Federal Court		Cour fédérale

Date: 20101005

Docket: IMM-968-10

Citation: 2010 FC 991

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 5, 2010

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

JORGE ADELMARO MORALES GONZALEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), dated December 25, 2010, which rejected the applicant's refugee claim and found that he was neither a refugee under section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA.

Background of the application

[2] The applicant, a citizen of El Salvador, worked as business manager for a credit firm. In January 2008, he was forced, under threat of death, to pay $100 per month to members of the Mara Salvatrucha gang, a transnational criminal organization. The applicant paid the amount demanded for the months of January 2008 to August 2008 and refused to pay as of September 2008.

[3] After his refusal to pay the amounts demanded, the applicant and his family were subject to threats and intimidation from members of Mara Salvatrucha. His wife and children allegedly left to live in Honduras and the applicant left his country for Canada on October 5, 2008.

Impugned decision

[4] The Board rejected the applicant's claim on two main grounds. Initially, it analyzed the application under section 96 of the IRPA and found that the applicant did not establish that his fear of persecution was related to one of the five Convention grounds. The Board subsequently analyzed the refugee claim under paragraph 97(1)(*b*) of the IRPA and found that the applicant failed to establish on a balance of probabilities that he was subject to a greater risk of extortion and violence from gangs than the general public was. The Board based its decision in this matter on the principles set out by the Court in *Prophète v. Canada* (*Citizenship and Immigration*), 2008 FC 331, [2008] F.C.J. No. 415.

[5] On the basis of the information contained in the National Documentation Package on El Salvador, the Board found that El Salvador is one of the most dangerous countries in the world,

that extortion by gangs is widespread and that all citizens are subject to a risk of extortion and violence from gangs. The Board also stressed that the applicant himself had acknowledged in his testimony that all citizens are subject to a risk of extortion by gangs, that they are active throughout the country and that members of these criminal organizations do not hesitate to kill those who refuse to pay the money demanded.

Issue

[6] In his memorandum, the applicant alleged that the Board had erred in finding that the applicant was not part of a particular social group within the meaning of section 96 of the IRPA, and that it had also erred in finding that the fear shown by the applicant was a generalized fear, which excluded him from the definition of person in need of protection under section 97 of the IRPA. During the hearing, the applicant's counsel abandoned the first ground.

[7] The only issue to be determined therefore is whether the Board erred by not recognizing the applicant as a person in need of protection on the ground that he was not subject to a greater personal risk than that which the general public was subject to if he were to return to El Salvador.

Standard of review

[8] It is well established in case law that the Board's decision as to the interpretation and application of section 97 of the IRPA is reviewable on a standard of reasonableness: *Perez v. Canada* (*Citizenship and Immigration*), 2010 FC 345, [2010] F.C.J. No. 579; *Marcelin Gabriel v.*

Canada (*Citizenship and Immigration*), 2009 FC 1170, [2009] F.C.J. No. 1545 and *Ventura De Parada v. Canada* (*Citizenship and Immigration*), 2009 FC 845, [2009] F.C.J. No. 1021.

[9] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada defined reasonableness as follows:

> ... reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (para. 47 of the decision).

Analysis

[10] The applicant submits that the Board erred in finding that his fear was a generalized fear experienced by the general public. The applicant submits that he has shown that he was personally targeted by the Maras, that he was subject to extortion, that he agreed to pay the money demanded for eight months and that he was threatened when he refused to continue to pay. The applicant submits that, since then, he has been subject to a personalized risk and that it cannot be considered comparable to that which the general public is subject to. In his memorandum, the applicant also stressed that the nature of his work puts him at a greater risk than the general public is subject to. The applicant supports his allegations by referring to *Martinez Pineda v. Canada* (*Citizenship and Immigration*), 2007 FC 365, [2007] F.C.J. No. 501 and *Hidalgo Tranquino v. Canada* (*Citizenship and Immigration*), 2010 FC 793, [2010] F.C.J. No. 962.

[11] The respondent, however, argues that the applicant's suggestion is not consistent with this Court's case law and that the Board was justified in finding that the risk that the applicant was

subject to was not personalized because it was comparable to that which the entire population of El Salvador was subject to.

[12] With all due respect and however sympathetic I may be to the applicant, I find that the application for judicial review must be dismissed. I think that, in this case, it was not unreasonable for the Board to conclude that the risk of threats and extortion from gangs which the applicant was subject to was the same as that which the general public of El Salvador was subject to.

[13] Paragraph 97(1)(*b*) of the IRPA does not give protection to people who are subject to a risk which others in a country are generally subject to:

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 :
. . .	[…]
(*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.

[14] The Court has ruled a number of times on the concept of personalized risk in circumstances where the risk in question is also faced by the general public or by a significant portion of the population. In *Prophète*, Justice Tremblay-Lamer stated the applicable principles as follows:

> [18] The difficulty in analyzing personalized risk in situations of generalized human rights violations, civil war, and failed states lies in determining the dividing line between a risk that is "personalized" and one that is "general". …
>
> [23] … the applicant does not face a personalized risk that is not faced generally by other individuals in or from Haiti. The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[15] In *Innocent v. Canada* (*Citizenship and Immigration*), 2009 FC 1019, [2009] F.C.J. No. 1243, at para. 67, the Court found that a person who has personally been a victim of crime is not, by that fact alone, a person in need of protection under section 97 of the IRPA. The case of *Acosta v. Canada* (*Citizenship and Immigration*), 2009 FC 213, [2009] F.C.J. No. 270, dealt with facts similar to those in this case in that the applicant had been personally targeted by the Maras in Honduras and had established that the gang was still looking for him. The Court reiterated the principles set out in *Prophète* and concluded that:

> … It is no more unreasonable to find that a particular group that is targeted, be it bus fare collectors or other victims of extortion and who do not pay, faces generalised violence than to reach the same conclusion in respect of well known wealthy business men in Haiti who were clearly found to be at a heightened risk of facing the violence prevalent in that country (paragraph 16).

[16] In *Ventura De Parada*, Justice Zinn reiterated these same principles and stated the following at paragraph 22:

> I agree with my colleagues that an increased risk experienced by a subcategory of the population is not personalized where that same risk is experienced by the whole population generally, albeit at a reduced frequency. I further am of the view that where the subgroup is of a size that one can say that the risk posed to those persons is wide-spread or prevalent then that is a generalized risk.

[17] The same principles were also applied by Justice Boivin in *Perez.*

[18] I understand that the applicant is likely to be subject to extortion and threats again from gangs if he returns to El Salvador, but his risk is comparable to that which the general public is subject to. The fact that he has already been a victim of extortion by the Maras is not sufficient to

make his risk recognized as a personalized risk, because all citizens of El Salvador are subject to a risk of extortion by gangs. The evidence does not support a finding that a person who has already been a victim of extortion by gangs is more likely to again be subject to extortion. Therefore, I consider that the Board's finding is reasonable: it is based on the evidence, is well articulated and falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

[19] The judgments in *Martinez Pineda* and *Hidalgo Tranquino* were rendered in a specific factual context, separate from the factual context of this case, and the Court's findings in those matters cannot be applied in this case.

[20] The parties did not propose a question for certification and none will be certified.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. There is no question to certify.

"Marie-Josée Bédard"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-968-10
STYLE OF CAUSE:	JORGE ADELMARO MORALES GONZALEZ v. MCI
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