

Federal Court



Cour fédérale

**Date: 20120619**

**Docket: IMM-8536-11**

**Citation: 2012 FC 776**

**Toronto, Ontario, June 19, 2012**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**RONALD ANTONIO MORENO MANIERO  
GIANEYA SAO KING RAMOS LEE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Court finds that there are three significant errors in this decision and as such it is unreasonable. The applicants' claims for protection must be redetermined.

**Failure to Examine on the Documentary Evidence**

[2] The Board's decision begins by noting inconsistencies concerning the date of the car accident between Mr. Maniero and Ivan, the police officer who is the alleged agent of

persecution. Whereas the applicants assert in their Personal Information Forms (PIF) that the car accident occurred on October 25, 2007, two of the four police reports filed in support state that the accident occurred in 2005. This discrepancy was only noticed by the Board after the hearing; it was not put to the applicants. The Board stated that it was simply “noting the inconsistency.” However, later the Board writes: “Irrespective of my credibility concerns due to inconsistencies in which the initial incident and Ivan occurred whether it was in 2005 or 2007 ... .” I agree with the applicants that notwithstanding the assertion by the Board that it was simply noting the inconsistency, it appears to have weighed into the Board’s view of the credibility of the applicants. This view is further supported because the Board goes on to speculate that a trip to Canada in 2005 was prompted by this accident. Thus, despite the assertion that the conflict in dates was just being noted, the Board appears to have used that discrepancy against the applicants without seeking any clarification from them.

[3] The Board also rejects a letter signed by the applicants’ Venezuelan lawyer, in part because the lawyer states in that letter that he arrived at the scene of the accident, whereas the Board noted that there is no mention of him in any of the police reports. This concern or conflict in the documentary evidence was not put to the applicants by the Board. In fact, the Board asked no questions of the applicants about any of the documentary evidence they submitted.

[4] In my view, in the circumstances of this case, natural justice required that the Board, before discounting or relying on documentary evidence to question the credibility of the applicants, was required to recall the applicants and put these concerns directly to them.

### **Subjective Fear**

[5] The Board found that the applicants had no subjective fear of the agent of persecution. A major fact used to reach that conclusion was the conduct of Mr. Maniero between the date of the car accident and the date on which he was shot at by the agent of persecution. I find this to be unreasonable. After the shooting the applicants left Venezuela within two weeks. Delays after the shooting to the date of claiming refugee status are obviously relevant. Using the prior period, in the circumstances here is of marginal, if any, relevance.

[6] Prior to the shooting incident, the applicants sought legal assistance, made police reports and relocated, all in an effort to distance themselves from the agent of persecution. The implication of the Board's decision is that if they were then in fear, rather than take these steps, they ought to have fled immediately and sought refugee protection. This is perverse. It is contrary to the body of Canadian and international law that requires claimants to take all reasonable steps to seek protection in their home state before seeking refugee protection. The shooting was clearly an intervening event that significantly changed their assessment of their situation.

### **State Protection**

[7] Lastly, the Board found that there were other authorities that the applicants should have approached to seek state protection, namely the Ministry of the Interior which it says "appears to be dealing with the issues of police misconduct in Venezuela." The evidence of the applicants as to efforts they made to seek state protection was the following. Mr. Maniero approached the police himself on four occasions; without result. He retained the services of a lawyer who

followed up with the police and also contacted the Public Ministry and the Attorney General on his behalf; without result. Furthermore, he testified that it was on his lawyer's advice that he fled Venezuela after the shooting because of the previous lack of action by these authorities.

[8] Canadian courts have never held that a refugee claimant must exhaust every possible avenue of protection before fleeing the country. The test is only that all "reasonable" efforts must be made. In light of the numerous avenues that had been taken by these applicants, the resounding lack of action, and most particularly the fact that their own lawyer, who presumably knows the available avenues to seek, recommends flight, it is unreasonable for the Board to have found that they failed to prove that they had exhausted all reasonable avenues of protection before fleeing Venezuela.

### **Conclusion**

[9] This decision must be set aside. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed, the decision of the Refugee Protection Division of the Immigration and Refugee Board is set aside, the applicants' claim for protection is referred to a differently constituted panel, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-8536-11

**STYLE OF CAUSE:** RONALD ANTONIO MORENO MANIERO ET AL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 6, 2012

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

**DATED:** June 19, 2012

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