

Federal Court



Cour fédérale

**Date: 20101110**

**Docket: IMM-1777-10**

**Citation: 2010 FC 1127**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, November 10, 2010**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**LUIS HERNANDEZ RENDON  
MARIA GUADALUPE RODRIGUEZ GARCIA  
LUVIA IVETTE HERNANDEZ RODRIGUEZ  
ROCIO ALEJANDRA HERNANDEZ  
RODRIGUEZ and  
JOSE LUIS HERNANDEZ RODRIGUEZ**

**Applicants**

**and**

**CANADA (MINISTER OF CITIZENSHIP AND  
IMMIGRATION)**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (the Board) in which the applicants were refused refugee protection. In a decision written

by member Viviane Ducheine, the claims in files MA7-07334, MA8-02088, MA8-029089, MA8-02090 and MA8-02091 were rejected.

[2] The Board's decision focused mainly on the issue of the applicants' credibility. In that regard, the Board pointed out numerous disparities, inconsistencies and contradictions in the evidence filed and testimonies heard. In view of explanations that it considered insufficient, the Board was of the opinion that the contradictions and omissions were significant and therefore rejected the refugee protection claims.

[3] At the judicial review stage, the Court must discern the decisive issue or issues and identify the applicable standard of review. In this case, the issue is the assessment of the applicant's credibility. Since the case law has determined the applicable standard of review and there is no need for the Court to reassess that issue (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 57), the applicable standard of review for the Board's credibility assessment is the reasonableness standard (*Mxumalo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 413; *Wang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1153). This is also confirmed by paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and the interpretation given to this paragraph in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12.

[4] The Court, in its analysis, must consider the justification for and the intelligibility and reasonableness of the Board's decision (*Dunsmuir*, at paragraph 47). The powers of the Court do

not extend to reassessing the evidence filed before the Board (*Zrig v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178).

[5] It is important to note the inconsistencies and omissions identified by the Board in its decision:

- a. The submission that police operation “Tractor” was carried out without the knowledge of the principal applicant’s supervisor.
- b. An information request (MEX102992F) yielded no information on an operation called “Tractor” carried out around 2002. A letter attesting to that fact was sent to the applicant on November 20, 2008. No reasonable explanation was provided regarding that decisive fact.
- c. The applicant’s attributing to the translator an error as to the number of persons arrested in operation “Tractor”. The applicant testified that seven criminals were arrested. His narrative indicated [TRANSLATION] “five or six”, and he attributed that disparity to a translation error.
- d. The applicant’s failure to clarify an important element in his narrative in support of his claim, specifically, that he was ordered to free the criminals on the day of the operation.
- e. The nature of the threats was not clearly indicated in his PIF, but at the hearing the applicant insisted that they were death threats. This disparity is attributed to the translator.
- f. The lack of a satisfactory explanation for the blame laid on the translator and on the fact that his narrative was not reread to him. At the beginning of the hearing,

the applicant did not indicate that his narrative was incomplete or that he had something to add. The elements related to the translation were considered adjustments in his testimony.

- g. The applicant's move to Pueblo and to Chiapas is not stated in his PIF, despite this form's requirement for complete information.
- h. The submission that Mr. Gonzalez, the chief of police, came to find the applicant in Chipas and was seen by the applicant but did not recognize him was considered an adjustment in his testimony.
- i. The applicant's explanations for the disparities in the number of assailants, his trip to the hospital and his wife's behaviour during these events were considered unsatisfactory. The contradiction between the testimonies of Ms. Hernandez Rodriguez and Mr. Hernandez Rendon was considered significant.
- j. The applicant took the opportunity to amend his PIF. However, he did not include information that was essential to his claim, preferring to bring it up at the hearing. The Board drew a negative inference from that fact.
- k. The applicant was confronted with those contradictions and omissions at the hearing and failed to provide satisfactory explanations in the eyes of the Board and this Court.

[6] Credibility assessment is a difficult task, which the Board is most certainly in the best position to perform. The Court cannot substitute its own assessment, especially not on the basis of a written file and the submissions made at the hearing. In the context of judicial review, the Court must assess the file as a whole and analyze the reasonableness of the Board's decision. In

this case, the Board made an effort to raise significant omissions and contradictions. At the hearing, the applicants had the opportunity to present their submissions.

[7] The Board made its decision and decided that the applicant was adjusting his testimony and that there were significant omissions. The Board noted omissions in the applicant's PIF which it considered significant. In light of those observations, the Court must recognize that the Board seriously analyzed the evidence and testimonies and made a justified and clear decision on the applicants' credibility. The Board's decision was reasonable.

[8] The Court is not satisfied that the Board erred in any manner warranting this Court's intervention. Therefore, there is no reason to interfere with the Board's findings or to refer the matter back to a differently constituted panel.

[9] The parties have proposed no question for certification.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

- The application for judicial review be dismissed; and
- No question be certified.

“Simon Noël”

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Judge

Certified true translation  
Sarah Burns

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

**DOCKET:** IMM-1777-10

**STYLE OF CAUSE:** LUIS HERNANDEZ RENDON ET AL.  
v.  
MCI

**PLACE OF HEARING:** Montréal

**DATE OF HEARING:** November 5, 2010

**REASONS:** NOËL J.

**DATED:** November 10, 2010

**APPEARANCES:**

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