

Federal Court



Cour fédérale

Date: 20120525

Docket: IMM-8148-11

Citation: 2012 FC 640

Toronto, Ontario, May 25, 2012

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

**BETWEEN:**

**LAURA GUADALUPE  
ENRIQUEZ MARTINEZ  
MARIA DEL ROSARIO  
ENRIQUEZ MARTINEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The Applicants dispute the Refugee Protection Division of the Immigration Refugee Board's [Board] finding with regard to their lack of credibility and lack of evidence in support of their testimony. This Court, in *Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 95, serves as a specific response thereto:

[39] Having found credibility issues, the Board then looked for documentary evidence. The jurisprudence holds that where a claimant's story is found to be

flawed because of credibility findings, the lack of corroboration is a valid consideration for the purposes of further assessing credibility (see *Matsko* and *Bin* cited above). The Board concluded there was insufficient corroborating documentary evidence. Firstly, the Applicant did not provide the Board with documentary evidence showing that she wrote the entrance examination. The Board refused her explanation that she did not know that such evidence would be required for the hearing. The Board reasonably made a negative inference since this document could have supported her allegation as to why she became depressed and turned to Falun Gong practice. [Emphasis added].

## II. Judicial Procedure

[2] This is an application for judicial review of a decision of the Board, dated October 27, 2011, wherein, the Applicants were found to be neither “Convention refugees” nor “persons in need of protection” pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## III. Background

[3] The principal Applicant, Ms. Laura Guadalupe Enriquez Martinez, and her sister, Ms. Maria del Rosario Enriquez Martinez, are citizens of Mexico.

[4] The principal Applicant obtained a diploma in Law in August, 2008. She alleges that she was persecuted by Mr. Ricardo Salazar Contreras, a lawyer, with whom she was in a romantic relationship from September to November 2006. The principal Applicant worked at the office of Subprocuraduria General de la Republica.

[5] The principal Applicant alleges that her persecutor became abusive when she refused to provide him with sensitive information from the Subprocuraduria General de la Republica. After the end of their romantic relationship, Mr. Contreras harassed the principal Applicant and her sister. A

friend of the principal Applicant was also found murdered in his bar in January 2009, the day after the principal Applicant threatened to tell the media about Mr. Contreras' activities.

[6] The Applicants tried to obtain protection by filing a complaint at the Public Ministry; however, the agent, who worked for Mr. Contreras, threatened them and advised them to desist.

[7] The principal Applicant also tried to hide but Mr. Contreras found her and she was taken and beaten. Mr. Contreras wanted the principal Applicant to work with him and threatened to kill her sister if she would not. The principal Applicant then decided to work for him gratuitously from November 2008 to January 2009. She was also beaten.

[8] In January 2009, the principal Applicant alleges that she was taken to a house, beaten and left in a locked room. Her sister was kidnapped at the university and taken to the house and the principal Applicant could hear her sister scream. Mr. Contreras then ordered that the sister be killed but, at the last minute, dropped her on the road instead.

[9] The sisters attempted to report the kidnapping to the police but the police told them that, as no ransom was claimed, they were not victims of a kidnapping.

[10] The principal Applicant's sister returned to her university. On February 27, 2009, she was threatened by a man on behalf of Mr. Contreras. The same day, when she was at home, Mr. Contreras beat her as he wanted to locate her sister.

[11] The principal Applicant fled to another city and stayed with friends. She arrived in Canada on May 26, 2009 and her sister arrived on March 31, 2009.

#### IV. Decision under Review

[12] The Board found that the Applicants were not credible and that some parts of their testimony lacked details. It also noted inconsistencies in the principal Applicant's testimony, namely, that she worked as a volunteer to complete her diploma and would therefore not have had access to (sensitive) information at the Ministry.

[13] The Board also questioned the principal Applicant's claim that she was in a romantic relationship with Mr. Contreras because of the lack of corroborative evidence, such as photographs.

[14] The Board drew a negative inference from the fact that the Applicants did not provide the report of their visit to the Veracruz Institute for Women in Mexico [Women's Institute]. The Board was not satisfied with the letter submitted from the Women's Institute which states that the report's request was made subsequent to a lengthy period and refers to its confidential policy in respect to such matters.

[15] The Board rejected two psychological reports submitted by the Applicants because it found them to be based on their Personal Information Form [PIF]. The Board then concluded that the Applicants had not provided any medical evidence to support their allegation.

[16] The Board also found the decision of the principal Applicant's sister to return to university after almost having been killed to be inconsistent.

[17] The Board noted the lack of evidence of the Applicants' travel as they were trying to hide.

[18] The Board found that the Applicants had not provided any evidence that state protection is unavailable.

#### V. Issue

[19] Is the Board's decision reasonable?

#### VI. Relevant Legislative Provisions

[20] The following legislative provisions of the *IRPA* are relevant:

##### **Convention refugee**

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

##### **Définition de « réfugié »**

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors

*(b)* not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### **Person in need of protection**

### **Personne à protéger**

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

*(a)* to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

*a)* soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

*(b)* to a risk to their life or to a risk of cruel and unusual treatment or punishment if

*b)* soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

*(i)* the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

*(i)* elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

*(ii)* the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

*(ii)* elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

*(iii)* the risk is not inherent

*(iii)* la menace ou le

or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

#### **Person in need of protection**

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

#### **Personne à protéger**

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

### VII. Analysis

[21] The Board's findings were not only reasonable but formulated in detail. The Applicants did have the burden of proof to demonstrate a well-founded fear of persecution which their testimony and evidence did not provide. Consequently, the Applicants had to provide some measure of corroborative evidence of worth which they also did not.

[22] The Applicants failed to rebut the presumption of state protection.

[23] Questions of fact or of mixed fact and law are reviewed under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[24] Furthermore, as stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708:

[15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show “respect for the decision-making process of adjudicative bodies with regard to both the facts and the law” (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

[25] It is trite law that the Board, as the trier of fact, is in a better position to assess credibility. As stated in *Aguebor v (Canada) Minister of Employment and Immigration*, [1993] FCJ No 732, (QL/Lexis) (FCA):

**4** There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review ... [Emphasis added].

[26] The Applicants dispute the Board’s finding with regard to their lack of credibility and lack of evidence in support of their testimony. This Court, in *Chen*, above, serves as a specific response thereto:

[39] Having found credibility issues, the Board then looked for documentary evidence. The jurisprudence holds that where a claimant’s story is found to be flawed because of credibility findings, the lack of corroboration is a valid consideration for the purposes of further assessing credibility (see *Matsko* and *Bin* cited above). The Board concluded there was insufficient corroborating documentary evidence. Firstly, the Applicant did not provide the Board with documentary evidence showing that she wrote the entrance examination. The Board refused her explanation that she did not know that such evidence would be required for the hearing. The Board reasonably made a negative inference since this document could have supported her allegation as to why she became depressed and turned to Falun Gong practice. [Emphasis added].



[27] Having noted the lack of corroborative evidence, the Board questioned the veracity of the Applicants' testimony. The Board used the term "confusing" to describe the testimony of the principal Applicant with respect to her description of her employment and her access to files (Board's Decision at para 23). This finding is supported by the testimonial evidence as is evident from the following exchange with the principal Applicant's counsel (wherein, even with her own counsel, she is suddenly at a loss of words in regard to her oral narrative):

**COUNSEL:** So what... I mean from my perspective what I see is that he was able to get the file without you. He told you he always gets what he wants.

**PRINCIPAL CLAIMANT:** Yes.

**COUNSEL:** And you stated yourself in your personal information form narrative that he was able to go to other people that he was connected to within your workplace. Yes?

**PRINCIPAL CLAIMANT:** Yes.[ph]

**COUNSEL:** So my question then is, ... if he was able to do these things without your assistance why did he keep coming back at you? Do you understand my question? He keeps asking you for your assistance even though, at least he seems to be showing you he does not really need it. Do you have any idea why he would do that?

(Tribunal Record [TR] at pp 898-899).

[28] In addition, a discrepancy of credibility exists between the PIF and the testimony in respect of what the principal Applicant was asked to do. In one, she states she was asked to destroy the files and, in the other, to give the files to Mr. Contreras. That demonstrates the fact that several key factors in the narrative are not in harmony when both the testimony in the transcript and the PIF is analyzed.

[29] The Board also drew a negative inference with respect to the lack of corroborative evidence to illustrate the relationship in which the principal Applicant was involved; although the Board did not, in its reasons, mention the fact that counsel for the Applicants had explained that the Applicants had given him a photo showing the principal Applicant with Mr. Contreras which he forgot to submit (TR at p 891). A picture would not, in and of itself, prove the testimony from the perspective of the principal Applicant as to the character of the relationship she had with Mr. Contreras.

[30] The Court respects the deference due to the trier of fact. It was for the Applicants to provide, at the very least, adequate substantial answers, if not, corroborative evidence, to have their narrative determined to be credible.

[31] With respect to the letter from the Women's Institute that was rejected by the Board, a review of the evidence reveals that the report cannot be provided because of its confidentiality policy. It is not the role of this Court to re-assess the evidence. The Board did consider the facts in its conclusion to the effect that the Applicants requested the report; however, at a very late date, long subsequent to the initial written information which the Applicants submitted to the Board.

[32] Moreover, the Board highlighted the lack of corroborating evidence to demonstrate the Applicants' travel and their medical treatment in Mexico in addition to their behaviour subsequent to the alleged persecution.

[33] Finally, the criticism of the Applicants that the Board did not proceed to an analysis of the country conditions is unwarranted due to its lack of credibility finding. This Court also simply

comments that an internal flight alternative was not truly considered by the Board due, again, to the lack of credibility finding which disposed of that need.

#### VIII. Conclusion

[34] For all of the above reasons, the Applicants' application for judicial review dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicants' application for judicial review be dismissed.

No question of general importance for certification.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-8148-11

**STYLE OF CAUSE:** LAURA GUADALUPE ENRIQUEZ MARTINEZ  
MARIA DEL ROSARIO ENRIQUEZ MARTINEZ  
v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 24, 2012

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

**DATED:** May 25, 2012

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