

Federal Court



Cour fédérale

Date: 20110615

Docket: IMM-6954-10

Citation: 2011 FC 702

Toronto, Ontario, June 15, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

JOSE MARIA SERRANO LEMUS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Board dated October 26, 2010 in which it was determined that the Applicant's claim for refugee protection was rejected. I am dismissing this application.

[2] The Applicant is an adult male citizen of El Salvador. He, together with his wife and children sought refugee protection in Canada. His wife was the principal Applicant, he and the children made claims under his wife's principal application.

[3] The Applicant's claim was dismissed on two grounds. The first ground was that of exclusion under Article 1F of the 1951 Refugee Convention. In this respect the Refugee Protection Board made a finding that the Applicant was subject to exclusion. Nonetheless the Board went on to consider whether the Applicant would be subject to risk under section 97 of the *Immigration and Refugee Protection Act*, SC 2000, c.27 as amended (IRPA). In considering the section 97 matter the Board considered not only the Applicant's claim but also that of his wife who was the principal Applicant, and the children. The Board concluded that the risk alleged was generalized and therefore exempted under section 97(1)(b)(ii) of IRPA.

[4] The Applicant raises, with respect to the Board's decision as to exclusion, that the reasons given by the Board were inadequate. The Applicant argues that this is a matter of procedural fairness and not a matter of reasonableness. On this ground, even on a standard of procedural fairness, I find that the reasons provided are adequate. The Board fairly sets out the relevant facts, it discusses the relevant law including cases relied upon by Applicant's Counsel, it fairly sets out the Applicant's argument, and clearly states its conclusion. As directed by the Supreme Court of Canada in *Ryan v. Law Society (New Brunswick)* [2003] 1 S.C.R. 247 the reasons do withstand "a somewhat probing examination." I dismiss the application on this ground.

[5] The Applicant raised the issue of section 97 of IRPA which was considered and determined by the Board against the Applicant as well as against the principal Applicant, his wife, and his children.

[6] There is some jurisprudence to the effect that a Court will consider this issue since a favourable determination may result in the permanent stay of an Applicant's exclusion. However the Federal Court of Appeal in *Sing v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 held that such consideration should only be given where an Applicant is a principal Applicant and others claiming under that application, such as children, might be affected. This is not the case here. In *Sing* Malone J.A. for the Court wrote at paragraph 70:

Having determined that the Applications Judge did not err in finding that the Board's conclusions on the exclusionary question were reasonable, the adult appellants are excluded from the definition of Convention refugee. The recent decision of this Court in Xie has determined that once excluded under Article 1F(b), claimants are not entitled to have their inclusionary claims determined. However, the present facts are distinguishable from those in Xie because in this appeal the children's actions were not subject to Article 1F(b) and their derivative claims must be determined. Accordingly, it was proper for the Board to proceed to conduct an inclusionary analysis with respect to all five of the appellants in order to determine if the children's derivative claims could be successful.

Therefore I will not consider the section 97 issue.

[7] The application will be dismissed. Respondent's Counsel did not request a certified question. Applicant's Counsel requested certification directed to consideration of mitigation in dealing with crimes committed long ago. The facts of this case do not provide an adequate basis for such certification. The application is dismissed without certification.

JUDGMENT

FOR THE REASONS provided;

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6954-10

STYLE OF CAUSE: JOSE MARIA SERRANO LEMUS v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 13, 2011

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

DATED: JUNE 15, 2011

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