

Federal Court



Cour fédérale

**Date: 20100429**

**Docket: IMM-4803-09**

**Citation: 2010 FC 472**

**Ottawa, Ontario, April 29, 2010**

**PRESENT: The Honourable Mr. Justice Near**

**BETWEEN:**

**EMMA GRIZZEL DIAZ HEVIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is a judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 18, 2009, wherein the Board determined that the Applicant is neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27.

[2] For the reasons set out below the application is dismissed.

I. Background

[3] The Applicant is a 30-year-old citizen of Venezuela who entered Canada on December 12, 2007 and made a refugee claim. The Applicant claimed a fear of persecution based on her involvement in political activities in opposition to the government of President Hugos Chaves.

[4] The Applicant claims she was seen as an opponent of the Chavez regime based on her membership in and leadership of a political party known as COPEI and as such both she and her family were targeted by the government. The Applicant claims to have attempted to make a denunciation, but that only one police station would accept her complaint and that she could not list her political activities as the cause of the threats and attacks.

[5] The Applicant left Venezuela and subsequently returned in September 2007. She claims that after her return she received two anonymous threatening letters warning her to stop her work with COPEI in October and November of 2007. The Applicant left for Canada in December 2007.

[6] The Board found that the Applicant had failed to establish with credible or trustworthy evidence that she was a leader in her state COPEI party and that she suffered persecution, harm, and threats based on her political activities.

[7] Specifically, the Board found that:

- The Applicant did not provide sufficient credible or trustworthy evidence in support of her allegation that she was a leader of the COPEI party in her state;
- There were inconsistencies between the Applicant's allegations in her Port of Entry notes (POE) and her Personal Information Form (PIF);
- That the Board could not give weight to the medical evidence as the Board was not satisfied with the Applicant's explanation of inconsistencies with regard to the document's format;
- The Applicant's reavilment to Venezuela undermined the well-foundedness of her fear; and
- The documentary evidence did not support the Applicant's argument that a particular political party threatened and harmed opposition members in 2007 during the period of alleged persecution.

## II. Issues and Standard of Review

[8] The Applicant raises the following issues:

- (a) Whether the Board erred by ignoring or misunderstanding evidence in making its credibility findings;
- (b) Whether the Board's credibility findings were perverse or capricious and not reasonably open to it; and

- (c) Whether the Board erred in failing to assess all the evidence before it in deciding whether the Applicant would face a reasonable possibility of persecution if she returned to Venezuela.

[9] These issues will be assessed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339). As set out in *Dunsmuir* and *Khosa*, reasonableness requires the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

[10] The Court is to demonstrate significant deference to Board decisions with regard to issues of credibility and the assessment of evidence (see *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362; [2008] F.C.J. No. 442 at paragraph 12).

### III. Analysis

#### A. *Issues Related to Credibility*

[11] In essence, the Applicant claims that the Board ignored, misunderstood or failed to assess all the evidence before it and made credibility findings that were perverse or capricious and not reasonably open to it.

[12] The Board determined that the Applicant did not provide credible evidence and that the evidence provided by her was inconsistent. The Board found numerous inconsistencies between the statements made by the Applicant in her POE and PIF. The Board also held that the Applicant had made numerous and unacceptable errors with regard to specific knowledge of the COPEI party, of which she claimed to be a leader.

[13] The Applicant argues that she provided explanations for these inconsistencies at the second day of the hearing while being questioned by her counsel.

[14] While it is open to the Applicant to provide explanations, the Board may consider the response and determine whether it was sufficient (see *Sinan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 87; [2004] F.C.J. No. 188 at paragraph 10). In this case, the Board noted that it preferred the evidence provided on the first day of hearings as the Applicant did not have time to prepare an answer. The Board stated that the Applicant's inability to accurately answer most of the questions it asked with regard to her party undermined her credibility and her claim to be a member and leader of COPEI. The Board's decision was reasonable.

#### B. *Issues Related to the Evidence*

[15] The Applicant states that the Board erred by ignoring, misunderstanding or unreasonably rejecting the evidence before it with regard to the COPEI party. The Applicant argues that relevant

evidence cannot be ignored or misunderstood by the panel in making its findings, relying on *Toro v. Canada (Minister of Employment and Immigration)*, [1981] 1 F.C. 652, Action No. A-281-80, *Padilla v. Canada (Minister of Employment and Immigration)*(1991), 13 Imm. L.R. (2d) 1; [1991] F.C.J. No. 71 (F.C.A.) and *Lai v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 906, Appeal No. A-484-91).

[16] The Board considered the evidence with regard to the persecution of opposition members by the “Bolivarian Circle”. I note that many of the articles cited by the Applicant are recent and not directly related to the period of time the Applicant claims she was persecuted. After reviewing the evidence, the Board held that the documents did not support the Applicant’s claim that the group had been active in persecuting opposition leaders. It is not the role of this Court to re-weigh the evidence. The Board’s decision was reasonable.

[17] In addition, the Board had previously found that the Applicant was not a leader of the COPEI party based on her problematic testimony. Therefore, the Board’s treatment of the documentary evidence with regard to the COPEI party and their membership in Venezuela does not go to the heart of the decision.

### C. *The Issue of Reavailment*

[18] The Applicant argues that the Board ignored her evidence and explanation for leaving and then returning to Venezuela in September 2007. It is her position that she testified at her hearing that

the threats, in the form of two letters, intensified on her return. Therefore, the Applicant argues, the Board's decision that her return demonstrated a lack of subjective fear was unreasonable.

[19] The Respondent argues that the Court has held that the Board may infer an applicant does not have a fear of persecution if they return to or visit their country of nationality (see *Ali v. Canada (Minister of Citizenship and Immigration)*, 112 F.T.R. 9; [1996] F.C.J. No. 558). Therefore, if the Applicant had truly feared for her life, she would not have reavailed herself to Venezuela.

[20] The Board found that the Applicant's reavilment to Venezuela undermined the well-foundedness of her fear. This decision is reasonable even if the threats increased after her return in September 2007. The Applicant's claim was based on the alleged persecution before and after September 2007. Therefore, it was reasonable that the Board would find that her claim to a subjective fear of persecution was undermined by her return to a country that she had previously fled due to persecution. The conduct of the Applicant was inconsistent with the alleged well-founded fear of persecution.

[21] The parties did not raise an issue for certification and none arose.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. this application is dismissed; and
2. there is no order as to costs.

“ D. G. Near ”  
\_\_\_\_\_  
Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4803-09

**STYLE OF CAUSE:** HEVIA v. MCI

  

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** APRIL 20, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** APRIL 29, 2010

**APPEARANCES:**

Richard Addinall FOR THE APPLICANT

Ada Mok FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Richard Addinall FOR THE APPLICANT  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General Canada