

Date: 20081009

Docket: IMM-880-08

Citation: 2008 FC 1147

Toronto, Ontario, October 9, 08

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**JULIAN MONDRAGON ESCOBAR
ELSA MARTINEZ ZEPEDA
ERICK MONDRAGON MARTINEZ
ADDITY MONDRAGON MARTINEZ**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision made on February 5, 2008 by the Refugee Protection Division (RPD) in which the Applicant's claim for refugee protection was denied on the basis of a global negative credibility finding.

[2] The Applicant's claim is based on a detailed factual scenario. As a police officer in Mexico with 17 years experience and being charged with investigating drug trafficking, the Applicant

participated in the interception of a \$25 million shipment of cocaine. As a result, he provided evidence against an accused drug lord which resulted in a conviction. Following a second trial of the same drug lord in which the Applicant again provided evidence, the Applicant received threatening phone calls, was denied protection by the security forces, was terminated from his job, was kidnapped twice, and in the second kidnapping, was severely beaten and left for dead; in addition, his wife was assaulted. The Applicant gave evidence to the RPD to substantiate his fears that the violence he suffered was at the hand of the drug lord and was intended to silence him. The Applicant testified to s.97 prospective fear of this drug lord should he be required to return to Mexico.

[3] The RPD's negative global credibility finding stated in the decision under review is as follows:

In the morning questions by the counsel for the Minister, the claimant insisted he never made an arrest without a warrant. His role was only to execute the warrants of a judge. Further, whenever he made an arrest, a representative of Human Rights would be present.

In the afternoon, in answer to my question, he initially stated he always worked with an arrest warrant. When I asked, during his 17 years on the force as part of an investigation did he never see someone committing a crime and make an arrest, then the claimant responded yes.

When asked why, if he made arrests during the committing of a crime, he had not answered yes to the question did he ever make an arrest without a warrant the claimant responded that he did not understand.

I do not accept this explanation. This questions [sic] or ones similar were asked by counsel for the Minister and myself on numerous occasions. It is not plausible the claimant would not understand any of these questions asked throughout the hearing.

I am satisfied the claimant made an attempt to withhold evidence from the counsel to the Minister in order to protect himself from being excluded from the protection of Canada. Hence, I make a negative credibility inference. [Emphasis added]

(Tribunal Record, p. 8)

[4] Counsel for the Applicant argues that the Applicant's responses are based on a misunderstanding. On this issue, during the RPD hearing, the Applicant was questioned by Counsel for the Minister as to whether he is inadmissible to claim refugee protection as a member of an organization that commits torture, being the Mexican police, and by the RPD Member with respect to the merits of the claim for protection itself. The conduct of this questioning, and the answers the Applicant gave are as follows:

Q [posed by the Counsel for the Minister]: When you arrested individuals, did you always have an arrest warrant?

A: Yes.

Q: These packages of documentation repeatedly say that arrests were frequently made without warrant.

Does that statement surprise you?

A: Yes, because we always had arrest warrants from a judge.

Q: Did you ever hear of people being arrested and detained without warrant?

A: Well, maybe if that person is committing a crime.

Q: But, you had never heard of illegal arrests or detentions?

A: No.

(Tribunal Record, pp. 1563 – 1564)

[...]

Q [posed by the RPD Member]: When you were a police officer in Mexico, did you ever make an arrest that was not a result of a judge signing a warrant?

A: No, I always worked with arrest warrants.

Q: So, you never were involved in an investigation where you found somebody right there involved in a criminal act, and you made an arrest immediately?

A: Yes.

Q: You did that.

A: Yes.

Q: Did you have a warrant?

A: No, but he was committing a crime.

Q: Well then, sir, did you ever make an arrest in Mexico of someone where you didn't have a warrant signed by a judge, why wasn't the answer yes?

You're now telling me you did make arrests when you didn't have a warrant.

A: If a person is committing a crime, it is my responsibility to arrest them.

Q: Of course.

So why wasn't that the answer to my first question yes?

A: I told her.

Q: Well, I just asked you, sir, did you ever make an arrest when you didn't have a warrant?

You said 'no'.

A: (speaking)

Q: Sir, listen to me.

That makes absolutely no sense whatsoever that a 17-year police officer involved in investigations in Mexico would never make an arrest without a warrant.

So, when I asked you, were you never involved in an investigation where right there in front of you, you found somebody breaking the law, and you said, yes, I was, and yes, I made an arrest.

So, why wasn't the answer to the first question yes?

A: Maybe I didn't understand. [Emphasis added]

(Tribunal Record, pp. 1571 - 1572)

[5] On the face of this record, it is quite possible that the Applicant believed he was being questioned about his role as a drugs investigator when he said that he always arrested on a warrant, but easily offered the evidence that during his long career as a police officer, he has arrested people without a warrant whom he found committing a crime. Instead of accepting the Applicant's statement that, in effect, he and his questioners were operating at cross purposes, the RPD found that the exchange quoted provides evidence that the Applicant is guilty of lying. In my opinion, given the state of the evidentiary record, this is a totally unsubstantiated conclusion. Indeed, the

RPD provides no clear reasons required to ground the implausibility of the Applicant's statement that he did not understand.

[6] As a result, I find that the decision under review is made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for re-determination before a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-880-08

STYLE OF CAUSE: JULIAN MONDRAGON ESCOBAR, ELSA MARTINEZ
ZEPEDA, ERICK MONDRAGON MARTINEZ
ADDITY MONDRAGON MARTINEZ v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 7, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: OCTOBER 9, 2008

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