Date: 20081215

Docket: IMM-2804-08

Citation: 2008 FC 1377

Toronto, Ontario, December 15, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

DIEGO ALEJANDRO GIRON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Colombia. His claim for refugee protection was rejected in a written decision of a member of the Immigration and Refugee Board dated June 2, 2008. The Applicant seeks judicial review of that decision. For the Reasons that follow, I find that the application is dismissed.

[2] The Applicant's claim is based on his fear of FARC guerrillas in Colombia. He claims to have been a sports educator in Colombia and that he had been kidnapped by the FARC while

travelling from one city to another in Colombia. At that time, he claims that the FARC were not entirely clear what they wanted of him but that they seemed to want him to collaborate with them while he was otherwise doing his educational work. He claims to have been specifically targeted by FARC on subsequent occasions during which times he and three children living with him were threatened. He claims to have reported these incidents to a Public Ministry but nothing came of it.

[3] The Member rejected the claim with brief reasons stating that the determinative issue was credibility. The Member found that, on a balance of probability, the Applicant had not provided persuasive evidence that the incidents with FARC took place or that FARC are still interested in him.

[4] The Applicants challenges the Members determination on two grounds. The first challenge is as to the finding of credibility; the second is that it is argued that the Member gave insufficient weight to the documentary evidence before him that was favourable to the Applicant.

[5] At the outset of the hearing, counsel for the Applicant stated that he wished to raise a further argument. One business day before the hearing, Counsel advised the Court and Counsel for the Respondent in a letter that he wished to do so.

[6] Normally a Court will be reluctant to receive argument not made in a party's Memorandum and where only short notice was given (e.g. *Radha v. Canada (MCI)*, 2003 FC 1040 at paras. 13 ff). However I permitted Counsel to make the argument which was one of failure of natural justice.

Counsel pointed to the transcript of the hearing where there was a brief exchange between the Member and claimant's Counsel in which the Member concluded "…you have no questions at all, counsel." Counsel made no verbal response.

[7] In this Court the Applicant's Counsel (who was not Counsel at the hearing) argued that if the Member had any concerns as to the claimant's credibility the Member was under a positive duty to raise them with Counsel at the hearing. Applicant's Counsel relied on cases such as *Sathasivam v. Canada (MCI)*, May 23, 1997, IMM-2549-96 where the Court said that the Member should have advised the claimant as to credibility concerns; however it appears that case that the Board had said to the claimant that it was satisfied with the claimant's story. This case and others like it cited by Counsel are directed to a situation where the Board or a Member clearly stated one thing and then, in the Reasons, did another. I find that the brief exchange relied upon here cannot be construed as the Member taking a position that would have mislead Counsel. There is no evidence here that Counsel was misled. I find that Applicant's Counsel here is placing a very strained interpretation on this exchange. I find that there is no reasonable interpretation as would give rise to grounds for review based on natural justice.

[8] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] S.C.R. 190 has established that in matters not pertaining to legal questions but to matters where discretion and weighing evidence is concerned, a standard of reasonableness is to be applied, with deference being given to tribunals whose expertise lie in the subject matter under review. This is such a matter.

[9] Where the conclusions reached are reasonably open to a Member of the Board in reaching a decision such as this, the Court should not interfere (*Aguebor v. Canada (MCI)* (1993), 160 N.R. 315 (FCA)). This is such a circumstance. The Applicant is simply asking this Court to reweigh the evidence given by the Applicant and come to a different conclusion.

[10] Applicant's Counsel argued that the Member overlooked documents that supported the Applicant's claim. One such document was a survey of general country conditions in Colombia. Others were certificates from the mayor of a town in Colombia and from a Municipal Prosecutor. Both certificates simply recite what the persons signing them were told by the claimant. While hearsay evidence can be accepted into evidence its weight is to be determined by the Member.

[11] A Member in giving reasons is not obligated to mention every document put into evidence. General country conditions must be linked to specific harm likely to be suffered by the claimant (*Waheed v. Canada (MCI)*, 2003 FCT 329 at paragraph 43). Documents that are reflective only of statements made by a claimant may not be given such probative value once a negative credibility finding has been made. At paragraph 21 of *Hamid v. Canada (MEI)* (1995), 58 A.C.W.S. (3d) 469, Nadon J. (as he then was) wrote:

> ***21*** *Consequently, in my opinion, the applicant's assertion that the Board is bound to analyze the documentary evidence "independently from the applicant's testimony" must be examined in the context of the informal proceedings which prevail before the Board. Once a Board, as the present Board did, comes to the conclusion that an applicant is not credible, in most cases, it will necessarily follow that the Board will not give that applicant's documents much probative value, unless the applicant has been able to prove satisfactorily that the documents in question are truly*

> *genuine. In the present case, the Board was not satisfied with the applicant's proof and refused to give the documents at issue any probative value. Put another way, where the Board is of the view, like here, that the applicant is not credible, it will not be sufficient for the applicant to file a document and affirm that it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to "offset" the Board's negative conclusion on credibility.*

[12] I am satisfied that, given the record before him, the Member arrived at a reasonable determination and that no relevant matter was overlooked.

[13] The issues raised in the application are purely factual. Neither counsel sought certification. No question will be certified. There are no special reasons for awarding cost.

JUDGMENT

For the Reasons given:

1. The application is dismissed;

2. There is no question for certification;

3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2804-08
STYLE OF CAUSE:	*DIEGO ALEJANDRO GIRON* v. *THE MINISTER OF CITIZENSHIP AND IMMIGRATION*
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

	FOR THE APPLICANT
Richard Addinall	
	FOR THE RESPONDENT
Laoura Christodoulides	

SOLICITORS OF RECORD:

	FOR THE APPLICANT
Richard Addinall Toronto, Ontario	
	FOR THE RESPONDENT
John H. Sims, Q.C. Toronto, Ontario	