

Federal Court



Cour fédérale

Date: 20111007

Docket: IMM-89-11

Citation: 2011 FC 1146

Ottawa, Ontario, October 7, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**PAUL ULLOA ARGUETA
CLAUDIA VERONICA MENESES
VALLADOLID
PAUL MAXIMILIANO ULLOA MENESES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review arises from a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated December 14, 2010, which found the applicants to be neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (IRPA).

[2] The three claimants are citizens of Mexico. Their claim is based on persecution by a Commander of the *Procuraduria General de Justicia* (PGJ). The Board determined that there was no credible basis for the claims pursuant to subsection 107(2) of the *IRPA*. The applicants seek an order setting aside the decision and remitting the matter for reconsideration by a differently constituted panel. The application is granted.

The Facts

[3] The applicants are a Mexican family. Together they lived with Paul Argueta's brothers in the state of Puebla in Mexico. In February 2005, his youngest brother started working as a driver for a Commander of the PGJ of the state of Puebla. The Commander's name was Marcos Moreno Bravo (referred to as Bravo).

[4] Bravo would often visit their house and drink alcohol. On December 25, 2005, the male applicant returned home to find his son locked in his room, and his wife yelling for help. Bravo had beaten her and tried to sexually assault her. The male applicant confronted Bravo and there was a fight. In this fight Bravo cut the male applicant on his arms with a knife and cut the female applicant on her hands. During the struggle a pot of boiling water fell on the female applicant's legs and she suffered severe burns.

[5] The female applicant called the police during the struggle. When the police arrived they removed Bravo from the house.

[6] The applicants allege that Bravo began stalking the female applicant shortly thereafter, following her both at work and at home. In January 2006 the applicants alleged that Bravo vandalized their home and then phoned them threatening that he would never leave them alone until he received sexual favours from the female applicant.

[7] The applicants state that they approached the Public Ministry to file a report but they would not accept it, saying that the person in charge of accepting reports was not available until the following day. The applicants say that they went to another office in a different district but were told they could only file a report in their own district. They went back to their own district office and, after waiting for four hours, were unable to file a report.

[8] The applicants state that they continued receiving threatening phone calls from Bravo. They moved to a new house in February 2006 but Bravo discovered their new address and telephone number.

[9] The evidence before the Board was that the applicants continued to receive threatening phone calls and, in consequence, the applicants quit their jobs and moved to the State of Mexico in July 2006, where they stayed with a family member. According to the applicants, Bravo tracked them to the State of Mexico and began calling them at their family member's house. At this point, they decided to flee to Canada.

[10] They attempted to make another report to the Public Ministry in August 2006. This time, they made a report but stated that the officials refused to name Bravo as the perpetrator despite the applicants specifically naming him.

[11] The applicants' Personal Information Form (PIF) states that they consulted a friend while living in the State of Mexico and that he advised them to flee to Canada. The applicants provided a letter from this friend, which states that he is a lawyer and was first consulted by the applicants in January or February of 2006, and that he accompanied the applicants when they made the report to the Public Ministry in August, 2006.

[12] The applicants arrived in Canada on August 29, 2006 and claimed refugee status the following day.

The Decision Under Review

[13] Credibility was the determinative issue in the Board's decision. The Board made a number of credibility findings. Credibility findings are, of course, within the Board's discretion, and this Court pays deference in this regard. While some of the Board's findings of credibility are maintained and fall within the range of acceptable, possible outcomes, others do not. As these findings are material to the decision and cannot be severed from the finding as a whole, the application is granted. The Court has no comfort that, but for these errors, the outcome would be the same.

[14] The Board noted that the applicants did not provide any media reports to corroborate Bravo's existence. The Board member stated that it was within his specialized knowledge as a member who has adjudicated other Mexican claims to know that the media in Mexico are not shy about reporting on crime, and that given Bravo's alleged profile, media documents regarding him would reasonably have been available to corroborate his existence. The Board found that the applicants' failure to provide corroborating media documents undermined their credibility. The female claimant explained that she did not pay attention to the media but the Board did not find this explanation satisfactory.

[15] The Board found that the applicants gave conflicting and confusing testimony on their efforts to report Bravo to the authorities. For example, the PIF states that when the applicants initially attempted to make a police report they were refused a copy. On the first day of the hearing the female applicant simply stated that they were told to come back the following day. The female applicant forgot to mention that they were refused a copy of the report. Later, the female applicant explained that she was nervous and had confused these events with the events surrounding their attempts to file a report after their house was robbed in January 2006. The Board found that these events should not have been difficult to recall, even if they were several years ago. The Board concluded that the female applicant realized she was providing conflicting timelines and made up evidence as she went along in an unsuccessful attempt to reconcile the timelines.

[16] The Board found that the applicants' account of the 2006 robbery was inconsistent. The PIF and the female applicant's testimony indicated that the robbers had already gone when they arrived home. The denunciation to the police indicated that the male applicant got out of the car when they

returned home and saw the robbers who fled while threatening him. The Board found that the applicants did not offer any explanations for these discrepancies which cannot be reconciled.

[17] The Board noted that the female applicant did not mention being burned by scalding water during the Record of Examination interview, nor did she mention having any scars. The failure to mention this incident undermined her credibility.

[18] The applicants' PIF states that they moved to the State of Mexico in July 2006 and that Bravo began threatening them again after they moved. However, the Record of Examination states that they moved in February 2006 and that Bravo's last call to them was in June 2006. The female applicant stated that the June date referred to the last call in Puebla. The Board did not accept this explanation and expected the applicants to remember that Bravo had threatened them more recently.

[19] The Board found that some of the supporting documents were problematic and further undermined the credibility of the applicants. For example the medical report detailing the female applicant's injuries focuses on the burns caused by the scalding water and did not mention that she was also cut by a knife. When questioned, she explained that the cuts were not serious and did not require stitches, which was why the burns were the focus of the report. The Board did not accept this explanation finding that, if the cuts were bad enough to leave scars these injuries would have been obvious to the doctor, and would have been mentioned in the report. The medical report regarding the male claimant only mentions one injury, but in his PIF and oral testimony, the male claimant stated that he suffered multiple wounds to both arms which left scars.

[20] The Board concluded that these discrepancies undermined the authenticity of the documents, and the applicants' credibility.

[21] In the PIF and in their oral testimony, the applicants stated that they resigned from their jobs because of Bravo's threats and moved away from Puebla in July 2006. However, the female applicant provided a letter from her former employer which gave her date of resignation as July 2005 – before the problems with Bravo. The female applicant stated that there must be a mistake in the letter and that she could provide an updated letter. The Board found that there was very little information in the letter and it should be expected that the date of resignation include the correct year.

[22] In the PIF, the applicants stated that they had spoken to a friend who told them to leave the country. In oral testimony the female applicant said that they had spoken to him initially as a friend, but confirmed that they first told him what was happening after they moved to the State of Mexico (July 2006). The female applicant later clarified that this friend was a lawyer and that they formally retained him as a lawyer after they moved to the State of Mexico.

[23] The applicants presented a letter from the lawyer. According to the letter the applicants called him after their house was robbed in January 2006 and he advised them to move in February 2006. He also states that he subsequently advised them to move out of state in July 2006 and that he assisted them with the denunciation that was filed in August 2006.

[24] The Board found that the discrepancies between the letter and the female applicant's testimony could not be reconciled. Even if the lawyer was not formally retained the Board would have expected the lawyer's involvement to be mentioned and explained in the PIF. The Board concluded that on a balance of probabilities the applicants forged this document to bolster their claim.

[25] Based on the discrepancies and omissions in the applicants' claim, the Board concluded that it simply did "not believe that, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually happened". The Board concluded that pursuant to section 107(2) of the *IRPA*, there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

The Issues

[26] The central issue in this application is whether the Board's credibility findings are reasonable. Subsumed within this issue is the question whether the Board erred by ignoring or misunderstanding relevant evidence before it in making its credibility findings.

Analysis

[27] While I have highlighted the areas of inconsistency in testimony the female applicant's evidence, was, in all major respects, consistent with the PIF narrative and her previous testimony. The only inconsistency was with respect to the first police report. The Board cannot make an adverse credibility finding without having regard to the totality of the evidence and without considering the applicants' explanations.

[28] The Board's negative inference based on the lack of media reports to corroborate the existence of Bravo is unreasonable. There was no evidence that Bravo was a high profile officer who would be mentioned in the media. There was no evidence of consistent media coverage of crime in Puebla such that Bravo's name would necessarily appear. The Board cannot draw a negative credibility inference based on no evidence. The existence of media reports is not reasonably within the Board member's specialized knowledge: *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784.

[29] The Board member simply asserted that it was within his specialized knowledge that there would have been media reports about Bravo. Mexico has a population of 112 million people and a well-recognized serious problem with crime and corruption. While the Board member might have some knowledge of how crimes are generally reported in Mexico it seems very unlikely that he could know whether one specific individual had attracted media attention.

[30] In *Wen Yi Xu et al v The Minister of Citizenship and Immigration*, March 4, 2011, IMM-4394-10, Justice Paul Crampton set aside a decision predicated on the finding that there should have been corroborating media reports. The Board member concluded that if the applicant's wife had been murdered and her two children shot and injured, that this would have been reported in the media. I note that in quashing the decision Justice Crampton held that "in the absence of any evidence to suggest that such events would ordinarily be reported in the media in Belize, the Board's conclusion was sheer speculation". That observation applies with equal force in this case.

[31] It was unreasonable for the Board to discount the medical report because it did not mention cuts to the female applicant's hands. The applicant testified that the cuts were small and did not require stitches. This was a reasonable explanation. It is also unreasonable for the Board to discount the medical report with respect to the male applicant because it describes an injury from a sharp cutting object, while the applicant testified he suffered multiple cuts. The report does not exclude the conclusion that there was more than one cut and there was no evidence that it was not a genuine document.

[32] With respect to the medical reports, the applicants rely on *Mahmud v Canada (MCI)*, [1999] FCJ No 729, for the proposition that it was unreasonable to conclude that a document contradicted an applicant's evidence on the basis of what it did not say, rather than what it did say. The Court noted that when an applicant swears the truth of certain allegations this creates a presumption that the allegations are true and, that on the face, the documents support the claimant's allegations in the absence of evidence to contradict the allegations.

[33] The applicants also argue that it was unreasonable for the Board to draw a negative credibility inference from the fact that the female applicant did not mention the scalding incident in the Record of Examination. During this interview the applicants testified that they were unaware of procedure, did not speak English and were helped only by the secretary of the first lawyer.

[34] The applicants emphasize that the Board erred by making negative inferences because of omissions made in the Record of Examination. I agree that this principle applies in the circumstances of this application. The refugee intake form is not intended to provide all the details

of the claim. *Bayrami v Canada (MCI)*, [1999] FCJ No 1167 (TD) and *Kanapathipillai v Canada (MCI)*, [1998] FCJ No 1110 (TD) stand for the proposition that members must be careful to distinguish between cases where the claimant contradicts his or her initial statement, and cases where the claimant simply adds further details. Adverse inferences should not necessarily be drawn when claimants simply add details consistent with the original statement.

[35] Similarly, in *Sawyer v Canada (MCI)*, 2004 FC 935, Justice Eleanor Dawson held that it was unreasonable of the Board to reject the applicant's explanation that the port of entry officer told him he did not have to explain all the details. Justice Dawson pointed to the Minister's operations manual which instructed officers only to ask about admissibility and eligibility, and not to ask claimants about the details of their claim.

[36] The Board's finding that the letter from the lawyer was forged to bolster their claim is unreasonable. The applicants testified that the lawyer was a family friend who knew about their problems but they did not formally ask him for help until they moved to Mexico City, in July or August of 2006. Before this, they spoke to him as a friend only. There was no reason for his involvement to be mentioned in the PIF. The letter corroborates the events described by the applicants and the Board had no reason to disbelieve it. There was simply no basis for the Board's conclusion that this letter was forged to bolster their claim.

[37] The applicants assert that the female applicant's evidence was in all respects consistent except for the initial evidence concerning the first contact with the police. The police report, the

medical reports and the letter from the Mexican attorney corroborated their testimony. The Board's finding that there was no corroborative evidence was thus unsustainable.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-89-11

STYLE OF CAUSE: PAUL ULLOA ARGUETA
CLAUDIA VERONICA MENESES VALLADOLID
PAUL MAXIMILIANO ULLOA MENESES v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: July 21, 2011

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

DATED: October 7, 2011

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