

Federal Court



Cour fédérale

Date: 20110524

Docket: IMM-5250-10

Citation: 2011 FC 577

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 24, 2011

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

URIEL MORALES MARTINEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION OF CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (panel) submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, by Uriel Morales Martinez (applicant). The panel found that the applicant was not a refugee or a person in need of protection and therefore rejected his refugee claim.

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[2] The applicant is a citizen of Mexico who was born on May 6, 1977. Starting in May 2003, he lived in the Federal District and worked as a taxi driver.

[3] On June 13, 2006, a man behaving like a judicial police officer purportedly got into the applicant's taxi. He apparently confined, beat and robbed him. The applicant filed a complaint with the Office of the Public Prosecutor that same day.

[4] On August 12, 2006, the same individual and an accomplice allegedly got into the applicant's taxi; they beat him and threatened him with death if he did not withdraw his complaint. Two days later, the applicant apparently tried to withdraw his complaint, but the Office of the Public Prosecutor purportedly told him that this was not possible and that the matter had to follow the due course of the law.

[5] On November 14, 2006, the same individuals apparently intercepted the applicant to ask him why he had not withdrawn his complaint. One of the criminals was wearing an Office of the Public Prosecutor badge bearing the name "Edgard Reyes S.". The criminals allegedly continued to follow and threaten the applicant. He apparently stayed with his parents for a few days and then with other relatives. The criminals purportedly showed up at his parents' home and his parents apparently told them that they did not know the whereabouts of their son.

[6] On January 28, 2007, the applicant left Mexico for Canada. He claimed protection on April 23, 2007.

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[7] The panel rejected the refugee claim on the ground of the applicant's lack of credibility.

[8] With respect to the incident on June 13, 2006, the panel found that it was not credible that the individual was able to [TRANSLATION] "look like a judicial police officer", as the applicant's explanation in this regard was halting and somewhat vague. Furthermore, the individual had been wearing jewellery, jeans, a shirt, and no police badge.

[9] The panel noted several inconsistencies between the applicant's Personal Information Form (PIF), the Office of the Public Prosecutor's report, the immigration officer's notes taken during the interview on April 23, 2007, and the applicant's testimony at the hearing. The panel noted that the applicant failed to mention in his testimony that Mr. Reyes had apparently stolen a bag containing 700 pesos, a hydraulic jack and his car keys as indicated in the police report. The applicant was given the opportunity to address this three times, but offered no explanation for his omission. He also testified that the individual had not taken the keys contrary to what was indicated in the report and explained that he had probably been tense when making that statement.

[10] The panel also found it implausible that a judicial police officer would have felt threatened by the general description in the complaint ("38 years old, brown skin, thin body type, short black hair"). The panel noted that there was no mention in the Office of the Public Prosecutor's report of

the fact that the applicant had believed that the individual was a judicial police officer, and it questioned why this individual had felt so threatened by the complaint.

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[11] The only issue is whether the panel's decision is reasonable. The applicable standard of review for credibility findings is reasonableness. At paragraph 47 of *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada noted that "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."

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[12] The applicant starts by drawing attention to the presence in the tribunal record of the complaint and the preliminary investigation report, and argues that it is settled law that documents issued by foreign governments are presumed to be authentic unless the evidence demonstrates otherwise or if their authenticity is questioned. The applicant contends that the panel did not consider these documents. The respondent replies that, even without questioning the report's authenticity (which the panel did not do), the panel could validly cast doubt on the applicant's credibility to the point of rejecting his entire account. I agree with the respondent. The panel in no way questioned the report's authenticity and it clearly took the report into account because it compared the details set out in it to the applicant's testimony. The fact that the panel did not find the

applicant's account to be credible does not mean that it did not believe in the authenticity of the report, but simply that it questioned the account contained in it.

[13] Moreover, the applicant complains that the panel focussed on the secondary aspects of his account to search for contradictions that were not central to the refugee claim.

[14] After reviewing the evidence and hearing counsel for the parties, it appears to me that the numerous gaps, contradictions and inconsistencies indicated by the panel are clearly based on the evidence, namely, the preliminary investigation report, the content of the applicant's PIF and his testimony at the hearing. Under the circumstances, it is not up to this Court to substitute its own assessment for the panel's, since the applicant failed to demonstrate that the panel had based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it (see paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7).

[15] The applicant's general lack of credibility seems to me to be well established, and this is therefore sufficient to dismiss his application for judicial review without the need to consider the additional argument contained in his supplementary memorandum.

[16] Consequently, the application for judicial review is dismissed.

[17] I am in agreement with counsel for the parties that this is not a case for certification.

JUDGMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board that the applicant was not a refugee or a person in need of protection according to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5250-10

STYLE OF CAUSE: URIEL MORALES MARTINEZ v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION OF CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 12, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: May 24, 2011

APPEARANCES:

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Marilyne Trudeau FOR THE RESPONDENT

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