Date: 20081201

Docket: IMM-1159-08

Citation: 2008 FC 1334

Ottawa, Ontario, December 1, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

AGUINALDO PINTO FERRARI,
YORLING MARGARITA ALVIR ABRAHAM
(a.k.a. YORLING MARGARI ALVIR ABRAHAM),
IRVING FERRARI ALVIR,
GIAN ANDRE FERRARI ALVIR,
and EDWIN FERRARI ALVIR

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of the Refugee Protection Division of the Immigration Refugee Board (Board), dated February 14, 2008 (Decision) refusing the Applicants' application to be deemed Convention refugees or persons in need of protection under section 96 and section 97 of the Act.

BACKGROUND

[2] Aguinaldo Ferrari is a 39-year-old citizen of Brazil, while his 36-year-old wife, Yorling Abraham (Principal Applicant) and their 3 sons, Irving Alvir, Gian Alvir and Edwin Alvir are all citizens of Mexico.

[3] The Principal Applicant alleges that in October 2001, she as a doctor, and her husband as a nurse, provided medical assistance in Saltillo, Mexico to a woman who had been seriously wounded by a gunshot. The victim told them she had been shot by Chato Lee, a well-known criminal. The Principal Applicant did not divulge the name of Chato Lee to the police during their investigation of the shooting. However, the Principal Applicant did give the police her cell phone number. The next day, the Principal Applicant says she received a phone call on her cell phone warning her not to talk.

[4] Over the next five years, the Principal Applicant says she received phone calls during which no one spoke or, on other occasions, she was warned not to speak about what she had heard from the victim of the shooting. The Principal Applicant also believes that, at times, her house was under surveillance.

[5] In November 2005, the Principal Applicant was a victim of a sexual assault in Saltillo, Mexico. The incident was not reported to the police.

[6] In January 2006, while in Mexico City, the Principal Applicant's husband was called by name and detained for an ID check by two men, one of whom was dressed as a policeman. The husband escaped because persons passing by came to his assistance.

[7] The Principal Applicant believes that if she and her family had remained in Mexico, the criminals who had shot the woman in 2001 would have taken action to ensure that she and her husband could not repeat to the police or others the name of Chato Lee.

DECISION UNDER REVIEW

[8] The Officer determined that parts of the Applicants' account were, on their face, implausible, and that the fear of serious harm from members of the gang today was not supported by the evidence. In the alternative, the Officer also found as follows:

> Parts of the account, on their face, are implausible.
>
> Even so, I am satisfied that if the family was to move to the Federal District (D.F.) within Mexico City and have incidents connected to the criminals she fears, that adequate, although not perfect, protection would be provided. Hence, the D.F. is a viable Internal Flight Alternative (IFA).

Principal Applicant's Fear of Serious Harm

[9] The Officer determined that the Principal Applicant's fears of facing serious harm at the hands of a criminal gang were not supported because:

1) She has never divulged any incriminating information to police;

2) She has never reported any of the phone calls;

3) She has refused to assist the victim in any legal proceeding;

4) Five years have passed where the gang has had opportunity and motivation to do the claimant harm but has taken no such steps.

[10] The Officer also concluded that there was no direct evidence that the Principal Applicant's 2005 sexual assault was connected to the 2001 incident.

Whether D.F. Within Mexico City was a Viable IFA

[11] The Officer examined whether the D.F. within Mexico City was a viable IFA. He was satisfied it would be for several reasons:

1) There has been an effort by the state to assist women in the D.F. within Mexico City by providing provisions to access psychological support by women at risk;

2) The Principal Applicant already lived for five years in the same area where the incident occurred;

3) If the Principal Applicant was to move to the D.F., she and her family will be at less risk of harm with more support available than they [had] for the five years when they lived in the same area where the original incident occurred;

4) The family could reasonably relocate to the D.F;

5) The state would make serious efforts to provide adequate protection in the D.F. even in the case where individual police officers or authorities are connected to the criminals.

[12] The Officer concluded that while there are areas of Mexico where serious efforts to provide adequate protection as a result of corruption and criminality are not being made, in the D.F., within Mexico City, this is not the case.

Principal Applicant's Husband Being Approached by Authorities in Mexico City

[13] The Officer found that the "new report" presented by counsel, that identified the husband as being present when assistance was provided to the victim in 2007, was problematic for two reasons:

1) The suspect of the crime was not reported as Chato Lee as the claimant recalls hearing spoken by the victim, but the sister of Chato Lee;

2) There is no mention of the claimant being present, only that her husband was present.

[14] The Officer concluded that, even if the husband believed he was being targeted by authorities in Mexico City for assisting the victim of the shooting five years earlier, his recourse as a citizen of Brazil is to Brazilian authorities. The evidence of this incident within the D.F. provides insufficient weight to offset the documentary evidence as to the efforts of the state to protect its citizens within the D.F.

[15] The Officer concluded that the husband had not demonstrated a well-founded fear in Brazil.

State Protection in D.F.

[16] The Officer provided the following reason for his conclusions on the availability of state protection:

> The premise for my analysis of state protection in the D.F. is if, in the future, the claimants became the victims of criminality or believed they were about to be victims, they would have recourse at that time. Five years have passed since the claimants were involved with Chato Lee's victim. During that time, the claimants never offered evidence or requested assistance. I made no inference from their lack of seeking assistance in the past, but focused on the future-looking aspect of the definition. As a result, I find the paragraph referenced by counsel is not relevant.

[17] The Officer makes the following findings on the January 2008 *Human Rights Watch, Mexico, World Report, 2008*.

1) The abuses referred to during law enforcement operations are not applicable to these facts;

2) The last sentence of the first paragraph on human right violations may apply to parts of Mexico, but the documents satisfy that this is generally not the case in the D.F.;

3) The discussion of President Calderon's proposal to strengthen the ability of prosecutors to combat organized crime is criticized since some due process guarantees are set aside. However the Officer finds "this appears to be exactly the claimants' request of the authorities, i.e. take action, even without strong evidence";

4) The section on Abuses by Security Forces was a cause for concern but was deemed to not apply to the facts before the Officer as the Applicants had not been exposed to such acts and abuses referenced. The act in Mexico City where the Principal Applicant's husband was not harmed was not considered to be of the nature described in the report;

5) Mexico City is referenced once in the report as an area of Mexico where abortion is legalized. The Officer concluded that just as abortion rights are different within jurisdictions within Mexico, other areas of law and the implementation of law are

equally different as law and enforcement are left to each state by the Constitution with certain exceptions;

6) Despite the report not distinguishing between Mexico City and the rest of Mexico, the Officer gave "such generalized statements insufficient weight to offset the statements made specifically regarding Mexico City" found in other documents.

The Officer concludes at page 8 of the Decision that the fear of harm today from criminals is not supported by the evidence. The D.F. within Mexico City meets both tests for a viable IFA. The Principal Applicant and her children had not established a serious possibility that they would be persecuted or seriously harmed in all parts of Mexico. Therefore, their claims failed pursuant to both sections 96 and 97(1) of the Act.

ISSUES

[18] The Applicants have raised the following issues on this application:

1) Is there a reasonable apprehension of bias on the part of the decision maker?

2) The decision maker failed to assess whether protection in Mexico is real and effective.

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être

religion, nationality, membership in a particular social group or political opinion,

persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le

	cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[20] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review" (*Dunsmuir* at para. 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[21] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[22] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the second issue raised by the Applicants to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para. 47). Put another way, the Court should only intervene if the Officer's decision was unreasonable in the

sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[23] The Applicants also raise a procedural fairness issue to which the standard of correctness applies: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

ARGUMENTS

The Applicants

Reasonable Apprehension of Bias

[24] The Applicants submit that the Officer exhibited an apprehension of bias towards them. They rely upon the definition for apprehension of bias in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394 (*Liberty*) and mentioned in *R v.R.D.S.*, [1997] 3 S.C.R. 484 at paragraph 11:

> …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information…[T]hat test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[25] The Applicants go on to submit that where a reasonable person, reviewing the facts, would suspect that a tribunal may be influenced by improper considerations to rule against an applicant, the applicant does not have to show that the bias prejudiced his/her position, but simply that it could

have occurred: *Spence v. Prince Albert (City) Police Commissioners*, [1987] S.J. No. 5 (Sask.C.A.), leave to appeal to S.C.C. refused [1987] 1 S.C.R. xiv.

[26] The Applicants cite case law that states that sarcastic remarks, or impugning the character of an applicant, is an apprehension of bias under some circumstances: *Saleh v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 745 (F.C.T.D.) and *de Freitas v. Canada (Minister of Employment and Immigration*, [1989] F.C.J. No. 52 (F.C.A.). In addition, they say that unreasonably aggressive questioning or comments about an applicant's testimony gives rise to a reasonable apprehension of bias: *Re Gooliah and Minister of Citizenship and Immigration*, [1967] M.J. No. 39 (Man. C.A.); *Re Golomb and College of Physicians and Surgeons of Ontario*, [1976] O.J. No. 1707 (Ont. Div. Ct.) and *Yusuf v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 1049 (F.C.A.).

[27] The Applicants find the following comments from the Board to be inappropriate and illustrative of an apprehension of bias and refer to the affidavit of Jenny Hwang, associate lawyer at the office of the solicitor of the Applicant:

> 3. I attest during parts of the hearing, the Board Member chuckled on occasion during the Applicant's hearing and made comments which gave the impression that the Applicants' claim for protection was not being seriously considered. During Mr. [Ferrari's] testimony, the Board Member interrupted to note "I'm glad to see the Portuguese citizens are no different than the Spanish, they gotta tell me everything."

[28] The Applicants say that the statements of the Board must be taken as they appear, and that speculation as to what the Officer meant is of no value, as no one could know what was in the mind

of the Officer. The Applicants also say that the statement of the Officer shows a "level of generalization towards the presumed nature of Mexican and Portuguese claimants but also shows that the [Board member] is intruding and cutting the applicant's testimony."

[29] The Applicants conclude that the "Board Member also shows a troubling insensitivity towards the Female Applicant in regard to the Sexual Assault that she was subjected too (*sic*)." This insensitivity demonstrates bias toward the Principal Applicant, which is in violation of the spirit of the *Chairperson Guidelines 4, Women Refugee Claimants Fearing Gender-Related Persecution.*

Real and Effective Protection in Mexico

[30] The Applicants submit that the Officer also failed to assess whether protection in Mexico is real and effective and merely accepted the declaration of the Mexican Government that it was making attempts to provide protection. The Applicant cites and relies upon the following excerpt from *Tobar v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 798 (F.C.T.D.):

> 24. A presumption exists that if the government apparatus has not completely collapsed a government is in a position to protect its citizens. Chile is not in a state of complete collapse. It was therefore up to the applicant to show clearly and convincingly that it was objectively unreasonable to seek protection from the Chilean authorities: see Ward v. M.E.I., 103 D.L.R. (4th) 1 (S.C.C.).
>
> 25. To determine whether a government can offer adequate protection a court must look not only at whether the government is able to offer such protection, but whether it will do so: see *Bobrik v. M.C.I.* (September 16, 1994-IMM-5519-93 (F.C.T.D.). Among the relevant factors, it must ascertain whether family violence is penalized under the country's legislation, whether that legislation is designed to protect victims against attacks and, most importantly, whether it is applied.

> 26. The existence of support services (counselling, legal and medical aid) is praiseworthy but does not in itself constitute protection. Similarly, the existence of a halfway house does not necessarily indicate that protection exists; if it only offers a temporary refuge and the local authorities do not protect the victims of family violence.
>
> 27. In view of the rules recently laid down by the international community, a government which does not take steps to prevent offences of violence against women is as guilty as the perpetrators of such acts. Governments are in fact required to prevent offences involving violence against women, to investigate such acts and to punish them.
>
> 28. In *Bobrik v. M.C.I.* 9IMM-5519-93, September 16, 1994, F.C.T.D.), Tremblay-Lamer J. held that even if the government wishes to protect its citizens, a claimant will meet the refugee status criteria if the protection provided is ineffective. In particular, she noted that "a state must actually provide protection, and not merely indicate a willingness to help".

[31] The Applicant points out that the Officer notes the existence of legislation and policies, but does not actually consider if Mexico has a real capacity to protect its citizens. This is contrary to the holding of Justice de Montigny in *Kaur v. Canada (Minister of Citizenship and Immigration),* [2005] FC 1491 at paragraph 28, where he said that "the protection offered by the State must not be only theoretical, but also practical and real and effective."

The Respondents

Reasonable Apprehension of Bias

[32] The Respondent contends that the Applicants allegations of bias are based on an inaccurate, incomplete and a summarized version of the transcript. The Respondent claims that the Officer's chuckles where due to counsel nearly falling off his chair, and are not evidence that the Officer was

biased. The Respondent notes that after the chair incident, the Officer went back to the task at hand and proceeded to clarify the Applicant's testimony about the alleged harassment by a police officer in Mexico City. The result was that the Principal Applicant's husband stated that the incident was not connected to his wife and the problems she experienced.

[33] The Respondent says that the Officer's comment that "I'm glad to see the Portuguese citizens are no different than the Spanish, they gotta tell me everything" indicated that the Officer was pleased the Principal Applicant's husband was forthcoming in his testimony.

[34] The Respondent concludes on this issue by stating that neither the transcripts nor the reasons indicate that the Officer was biased, or that a denial of justice occurred. Just because the Officer chuckled does not mean the Applicants did not have a fair hearing; the Applicants did not act upon this until they received a negative Decision. The right to complain of a breach of procedural fairness on judicial review is waived when the matter is not raised before the Board member: *Bankole v. Canada (Minister of Citizenship and Immigration),* [2005] FC 1581 at paragraphs 20-22, *Yassine v. Canada (Minister of Employment and Immigration)* (1994), 172 N.R. 308 at paragraph 7 (F.C.A.) and *Ranganathan v. Canada (Minister of Citizenship and Immigration)* 2003 FC 1367.

[35] The Respondent also cites and relies upon *Gonzalez v. Canada (Minister of Citizenship and Immigration* 2008 FC 983, where the claimants made an accusation of bias against a member two weeks after the hearing in their written submissions. The Court in *Gonzalez* held in relevant part as follows:

> **18** The applicants were represented by counsel at their refugee hearing. Moreover, this is not a case where the significance of the member's comments could not have been immediately apparent to the applicants or their counsel, nor was it a case where additional matters arose during the course of the hearing that, when taken cumulatively with the member's earlier comments, gave rise to a reasonable apprehension of bias.
>
> **19** Having regard to the nature of the applicants' objection in this case, it is clear that as soon as the disputed words were out of the mouth of the presiding member, the applicants and their counsel were in possession of all of the relevant information and evidence relating to the matters that they now say gives rise to a reasonable apprehension of bias on the part of the presiding member.
>
> **20** Not only did the applicants and their counsel not raise their bias objection at the time that the impugned statements were made, they continued on with the evidentiary portion of the hearing to its completion, without objection. Indeed, it was not until some two weeks later that the applicants first raised the issue of apprehended bias on the part of the presiding member.
>
> **21** In such circumstances, it cannot be said that the applicants have raised their bias objection at the first reasonable opportunity. As such, they are deemed to have waived their right to object.

[36] The Respondent says the *Gonzalez* case is “indistinguishable” from the case at bar except for the fact that the Applicants in this case waited even longer to object to the jurisdiction of the Officer on the grounds of bias. Their complaint only arose when a negative decision was rendered over one month later.

Real and Effective Protection in Mexico

[37] The Respondent contends that the actual question addressed by the Board was whether the Applicants had an internal flight alternative in Mexico City-DF, and not whether the protection in Mexico is real and effective. Therefore, the Officer had to be satisfied on a balance of probabilities

that there was no serious possibility of the Applicants being persecuted in the Mexico City-DF and that it would not be unreasonable for the Applicants to seek refuge there: *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (F.C.A.) at paragraph 12 and *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (F.C.A.).

[38] The Respondent relies upon *Thirunavukkarasu* at paragraph 5 for the proposition that since the existence of an internal flight alternative is "part and parcel" of whether or not a person is in need of protection, the onus is upon the Applicants to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the areas where an internal flight alternative is alleged.

[39] The Respondent discusses the principles found in *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 at paragraph 21 and *Rasaratnam* at paragraph 5, that persecution in a given region is not considered persecution within the meaning of the Convention if the government of the country is capable of providing protection for the applicants elsewhere within its territory, as long as it is a reasonable place for the victims to move in order to find protection.

[40] The Respondent points out that the Officer did not simply "accept the declaration of the government that it was making attempts to provide protection." The Officer notes as follows:

1) Civilian authorities maintain control over security forces;

2) The Government protects human rights at the national level by investigating, prosecuting and sentencing public officers, including security forces;

3) There exists a well-defined process to be followed for reporting crime which is supported by offices providing psychological, legal and medical assistance to victims (two such centres being found in Mexico City);

4) While corruption persists, there is a department responsible for monitoring corruption and the Office of the Attorney General conducts internal investigations that result in penalties including dismissal arrest and prosecution;

5) In particular, in the Federal District of Mexico City, police corruption can be reported to Internal Affairs for action;

6) That the husband was menaced by police (or someone impersonating the police) in Mexico City who asked to see his identification is insufficient to suggest that protection is not available to the Applicants, should it be necessary, in Mexico City.

[41] The Respondent concludes that the Applicants have not identified any evidence that was ignored or which would demonstrate that the Officer's findings were not within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The Respondent also says that inconvenience, attractiveness of the IFA, and possible job opportunities in the IFA are not genuine considerations in determining whether it is reasonable to seek safety there: *Thirunavukkarasu* at paragraphs 14-15.

ANALYSIS

[42] This application illustrates the ways in which levity can render a decision problematic. The Applicants say that it is indicative of bias on the part of the Board Member. Having reviewed the offending comments and "chuckles" in context, I have to conclude that, although inappropriate, they do not give rise to a reasonable apprehension of bias on the part of the Board.

[43] The comment made by the Board that “I’m glad to see the Portuguese citizens are no different than the Spanish. They’ve got to tell me everything. Let’s get to the kidnapping” is deplorable stereotyping and has no place in a refugee hearing. However, when I examine the full context in which the remark was made it is clear that the Applicants were not prevented or discouraged from placing their account before the Board. That account is also not discounted in any way that is not justified in the reasons or that is not supported by the evidence. The Board appears to be saying something to the effect of “Let’s get down to dealing with the kidnapping.”

[44] There are several instances throughout the transcript where the Board asks the Applicants if there is anything further they would like to say. The general impression is that the Applicants were given a full and fair opportunity to state their case and there is no indication that the innuendo present in the isolated remark quoted above played any role in the Decision.

[45] Similarly, the Board’s comment that “Your counsel’s about to fall off his chair,” when reviewed in context, obviously means that the husband’s testimony that there was no connection between the police officer and the incident involving the female Applicant is a mistake, and the Board, realizing this, goes on to give the husband an opportunity to correct that mistake and tell his story. There was no need for the Board to comment upon counsel’s possible reaction to the husband’s mistake, but it is merely a humouress way of saying that an obvious mistake has been made. As this case shows, humour can give rise to possible misconceptions and this Board member ought to bear that in mind for the future.

[46] I have also examined the record regarding the Applicants' allegations of insensitivity towards the female Applicant. I can find none. The Board was obviously confused about the legal concepts of "rape" and "sexual assault," but this matter was clarified between the Board and legal counsel, and the Board expresses gratitude for the assistance. The Board was simply attempting to test the credibility of the female Applicant. This is not disrespectful.

[47] If the "chuckles" and the remarks referred to by the Applicants gave rise to an apprehension of bias, then any concerns would have been, and should have been, raised much earlier than they have been raised in this application.

[48] Instances of levity on the record reflect the personal style of this Board member. They are regrettable and should be corrected. But, on these facts, they do not give rise to a reasonable apprehension of bias.

[49] Nor can I find evidence of bias or procedural unfairness in the manner of the Board's questioning. Justice Mosley's comments in *Bankole v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 1581 at paragraph 25, could be applied equally to the present case:

> Having reviewed the transcript closely, I am not persuaded that the manner of questioning in this case amounted to a denial of procedural fairness in the conduct of the hearing despite my concerns about specific excerpts. Overall, the transcript discloses that the member went to considerable lengths to obtain the applicant's complete evidence and to attempt to clarify the contradictions and inconsistencies in his testimony. The hearing as a whole, while flawed, was not unfair.

[50] It is also apparent that the Officer was not predisposed or biased as a result of any persuasive decisions that might exist. There is no evidence that the Officer relied upon any such decision, and I am satisfied that the Officer looked at the facts before him and came to his own conclusions.

[51] In summary, on the bias issue, I have to conclude that an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that there is no apprehension of bias in this case as alleged by the Applicants.

[52] As regards the Applicants' second issue, I cannot agree that the Officer committed a reviewable error. However, even if I were to so find, the Decision must stand because it was based upon alternative grounds. The Officer makes it clear that the Applicants have established no objective fear: "I find the claimants fear of serious harm from members of the gang today to be not supported by the evidence I heard at the hearing." This was a reasonable conclusion and, apart from the bias issues already addressed, the Applicants do not take issue with it. Hence, in the absence of apprehended bias, that conclusion must stand. There is no need to address in detail the I.F.A. issues raised by the Applicants.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This Application is dismissed
2. There is no question for certification.

James Russel

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1159-08
STYLE OF CAUSE:	**AGUINALDO PINTO FERRARI, YORLING MARGARITA ALVIR ABRAHAM (a.k.a. YORLING MARGARI ALVIR ABRAHAM), IRVING FERRARI ALVIR, GIAN ANDRE FERRARI ALVIR, and EDWIN FERRARI ALVIR v. MCI**
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	October 6, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	JUSTICE RUSSELL
DATED:	December 1, 2008

APPEARANCES:

Ms. Wennie Lee	FOR THE APPLICANT
Ms. Lisa Hutt	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEE & COMPANY Immigration Advocacy, Counsel & Litigation TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H.SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT