Federal Court  Cour fédérale

**Date: 20091201**

**Docket: IMM-456-09**
**IMM-651-09**

**Citation: 2009 FC 1232**

**Ottawa, Ontario, December 1, 2009**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**ANA YOLANDA MARTINEZ DE QUIJANO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a 48-year-old citizen of El Salvador, filed two applications for judicial review, the first (IMM-651-09) from a decision denying her application for a Pre-Removal Risk Assessment (PRRA), and the second (IMM-456-09) from a decision denying her application for an exemption, for humanitarian and compassionate (H&C) considerations, from the obligation to obtain a visa outside Canada. These two decisions were made on the same day and by the same

immigration officer. Since the two applications raise essentially the same issues, they were heard at the same time and are the subject of a single order and set of reasons, which will be placed in both records.

## I. Facts

[2] Ana Yolanda Martinez De Quijano became involved with the Farabundo Marti National Liberation Front (FMLN) in 1978, when she was a student. The FMLN is a political and military movement fighting for political change in El Salvador. After waging a long guerrilla war, the movement became an authorized and legal political party in 1992.

[3] The applicant participated in the FMLN's activities in different ways. She initially prepared posters, distributed tracts and did secretarial work during meetings of senior FMLN leaders between 1978 and 1994.

[4] After leaving the movement, she held various jobs. Among those was a job with the national police from January to March 2000. It was then that she allegedly discovered that arms were being diverted, which she reported to her superiors. Those superiors, who were FMLN members, told her to mind her own business and that she was behaving like a traitor. She then resigned to go and work in the private sector.

[5] In January 2003, the applicant claims that she again helped the FMLN voluntarily by checking and auditing accounts for the election campaign. In the process, she allegedly again

discovered that funds were being diverted by the FMLN for clandestine arms purchases. Compromising documents implicated Humberto Centeno and Salvador Sanchez Ceren, two FMLN leaders. She then allegedly confronted Mr. Ceren, who threatened her and ordered her not to reveal anything. She therefore resigned soon after that incident.

[6] In April 2003, the applicant alleges that she began receiving threats by telephone and mail. She claims that she was harassed and threatened, some of her property was destroyed, and bloody clothing was even thrown at her residence.

[7] In June 2003, she went to the Canadian embassy in Guatemala to obtain a permanent resident visa as a refugee outside Canada, but without success.

[8] She then continued to receive threats, so that she decided to move in order to hide. On February 5, 2004, she says that she was visited by Mr. Centeno. He allegedly told her that he knew she had seen compromising documents, threatened her by reminding her of [TRANSLATION] "the price of disobedience", and asked her to resume working for the FMLN, which she refused to do. Two days later, strangers entered through the roof of her house and destroyed everything.

[9] Subsequently, she says that she was followed and threatened on several occasions. On July 29, 2004, two armed men attacked her at her home and raped her. She managed nevertheless to get away by alerting the neighbours as the men were trying to take her to another place to execute her.

[10] On August 5, 2004, she therefore decided to flee her country and went first to the United States and then to Canada, where she filed her refugee claim on August 18, 2004.

[11] On January 17, 2007, the applicant was found not to be a Convention refugee or a person in need of protection under paragraphs 1F(a) and (c) of the Convention. The Board found that the applicant was complicit in human rights violations because of her membership in the FMLN, an organization that had committed crimes against peace, war crimes, crimes against humanity and acts contrary to the purposes and principles of the United Nations. On September 24, 2007, the Court dismissed the applicant's application for judicial review and upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD), even though the applicant submitted that her involvement in the FMLN had not been voluntary. On October 9, 2007, an inadmissibility report was issued against the applicant under section 35(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[12] On October 17, 2007, Ms. Quijano filed an H&C application for a permanent residence visa. Since she was under effective removal, she also filed an application for a Pre-Removal Risk Assessment (PRRA) on July 23, 2008. As mentioned above, the immigration officer denied both applications on December 19, 2008.

II. Impugned Decisions

A. *Decision on the H&C Visa Application*

[13] The officer noted first that the applicant's claim that her involvement in the FMLN was involuntary had to be rejected since a decision on that question had already been made by the RPD and upheld by this Court. The findings of fact on that question were therefore *res judicata* and could not be challenged again.

[14] The immigration officer attached no credibility to the applicant's allegations based on her fear of the FMLN owing to contradictions, omissions and implausibilities with respect to key elements of her narrative (i.e. the discovery of compromising documents in February 2003 concerning a purported arms purchase, the names of her persecutors, the period of collaboration with the FMLN and the rape of July 29, 2004).

[15] More specifically, the officer relied on the following contradictions and omissions:

- In the account given in her Personal Information Form (PIF), the applicant alleged that she feared the FMLN because of the discovery in February 2003 of compromising documents on arms trafficking and mentioned the sexual assault of July 29, 2004. Those facts were never mentioned before.

- When they applied for permanent residence from El Salvador as refugees outside Canada, the applicant and her son (Angel Francisco Albanez Martinez) alleged that they feared the FMLN, for which the applicant had

allegedly stopped working in 1994. They made no mention of the compromising documents on arms trafficking by the FMLN which the applicant had allegedly discovered in February 2003.

- On August 18, 2004, in the interview conducted and in Schedule 1 filled out at the port of entry, the applicant alleged that she feared the FMLN because of her work for the police in 2000. She reported neither the discovery of the compromising documents on arms trafficking in February 2003, nor the names of her persecutors (Ceren and Centeno), nor the sexual assault she allegedly suffered on July 29, 2004.

[16] The officer summarized her reasons for finding the applicant's explanations unsatisfactory as follows:

> [TRANSLATION]
>
> Although I understand that some people have difficulty verbalizing the full extent of their problems, it nevertheless remains that the explanations of these omissions and contradictions are not satisfactory for the following reasons:
>
> 1. The applicant did not mention the story of the compromising documents in her written application in June 2003, nor the names of her persecutors. There was then no question of anyone overhearing her comments. Form IMM0008 which she filled out stipulated that the information she provided was protected under the Privacy Act.
>
> 2. Neither she nor her son mentioned to the Canadian embassy that they feared that their statements would be overheard through the door by people present in the waiting room. The applicant's son was heard separately and would

> have had the opportunity to tell the immigration officer that his mother's statement could be overheard from the waiting room.
>
> 3. After that application was denied by the immigration officer, the applicant wrote the embassy a letter, dated February 24, 2004, in which she asked that her case be reconsidered. She reported new threats and a break-in at her residence. However, in that letter asking that her case be reconsidered, she did not mention that the interview had taken place under unfavourable conditions and did not take the opportunity to add essential information about which she had remained silent during her interview of September 10, 2003, that is, the names of her alleged persecutors, Ceren and Centeno, and the story of the compromising documents, the source of all her problems.
>
> 4. During her interview at the port of entry, on August 18, 2004, the applicant stated that it was the interpreter's fault if it was not clear during her interview at the Canadian embassy in El Salvador that the alleged threats came from the FMLN.
>
> 5. In her personal information form, which she signed on September 13, 2004, the applicant did not mention that during her interview at the Canadian embassy she feared being overheard or that the conditions in which that interview was held were unfavourable.

[17] The officer also relied on several implausibilities:

> [TRANSLATION]
>
> If the applicant had been sexually assaulted on July 29, 2004, it is understandable that she was in too troubled a psychological state to discuss this painful subject. However, it is not plausible that she would mention all sorts of events involving the FMLN to the immigration officer at the port of entry, but not the principal source of those problems, namely the discovery of compromising documents in February 2003.
>
> The fact that she feared that her statements were not confidential and that the FMLN would learn that she had claimed refugee protection

> is not plausible, since she clearly identified the FMLN in her deposition as the source of her persecution and was able to describe specific events such as for example the break-in at her home.
>
> What is also not plausible is that her alleged persecutors did not act immediately after she discovered the documents that compromised them. She says that she saw those papers in February 2003, or just one month before the election. If the authors had suspected her of having copies of those documents and were determined to shut her up, it is reasonable to think that they would not have taken the risk that she would disclose them just before the election and would have acted right away.
>
> Furthermore, it makes no sense that Centeno would show up at her place only a year after that important discovery and especially that he would ask her to conduct audits for the FMLN so close to the upcoming presidential election when she was considered, according to the applicant's statements, a traitor and a potential threat to the party.

[18] Asked during the PRRA hearing about those implausibilities, the applicant said that her persecutors controlled her through threats. In my opinion, these statements are not satisfactory and do not explain the implausibilities raised.

[19] Finally, the officer doubted the applicant's allegations concerning her son, who supposedly returned to live in El Salvador in January 2008 after having left his country for Guatemala in February 2006. Ms. Quijano submitted that her son had had to return to his country because he had been discovered in Guatemala and because his father (who now lives in Canada) had told him that he could sponsor him if he returned to El Salvador. Not only does the affidavit of the applicant's son not provide any details on the people who allegedly found him in Guatemala, but neither the applicant nor her son was able to provide satisfactory explanations as to why the FMLN would invest time and resources to track him down five years after the events described by his mother.

Moreover, the young man could have claimed refugee protection in Guatemala if he really believed that his life was threatened in El Salvador.

[20] With regard to the documentary evidence, the officer gave no probative weight to the affidavits of the applicant's son, the son's friend and the applicant's brother, or to the anonymous letters and photos of graffiti filed in evidence. The officer was of the opinion that all of that evidence was interested and was not corroborated by credible testimony. As for the letter from the intending physician produced by the applicant in support of her allegation that she had been sexually assaulted, the officer gave it little weight since it had no letterhead and did not indicate the name of the clinic where she was allegedly treated. Moreover, the letter was addressed [TRANSLATION] "To whom it may concern". The applicant says that she begged the woman doctor not to make a report to the police, saying that she would do so herself later. Yet she was unable to say why she requested such a certificate on the very day of the rape. The officer also noted that the causes of that assault, allegedly connected with the compromising documents, had not been credibly established owing to the applicant's contradictory testimony and the above-noted implausibilities and omissions.

[21] The officer then looked at the general situation in El Salvador. First, she pointed out that the applicant never sought protection from the authorities in her country, alleging that members of the FMLN had infiltrated the police. Yet the FMLN was not the party in power, and the applicant could therefore have turned to the government if she felt threatened by leaders of that party. The officer did not deny that violence against women was real, but noted that some regions are more affected

than others and that the authorities are fighting this scourge to the point where it is possible to live in certain regions that are less affected by crime and where the police forces are effective and more concentrated. Relying on the documentary evidence, the officer acknowledged that impunity, corruption and street-gang violence remain ongoing problems and that urban violence stemming from economic and social inequality is a major problem in El Salvador. She nevertheless concluded that the authorities are taking concrete steps to eradicate corruption within the national police and to give Salvadoran citizens access to different complaint mechanisms in cases of abuse.

[22] The officer did not deny that the applicant suffers from psychological problems, as attested by many practitioners and social workers working with her. While sympathizing with the applicant's symptoms of anxiety and depression, the officer said that she was unable to conclude that those stemmed from the alleged facts, given the contradictions, inconsistencies and omissions noted in her narrative. She also noted that the applicant was able to hold a full-time job and be involved socially in her community despite her psychological state. Lastly, based on the documentation she consulted, the officer considered that the applicant could receive the health care services she requires in El Salvador.

[23] Having regard to her establishment in Canada, the officer noted that Ms. Quijano had no family ties in Canada, since all of her close relatives (including her son) live in El Salvador. She has been working full-time since February 2007, has taken French language courses and is involved in her community. The officer found, however, that this was not sufficient to warrant granting an exemption, which is an exceptional measure. The officer noted that the purpose of the application

was not to assess the applicant's potential as a future immigrant, but to determine the hardship she would face if she were to file her application in her country. In that regard, the applicant is an educated person who has held several executive positions in her country, and it is reasonable to think that she could again support herself in El Salvador, especially since she can count on her entire family, which is still living there. Accordingly, the officer determined that the applicant had not discharged her burden of proving that she faced unusual, undeserved or disproportionate hardship warranting the filing in Canada of her application for permanent residence.

B. *Decision on the PRRA Application*

[24] The officer's decision regarding the PRRA application is in all respects similar to her decision regarding the H&C application for permanent residence, certain minor adjustments aside. Her analysis of the applicant's credibility is the same. In the main, she also reproduced the reasons she had grouped under the heading [TRANSLATION] "general situation in the country" in the section she entitled [TRANSLATION] "State Protection". At most, she added the following paragraph in her PRRA decision:

> [TRANSLATION]
>
> The courts have dealt many times with the concept of state protection. They have held that the burden of proving the lack of state protection increases with the degree of democracy in the country in question. The responsibility of providing international protection is engaged only where national or state protection is not available to the applicant. Therefore, absent a complete breakdown of the state apparatus, there is reason to presume that a government is able to protect its citizens and this presumption can be rebutted only through "clear and convincing" evidence of the state's inability to provide protection. In addition, *Zalzali* set the standard of protection that a country must offer its citizens : it must be "*adequate, though not necessarily perfect*".

[25] Relying on the same documentary evidence considered in her decision regarding the H&C application, the officer found that state protection, though not perfect, was available to the applicant and existed in El Salvador. However, the applicant made no effort to avail herself of that protection despite all the state means at her disposal. Accordingly, the officer considered that she had not discharged her burden of establishing, on a balance of probabilities, the Salvadoran government's inability to protect her.

## II. ISSUES

[26] These two applications for judicial review raise essentially three issues:

1. Did the officer err in her assessment of the applicant's credibility?
2. Are the officer's findings regarding state protection unreasonable?
3. Did the officer commit a reviewable error in finding that the applicant would not face unusual, undeserved or disproportionate hardship owing to the widespread violence in El Salvador and the mistreatment of women in that country?

## III. ANALYSIS

[27] The parties agree that the officer's findings concerning the applicant's credibility must be treated with great deference. These are findings of fact which are within the purview of the officer's expertise and regarding which this Court will intervene only if it is determined that these findings were arbitrary, unreasonable or made without regard to the evidence in the record.

[28] This also holds for the officer's assessment of the risk to which the applicant would be exposed if she returned to her country, and the hardship she would face if she had to file an application for permanent residence from her country of origin. These are determinations based essentially on an assessment of the facts adduced in evidence, and their legal dimension is negligible: see *Galdamez* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 334, [2009] F.C.J. No. 395, at paragraph 10; *Jakhu* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 159, [2009] F.C.J. No. 203, at paragraph 21. The officer's findings on those questions must therefore also be reviewed deferentially by this Court.

A. *Credibility*

[29] With respect to the applicant's credibility, her counsel argued mainly that the officer had not confronted Ms. Quijano regarding her failure to mention the compromising documents that were allegedly at the root of her problems either in the information provided in her permanent residence form in 2003 or in her request for reconsideration in February 2004. Counsel for the applicant also faults the officer for never asking her about the interpretation problems she allegedly encountered at the Canadian embassy and for not giving her the opportunity to explain why she had not mentioned in her Personal Information Form her fears of being overheard during her interview at the embassy.

[30] I agree with the respondent's argument that the officer was under no obligation to confront the applicant with information she herself had provided; the information on which the officer relied was not extrinsic to the record and the applicant cannot plead ignorance of its content. Dealing with

a similar argument in *Azali* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 517, [2008] F.C.J. No. 674, Justice Michel Beaudry wrote:

> 24 Finally, the applicants submit that they were not given the opportunity to respond to the inconsistent versions of their employment history presented for the purpose of the application presently under review, and the prior applications for temporary resident visas. They argue that the Officer was required to confront them with this discrepancy, and offer them the opportunity to disabuse him of his concerns.
>
> 25 The respondent submits that no basis exists for this argument. The respondent contends that the duty of fairness was not breached, because the Officer did not rely on any extrinsic evidence; rather, he relied on documents supplied by the applicants themselves, the contents of which they cannot plead ignorance.
>
> 26 I agree with the respondent. This is not a case where the Officer failed to confront the applicants with extrinsic evidence; rather, he relied on information which was not only known to the applicants, but supplied by them. Their duty of fairness does not require that the applicants be confronted with information which they themselves supplied. In *Dasent v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 720, at paragraphs 22 and 23, Justice Rothstein (as he was then) emphasized that in determining what constitutes extrinsic evidence, the relevant factor will be whether the evidence was known to the applicant. In this case, there is no doubt that the other version of the applicants' employment history was known to them.
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> See also: *Wang* v. *Canada (Minister of Citizenship and Immigration)* (1999), 173 F.T.R. 266.

[31] Counsel for the applicant also submitted that the implausibilities noted by the officer did not meet the test established by the courts to arrive at such a finding. He relied in particular on the comments of Justice Francis C. Muldoon in *Valtchev* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, 208 F.T.R. 267, that "plausibility findings should be made only in the

clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant" (at paragraph 7).

[32] However, the Court is of the opinion that this is a situation where the applicant simply disagrees with the conclusions drawn by the immigration officer. The officer duly pinpointed the aspects of the applicant's story that led her to make an unfavourable credibility finding. There is no doubt that she was entitled to find that the applicant's story was not in harmony with the preponderance of the probabilities which a reasonable and informed person would readily recognize as credible and plausible: *Muthiyansa* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 17, 103 A.C.W.S. (3d) 809; *Alizadeh* v. *Canada (Minister of Citizenship and Immigration)* (1993), 38 A.C.W.S. (3d) 361, [1993] F.C.J. No. 11 (F.C.A.).

[33] What is more, the officer was not obliged to alert an applicant to her concerns about weaknesses in her evidence that could give rise to implausibilities: see *Farooq* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 867, [2005] F.C.J. No. 1081; *Sarker* v. *Canada (Minister of Citizenship and Immigration)* (1998), 150 F.T.R. 284.

[34] As for the affidavits of the applicant's son, his friend and the applicant's brother, the officer was entitled to attach no probative value to them, on the ground that this evidence was interested and was not corroborated by credible testimony. These findings by the officer were in fact not challenged by the applicant.

[35] At most, the applicant alleged that the officer had erred in not considering her explanations regarding the absence of a seal on the letter from the attending physician which she adduced, and in not alerting her to her concerns about that letter. However, as already mentioned, the weight and probative value of evidence are at the very heart of the officer's expertise, and the mere disagreement of the applicant with the assessment made of that evidence does not warrant the Court's intervention.

[36] Moreover, the officer could give little weight to the letter from the attending physician, not only because it had no letterhead, address or telephone number of the clinic and was addressed [TRANSLATION] "To whom it may concern", but also because the causes of the assault were not credibly established owing to the contradictions, omissions and implausibilities noted in the applicant's testimony. The fact that the applicant may have suffered a sexual assault did not establish the truth of her account, the identity of her assailants and the reasons that would have led them to commit this violation of her physical integrity.

[37] In short, I am of the opinion that the officer's reasons are intelligible and that her assessment of the applicant's credibility falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47.

B. *State Protection*

[38] Counsel for the applicant raised several arguments against the officer's finding that the Salvadoran state could offer the applicant its protection. First, he submitted that she had not considered the particular risk faced by women in El Salvador, even though she had assessed that risk in the context of her decision regarding the H&C application. Yet, in counsel's submission, the evidence shows that women are exposed to a high risk of violence and discrimination, and it would be unreasonable to think that minor changes in the country's policy were likely to result in greater protection for women. He submitted that El Salvador is still one of the world's most violent countries and that the government is still unable to control organized crime.

[39] Mr. Shams also argued that the officer had erred in taking into account the fact that the applicant had not turned to the Human Rights Commission, since the mission of such an organization is not to protect citizens against criminal offences. Lastly, he argued that it was unreasonable to demand that the applicant request the aid of the police, insofar as she claims that the police are infiltrated by members of the FMLN.

[40] In my opinion, these arguments cannot be accepted. Even assuming that the applicant had been able to establish that she was personally targeted by the FMLN, the officer's conclusions regarding the availability of state protection are reasonable and are based on the documentary evidence that was before her. Even though that protection is not perfect, the officer could conclude, in the absence of clear and convincing evidence to the contrary, that the state was able to intervene to guarantee the safety of the applicant.

[41] Contrary to what Mr. Shams submits, the officer properly considered the documentary evidence on the situation of women in El Salvador even if she did not draw from it the conclusions that the applicant would have wished. She considered that the government had set up different mechanisms to provide better protection for its citizens. Although this is not necessarily the finding that the Court would have made, that does not make it unreasonable. The officer clearly examined the evidence that was before her and she did not base her decision on an erroneous finding of fact that she made in a perverse or capricious manner or without regard for the material before her.

[42] It is true that the applicant cannot be blamed for not seeking the aid of the Human Rights Commission, whose mandate is not to protect citizens who fear for their physical integrity. However, she ought at least to have given the authorities of her country the opportunity to come to her aid: see *Galdamez* c. *Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2009 CF 334, [2009] F.C.J. No. 395, at paragraph 19; *Paniagua* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 1085, [2008] F.C.J. No. 1350, at paragraph 8; *Velasquez* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 109, [2009] F.C.J. No. 112, at paragraph 22. The subjective belief that the police were infiltrated by her aggressors, particularly where that conviction is based on no objective evidence, is not sufficient to rebut the presumption that the state is able to protect its citizens, especially where the state in question is democratic and making real efforts to combat corruption and provide security. As Justice Judith A. Snider explained in *Judge* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 1089, at paragraphs 8 and 10:

> [8] The onus is on the Applicant to lead evidence to rebut the presumption that adequate state protection exists. The test is an

> objective one and involves the Applicant _showing that [she] is physically prevented from seeking [her] government's aid or that the government is in some way prevented from giving it_. (*Canada* (*Minister of Employment and Immigration*) v. *Villafranca* (1992), 150 N.R. 232 at 234 (F.C.A.)).
>
> …
>
> [10] In this case, it is clear that the Board heard and understood the Applicant's testimony that she believed that the police were in _cahoots_ with the people for whom she worked. This is a subjective belief; as noted above, the test for whether state protection _might reasonably be forthcoming_ is an objective one. It is not sufficient for the Applicant to simply believe that she could not avail herself of state protection.

[43] I am therefore of the opinion that the officer's finding that the applicant could have availed herself of the protection of the authorities of her country was not unreasonable. Although the situation in El Salvador is undoubtedly not perfect and the crime rate there is high, the applicant nevertheless had a duty to establish through clear and convincing evidence that she could not count on the aid of the police: *Carrillo* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] F.C.J. No. 399. By not taking any steps to obtain that protection, she failed to discharge her onus of proof in this regard.

C. *Unusual, Undeserved or Disproportionate Hardship*

[44] The applicant relied on the documentary evidence of widespread crime and violence in El Salvador, particularly toward women, to submit that she would face disproportionate hardship if she were to make her application for permanent residence from her country. She also submitted that the officer had erred in understating those risks on the ground that there are safer places outside the capital and that the state was making progress in improving the situation.

[45] It is important first of all to note that an application based on H&C considerations is a response to an exceptional situation and cannot bypass the rule that a visa application must be made from outside Canada, except where that requirement would cause unusual, undeserved or disproportionate hardship. The fact that the applicant works full-time, pays her taxes and is well-liked by her friends is therefore not sufficient to warrant granting her permanent residence on that basis: see *Nazim* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 125, [2005] F.C.J. No. 159; *Uddin* v. *Canada (Minister of Citizenship and Immigration)*, 2002 FCT 937, [2002] F.C.J. No. 1222.

[46] The documentary evidence on the situation in a country cannot in and of itself establish the existence of unusual or disproportionate hardship: *Rahman* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 138, [2009] F.C.J. No. 187; *Nazaire* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FC 416, [2006] F.C.J. No. 596. Also, there is no doubt that assessing the situation in an applicant's country is an eminently factual matter and as such must be treated very deferentially by this Court: *Bhango* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 882, [2001] F.C.J. No. 1268; *Fernandopulle* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91, [2005] F.C.J. No. 412.

[47] Having consulted the documentary evidence that was before the officer, I cannot find that her reading of that evidence is selective or unreasonable. Again, the question is not whether the Court would reach the same conclusion, but rather whether her decision is defensible in respect of

the facts that were brought to her attention. As it happens, I have no hesitation in finding that her conclusion is perfectly defensible. Moreover, she was under no obligation, in considering an H&C application, to specify the exact place where the applicant could find refuge in her country.

[48] For all these reasons, I would therefore dismiss both applications for judicial review filed by the applicant. The parties proposed no question for certification and, in my opinion, this case raises none.

## JUDGMENT

**THE COURT DISMISSES** both applications for judicial review filed by the applicant. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Brian McCordick, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-456-09 and IMM-651-09 |
| **STYLE OF CAUSE:** | Quijano v. MCI |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | September 2, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | de MONTIGNY J. |
| **DATED:** | December 1, 2009 |

**APPEARANCES:**

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| Thi My Dung Tran | FOR THE RESPONDENT |

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