

Federal Court



Cour fédérale

Date: 20110616

Docket: IMM-5255-10

Citation: 2011 FC 710

Toronto, Ontario, June 16, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**IVAN LUNA ROJAS,
SERGIO ANDRES LUNA NINO,
ANDREA JULIANA LUNA NINO,
OLGA LUCIA NINO PUENTES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application is a challenge to a decision of the Refugee Protection Division in which the Applicants' claim for protection was rejected on the principal ground of a global negative credibility finding.

[2] The key factual "allegations" which found the Applicants' claim are stated by the RPD as follows:

The principal claimant [Ivan Luna Rojas] and his wife, Olga Lucia Nino Puentes, are 41 and 46 years old, respectively. In 1997, he worked in Cali as pastor for a church of the Apostolic Church of Jesus Christ. That year, he was approached by two National Liberation Army (ELN) men, who wanted to use his church as a safe haven for wounded comrades. He refused for fear of the authorities. They threatened him and took the church money he had. Later, they returned and threatened to harm his child, Sergio. They came almost every month to take the church money he had. He confided these problems to his supervisor pastor, who advised him to wait out the situation. In March 1998, he requested a transfer to Bucaramanga, but the church organization could only offer him a post in Floridablanca, near Bucaramanga. At that time, he received an invitation for a church convention in Florida, U.S.A. With this letter, he and his family were able to obtain visitors' visas to the U.S.A. He sold his car and properties he owned in Cali, quit work and moved his family to his wife's parents' home in Bucaramanga. However, he received calls from unidentified people saying he could not escape, that he and his family had been found.

(Decision, para. 3)

[3] The RPD rejected the evidence just quoted on the basis of the following implausibility findings:

The determinative issue in this case is credibility and, in relation to that, the well-foundedness of the claimants' fear. The panel finds the principal claimant's story not to be wholly credible in its material aspects due to the following reasons.

The principal claimant had said that when the ELN requested he let them use the church to house their wounded, he refused, and they left after making threats and taking the church money with them. The panel finds it hard to believe and, in fact, incredible that the ELN had not simply taken over the church building, if they truly needed it for their wounded comrades. Furthermore, the principal claimant said they kept coming back periodically to take the church money, which was about equivalent to \$40, \$100, or \$150 Canadian dollars each time. He admitted also that the church was in the middle of Cali, where there were a lot of businesses. The panel finds it incredible that the ELN would waste their time on robbing him of church money which was a pittance compared to what they could get if they extorted the businesses in the city. From these, the panel does not

believe, on a balance of probabilities, that he had been or is a target of the ELN.

Furthermore, he said that the ELN had warned him against reporting them to the authorities. However, he had said that he knew the ELN had infiltrated the police force. The panel does not find sense in these apparently contradictory statements. If the ELN had, in fact, infiltrated the police force, what did they have to fear then if he had reported his ELN problems to police? The ELN infiltrators could simply squash or stymie any resulting investigation. The panel, therefore, draws a negative inference from these, leading the panel to disbelieve his claim that he was targeted or is a target of the ELN.

After he had left the Cali church, he admitted that another pastor had taken over the church there. When asked if the replacement pastor had experienced the same or similar ELN problems, he had answered, “I don’t know.” With the apparent interest the ELN had exhibited by periodically coming by, particularly to take the church money, the panel asked if the ELN had not simply gone to the church headquarters in Bucaramanga and extorted the headquarters of money, as they would likely have more there than at a little church. He said, “I don’t think so.” The panel finds it did not make sense that the ELN kept coming by his church for the little money he had, but did not target the church headquarters where they apparently could get more money. From this, the panel does not believe, on a balance of probabilities, his story that he had been extorted of church money and made a target of the ELN.

[Emphasis added]

(Decision, paras. 8 – 10)

[4] The well established standard against which the RPD’s implausibility findings are to be judged is stated by Justice Muldoon in the decision of *Istvan Vodics v. Minister of Citizenship and Immigration*, 2005 FC 783:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible.

Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

In addition, I confirm my finding as expressed in *Istvan Vodics v. Minister of Citizenship and Immigration*, 2005 FC 783:

It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[Emphasis added]

[5] In my opinion, it is readily apparent that the RPD in rendering the decision under review disregarded the law with respect to making implausibility findings. As a result, I find that the decision under review is not defensible on the facts or law and is, therefore, unreasonable.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5255-10

STYLE OF CAUSE: IVAN LUNA ROJAS, SERGIO ANDRES LUNA NINO, ANDREA JULIANA LUNA NINO, OLGA LUCIA NINO PUENTES v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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REASONS FOR ORDER AND ORDER BY: CAMPBELL J.

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