

Date: 20090224

Docket: IMM-3489-08

Citation: 2009 FC 193

Montréal, Quebec, February 24, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

RENÉ DE LA CRUZ OLGUIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review by the applicant pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated July 17, 2008, wherein it was determined that the applicant, a citizen of Mexico, did not provide trustworthy and credible evidence to support a well-founded fear pursuant to section 96, nor did he establish a risk under

subsection 97(1) of the IRPA and, consequently, he was not considered a Convention refugee nor a person in need of protection.

II. The facts

[2] The applicant's fear of persecution, which brought the applicant to leave his country of origin for Canada to claim protection, is based on threats to his life that the applicant would have received as a result of his alleged knowledge of illegal business transactions between his boss and the police with regard to the illegal sale of gasoline from an underground tank.

III. Issues

[3] Was the negative decision of the RPD unreasonable?

IV. Analysis

Standard of review

[4] The question is whether the RPD member erred in her factual assessment of the applicant's claim. Therefore, the standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9). As stated at paragraph 161 in *Dunsmuir*, "decisions on questions of fact always attract deference", especially when the credibility of the applicant is affected, and "when the issue is limited to questions of fact, there is no need to enquire into any other factor in order to determine that deference is owed to an administrative decision maker".

[5] In reviewing the Board's decision, the Court is mostly concerned with "the existence or lack of justification, transparency and intelligibility within the decision-making process [and also] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

[6] Unless the credibility findings were made capriciously or without supporting evidence, and had the RPD not provided sufficient reasons in clear and unmistakable terms to conclude as it did, this Court would owe these findings the highest degree of deference. The burden rests on the applicant to show that the negative credibility inferences drawn by the RPD could not reasonably have been drawn (*Aguebor v. Canada (Minister of Employment and Immigration)*(F.C.A.), [1993] F.C.J. No. 732 at paragraph 4).

Credibility findings

[7] The applicant contends that the RPD wrongfully dismissed his claim by alleging credibility issues. He accuses the RPD member of having been biased and not having a minimum knowledge of the situation in Mexico, in particular the criminality and corruption that invades his country. In fact the applicant insults the board member's knowledge and training when he claims that the negative decision resulted from the RPD member's inexperience.

[8] The applicant forgets however that the RPD member found his claim to be implausible and containing several discrepancies that were not supported by the evidence. In his recourse against the RPD decision, the applicant has not discharged his burden to show that the RPD erred in its

negative credibility inferences. The applicant also forgets that it was up to the RPD member and not to this Court to decide if his claim was plausible or not.

[9] A careful reading of the transcript of the hearing does not lead the Court to believe that the decision was made in a capricious manner or without regard to the material before it. On the contrary, the RPD exposed sufficient reason to find the applicant not credible and to justify why it reached its negative conclusion. The RPD found many contradictions and also found implausible the communication between the applicant and his boss about reference letters and the inspection of the underground tank, while fearing for his life from his boss.

[10] The applicant is in fact simply asking more or less this Court to analyse, appreciate and weigh the evidence in the expectation that the Court will substitute its opinion and conclude differently than what the RPD did. However, such is not the role of this Court. The RPD had the net advantage over this Court because of its expertise and of having heard the applicant. The RPD was therefore in a much better position than this Court is now to weigh the evidence, its weaknesses and strengths, and to decide on its acceptability, and whether it contained or not trustworthy and credible evidence to support a well-founded fear of persecution.

[11] At this stage of the process, the Court's role is limited to verifying whether the RPD's inferences and conclusions about the lack of credible evidence to support the applicant's claim are reasonable or not. The reasons given here by the RPD are not to be read hypercritically by the Court

nor is this administrative tribunal required to refer to every piece of evidence received (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425).

[12] The present matter turns on the applicant's failure to establish with credible and trustworthy evidence the purpose of his claim that is, the fact that his fear of persecution is related to his true knowledge of the alleged illegal business activities of his former employer and the threats that he would have incurred as a consequence.

[13] Overall, the applicant has failed to show that the impugned decision is unreasonable or falls as a whole outside the range of acceptable outcomes which are defensible in respect of the facts and the law. Therefore his application for judicial review will be dismissed.

[14] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS, THIS COURT dismisses the application.

“Maurice E.Lagacé”

Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3489-08

STYLE OF CAUSE: RENE DE LA CRUZ OLGUIN v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 3, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** LAGACÉ D.J.

DATED: February 24, 2009

APPEARANCES:

Marie Aziz FOR THE APPLICANT

Evan Liosis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Marie Aziz FOR THE APPLICANT
Montréal, Quebec

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec