refugee protection were denied.

## I. Background

[2] The Applicants claimed protection in Canada on the basis of an alleged fear of persecution at the hands of guerrilla groups in Colombia. Several members of the Applicants' extended family have, from time to time, sought protection successfully and otherwise in the United States and Canada.

[3] The culminating event that caused the Applicants' departure from Colombia to the United States was an alleged attempted kidnapping of Ms. Mantilla Cortes in late 1999. This incident followed a reported history of extortion, attempted kidnapping, kidnapping and threats directed primarily at Ms. Mantilla Cortes' father and her siblings over a period of more than 10 years.

[4] By January 2000 all of the Applicants had arrived in the United States where they remained until July 2005. At no time during their United States residency did they seek asylum despite having obtained legal advice about the process on a number of occasions. The Applicants entered Canada on July 7, 2005 and promptly claimed refugee protection.

[5] The record indicates that several of Ms. Mantilla Cortes' siblings and her father are now living back in Colombia despite having left there supposedly out of a fear of persecution similar to that expressed by the Applicants.

## II. The Board Decision

[6] The Board rejected the Applicants' claims on the basis of its adverse credibility findings and, in particular, because it did not accept the testimony of Ms. Mantilla Cortes. The Board was concerned by numerous identified weaknesses, lapses and inconsistencies in Ms. Mantilla Cortes' evidence including conflicts with the history of events given previously by her and by other involved parties. The Board was also troubled by Ms. Mantilla Cortes' inability to provide a plausible explanation the failure to seek asylum during 5 years of United States residency. The Board also took account of the reavailment to Colombia by several members of Ms. Mantilla Cortes' similarly situated family, all of whom apparently returned to positions of ostensible personal risk working with her father.

[7] The Board declined to consider the successful protection claims brought by other members of Ms. Mantilla Cortes' family and, instead, made its decision on "the evidence presented in front of us, in the case of the claimants in front of us". The Board also rejected most of the Applicants' corroborating documentary evidence including several police denunciations and a copy of a newspaper account of a 1989 kidnapping incident involving Ms. Mantilla Cortes' brother. The Board's rejection of the newspaper article was based on several identified inconsistencies between its content and the accounts given by the family principals who were allegedly involved. The Board's rejection of the police denunciations was expressed as follows:

> All of this makes us think that claimants invented a story in order to get a status in Canada. The other claimants, basing their problems on the same facts as those alleged by the principal claimant, are not credible either.

> Not having found them credible, we do not give any probative value to the following documents: M-19 (denunciation of her brother José Hernando), M-20 to M-25 (declarations), M-43 (denunciation made in Fairbury 2006) and M-49 (denunciation made on July 2006).

## III. Issues

[8] (a) Did the Board err by failing to consider the disposition of earlier refugee claims brought by members of the Applicant's extended family?

(b) Did the Board err by failing to address problems with the translation of testimony during its hearing?

(c) Did the Board err in its credibility assessment?

(d) Did the Board err in its assessment of the evidence of delay and family reavailment?

(e) Did the Board err in its treatment of the documentary evidence tendered by the Applicants?

## IV. Analysis

[9] Most of the issues raised by the Applicants involve challenges to the Board's assessment of the evidence including its credibility findings. These are issues deserving of the highest level of deference: see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993) 160 N.R. 315, 42 A.W.C.S. (3d) 866 (F.C.A.) at page 316 (cited to N.R.) For the sake of argument, I am prepared to apply the standard of correctness to the translation issue (being an issue of fairness) and also to the Board's treatment of the related refugee claims by other members of the Applicants' extended family (being an issue of law.)

***The Relevance of Related Refugee Claims***

[10] It was forcefully argued on behalf of the Applicants that the Board erred in its analysis of the significance of the claims to protection successfully brought by Ms. Mantilla Cortes' sister and, more recently, by her niece. There is no doubt that the Board declined to take the disposition of these earlier claims into account but the Applicants cited no authority to establish that the Board was under any legal obligation to do so. The Board's approach to this issue is in accordance with the authorities including *Bakary v. Canada (Minister of Citizenship and Immigration),* 2006 FC 1111, 155 A.C.W.S. (3d) 161, where Justice Yvon Pinard held at paras. 9 and 10:

> [9] As for the respondent's submissions, he first criticizes the IRB for failing to analyze the criterion of membership in a particular social group, i.e. the family. According to him, the IRB's analysis did not dispute that he is a member of the Bakary family which, according to the evidence, has suffered persecution: several members of his family have had to seek refuge abroad, and a number of them have been received in Canada as refugees.
>
> [10] In my view, however, a simple reading of the decision discloses that the IRB clearly considered and analyzed the applicant's claim on the basis of his alleged membership in the particular social class of his family. Moreover, a large number of cases decided by this Court have established that the IRB is not bound by the result in another claim, even if the claim involves a relative, because refugee status is determined on a case by case basis, and because it is possible that the other decision was incorrect (see, inter alia, *Rahmatizadeh v Minister of Employment and Immigration*, [1994] F.C.J. No. 578 (F.C.T.D.) (QL); *Museghe v. Minister of Citizenship and Immigration*, 2001 FCT 1117; *Singh v. Minister of Citizenship and Immigration*, 2002 FCT 1013; *Matlija v. Minister of Citizenship and Immigration*, 2003 FCT 704; *Gjergo v. Minister of Citizenship and Immigration*, 2004 FC 303 and *Bromberg v. Minister of Citizenship and Immigration*, 2002 FCT 939). Therefore, in my view, the IRB did not fail to consider the criterion of membership in the particular social group of his family.

## V. Translation Issues

[11] The Applicants complain that there were problems with the interpretation of the testimony before the Board, contributed to by the separation of the interpreter from the witnesses during the videoconference hearing. This issue was raised before the Board and was resolved on the following basis:

> …We want to make the following comments with respect to some of the submissions made by the counsel. First of all, when the principal claimant did not hear well the interpreter at the beginning of the hearing, he always repeated the questions or answers so that the principal claimant could hear and understand well what was said. The President of the Tribunal had also told her to feel free to interrupt the hearing and tell whenever something would not be clear. The principal claimant was nervous, yes, but we can not impute that nervousness on technical problems or problems of hearing. If it were the case, the lawyer should have told us during the hearing to stop and tell us about his concerns. He did not do so.

[12] While it is certainly a preferred practice to co-locate a translator with the witnesses during a videoconference hearing, the Board's policies do allow for exceptions; and, in any event, there is nothing in the record to substantiate the complaint that Ms. Mantilla Cortes' evidence was badly translated or that she was confused about the questions posed to her. The few problems that were identified during the hearing were adequately addressed by the Board and no other complaints about this issue were made by the Applicants or by their counsel during the hearing. Inasmuch as the Board member was fluent in Spanish any problems with translation would have been readily identified. Furthermore, it is not enough to allude vaguely to problems with translation. What is necessary is to establish actual and material prejudice: see *Ngyuen v. Canada (Minister of Citizenship and Immigration),* 2005 FC 1001, 141 A.C.W.S. (3d) 109 at para. 21. Here the

Applicants have identified no specific point of prejudice and their silence throughout the hearing is a clear indication that no material translation problems arose.

***The Board's Credibility Analysis***

[13] The Applicants challenge the Board's credibility findings with broad assertions that the Board essentially got it wrong. They say that their explanations for the matters of concern to the Board were reasonable and that the testimonial failings identified by the Board were not important. While acknowledging that there were "problems" with Ms. Mantilla Cortes' evidence, the Applicants contend that the Board's reasons for rejecting that testimony involve minutia and failed to address the central aspects of their allegations of persecution.

[14] The fundamental problem with this argument is that the weaknesses in Ms. Mantilla Cortes' testimony went far beyond matters of insignificant detail. As counsel for the Respondent accurately pointed out, Ms. Mantilla Cortes was frequently inconsistent about the identity of the agents of persecution and, in that regard, gave evidence that was contradictory to the statements provided by other members of her family. The Board also noted Ms. Mantilla Cortes' vagueness about the details of the ransom allegedly paid on behalf of her brother and it identified several important omissions and inconsistencies among the various narratives provided by Ms. Mantilla Cortes and by other members of the family concerning material aspects of the alleged persecution. Finally, the Board was not impressed by Ms. Mantilla Cortes' demeanour and it specifically noted a lack of spontaneity in her responses to key questions.

[15] It is not the role of the Court on judicial review to re-weigh the evidence or to draw its own inferences from that evidence. The Board is, after all, in the best position to assess the credibility of the witnesses who appear before it. Here the Board's credibility findings were reasonably supported by the evidence and I am, therefore, not satisfied that the Board erred in this aspect of its analysis.

***Delay and Family Reavailment***

[16] The Applicants contend that the Board erred by failing to accept their explanations for failing to seek asylum in the United States and for the return to Colombia of several members of their extended family who were also allegedly at risk.

[17] It is clear from the decision that the Board considered the explanations provided about delay and family reavailment but found those explanations to be lacking. With respect to the issue of the reavailment of other family members to Colombia, the Board drew the following inference:

> Three very close persons to the claimant went back to Colombia. We do not think that if the problems in Colombia for this family were as bad as the claimant alleges them to be, they would all have gone back to that country.

[18] This was a reasonable inference to draw from the evidence and it is not open to successful attack on judicial review simply because another inference was available. This is again an invitation by the Applicants for the Court to substitute its own view of the evidence for that of the Board.

[19] The Board's adverse inference drawn from the failure by the Applicants to seek protection during their 5 years of United States residency is similarly unimpeachable. Indeed, given that the

Applicants were well aware of the process for seeking asylum in the United States, it was reasonable that the Board found their explanation for not doing so to be unconvincing. I would add that, absent a convincing explanation, this failure to pursue asylum during a period of more than 5 years is markedly inconsistent with a subjective fear of persecution.

***Did the Board err in its treatment of the documentary evidence tendered by the Applicants?***

[20] The Applicants' complaint concerning the Board's treatment of their corroborative documents is also unmeritorious. The Board concluded that the Applicants had "invented a story" and it therefore rejected their tendered documents as being similarly unreliable. With respect to the 1989 newspaper account describing the kidnapping of Ms. Mantilla Cortes' brother, the Board noted a number of inconsistencies between the reported facts and those attested to by various members of the family including Ms. Mantilla Cortes. The Board was particularly concerned that the newspaper account referred to the kidnappers as members of the EPL whereas Ms. Mantilla Cortes' father identified them as members of the ELN. These identified inconsistencies and the Board's explicit rejection of the Applicants' testimony were sufficient to support its conclusion that the corroborating documents were unreliable: see *Hossain v. Canada (Minister of Citizenship and Immigration)*, 102 A.C.W.S. (3d) 1133, [2000] F.C.J. No. 160 at paras. 4 to 6.

[21] In conclusion, I have identified no reviewable error in the Board's treatment of the evidence or the law and no deficiency with respect to the fairness of the hearing. In the result, this application for judicial review is dismissed.

[22] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT ADJUDGES that** this application for judicial review is dismissed.

" R. L. Barnes "
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1671-07 |
| **STYLE OF CAUSE:** | Cortes et al.<br>v.<br>MCI |
| **PLACE OF HEARING:** | Toronto, ON |
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