

Federal Court



Cour fédérale

**Date: 20140821**

**Docket: IMM-6108-13**

**Citation: 2014 FC 814**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Montréal, Quebec, August 21, 2014**

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

**BETWEEN:**

**JOSE ANTONIO MENENDEZ PARRA  
MARIA JOSE MADRIGAL DE MENENDEZ  
MARCO JAVIER MENENDEZ MADRIGAL  
DIEGO ENRIQUE MENENDEZ MADRIGAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Preliminary remarks

[1] The tribunal's decision lacks an inherent logic and is therefore unreasonable. The facts in the record were taken entirely out of context; the chronology and the establishment of the facts were completely misunderstood.

## II. Introduction

[2] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated August 12, 2013, rejecting the applicants' claim for protection as refugees or persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

## III. Facts

[3] The applicants are citizens of El Salvador who made a claim for refugee protection. The principal applicant, Jose Parra, worked for a telecommunications company named Telesis, which specialized in radio communications. It is among the leading companies in the field in El Salvador.

[4] The principal applicant was responsible for sales and for security systems at Telesis.

[5] In June 2011, the principal applicant was instrumental in winning a contact with the organized crime unit of El Salvador's national police (DECO) for Telesis. He is also alleged to have concluded a radio communication contract with a company named Hotesa in

February 2012. The owner of that company, Jose Adan Salazar Umana [Salazar], and his associates allegedly offered the principal applicant \$250,000 for access to the national police's systems. The principal applicant states that he refused to co-operate with Salazar and that he was assaulted in March 2012 for refusing to co-operate.

[6] In April 2012, the principal applicant was allegedly informed by a police inspector that one of his co-workers had been murdered in connection with the contract with Hotesa. The principal applicant and his family left town immediately.

[7] On April 28, 2012, two unidentified individuals allegedly tried to kidnap the principal applicant's son, who was saved when security guards intervened.

[8] The applicants left El Salvador on April 30, 2012, entered Canada illegally on May 7, 2012, and claimed refugee protection the day after their arrival.

#### IV. Decision under review

[9] The RPD found that the applicants were not credible. The RPD noted, among other things, that it was implausible that neither the principal applicant nor anybody else at Telesis knew that Salazar was one of the most important and notorious criminals in El Salvador. The RPD did not believe that a company renowned for the reliability and security of its communication system would have taken on such a person as a client. Salazar had been under investigation by the national police for many years. Since the RPD did not believe there was a

contract with Hotesa, it therefore found that it was not credible that the principal applicant had been pressured by Salazar.

[10] The RPD also noted that the principal applicant contradicted himself regarding the time he spent at home after he was attacked in March 2012. The applicant confirmed several times during the hearing that he stayed at home for two weeks without going out. However, the evidence in the record showed that the principal applicant had filed a complaint with the police the day after his attack. The RPD found that the principal applicant's explanation for this contradiction was insufficient: "Yes, maybe . . . when I was recuperating . . . She (my wife) took me but I wasn't there long" (at para 23). It noted that the principal applicant was unable to spontaneously relate the sequence of events after his hospital stay following his attack. This undermined his credibility yet again.

[11] Finally, the RPD noted that the applicant had failed to mention his hospital stay in his Personal Information Form [PIF]. The RPD drew a negative inference regarding the applicant's credibility from this significant omission, which combined with the other credibility findings led the RPD to conclude that the applicants were not credible. The RPD therefore concluded that the applicants had not established the required elements in support of their refugee protection claim.

V. Issue

[12] Did the RPD err in concluding that the applicants were not credible?

VI. Relevant legislative provisions

[13] Sections 96 and 97 of the IRPA apply in this case:

<p>Convention refugee</p> <p>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,</p> <p style="padding-left: 40px;"><i>(a)</i> 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</p> <p style="padding-left: 40px;"><i>(b)</i> 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.</p> <p>Person in need of protection</p> <p>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</p> <p style="padding-left: 40px;"><i>(a)</i> to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p>	<p>Définition de « réfugié »</p> <p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> 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;</p> <p style="padding-left: 40px;"><i>b)</i> soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p> <p>Personne à protéger</p> <p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> 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;</p>
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(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

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

(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,

(iii) the risk is not inherent 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.

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.

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

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

(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) la menace ou le 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.

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. Positions of the parties

[14] The applicants allege that the RPD erred regarding several facts in their story and did not consider evidence that corroborated their story. They state that the RPD had no reason to refuse to believe that Telesis had contracts with DECO and Hotesa.

[15] The applicants also submit that the RPD erred in trying to trick the principal applicant into contradicting himself regarding the length of time he stayed at home after the attack in March 2012. The principal applicant submits that RPD could have simply looked at the copy of the police complaint that had been presented in evidence to confirm that he had left the house. The principal applicant did not try to hide the fact that he had gone out.

[16] Similarly, the principal applicant submits that the RPD erred in faulting him for failing to mention his hospital stay in his PIF. The principal applicant insists that he did not pay attention to his PIF when he filled it out and that this is no reason to find him not to be credible.

[17] The respondent submits that it was reasonable for the RPD to find that the significant implausibilities in the record seriously undermined the principal applicant's credibility. The respondent states that it is completely implausible that the principal applicant would be unaware of the affiliations of his co-contracting party, Salazar, whose activities had received particularly extensive media coverage. The respondent submits that it is just as implausible that the Salvadoran government would have compromised its communications by allowing Telesis to enter into an agreement with the head of one of the biggest cartels in the country.

[18] Regarding the circumstances surrounding the principal applicant's alleged assault in March 2012, the respondent submits that the RPD gave him several opportunities to explain his situation. It was only when he was confronted with the fact that he went out to file a complaint with the police the day after his attack that he stated that he only meant that he had not left the house for social reasons, such as going out to shop or to work. The respondent submits that these *ex post facto* explanations are clearly designed to tailor his story. The RPD had more than enough reason to conclude that there was a contradiction that undermined the credibility of the principal applicant and his narrative.

[19] Finally, the respondent submits that the RPD was justified in finding that the principal applicant's failure to mention his hospital stay in his PIF further undermined his credibility. The PIF clearly stated that he had to mention any medical care he received in connection with the incidents on which he based his refugee protection claim.

#### VIII. Issue

[20] Is the RPD's decision reasonable with regard to the lack of credibility of the principal applicant, on whom the other applicants based their case?

#### IX. Analysis

[21] As a result of certain findings of the RPD that are clearly wrong, according to the narrative in the record, and that were made with absolutely no understanding of the case as a



whole, this Court has no choice but to refer the case back to a differently constituted panel for rehearing.

[22] The RPD seems to have remained fixated on the fact that the principal applicant left his house after he was attacked, and the RPD failed in its duty to reasonably assess the factors as a whole.

[23] Telesis, the company for which the principal applicant worked, was not a [TRANSLATION] “security” company but a telecommunications company. Hotesa is a company that owns hotels. Telesis had business ties with Hotesa, not with Salazar directly.

[24] The relationship between the principal applicant and Salazar is not at all clear from the way it is described in the RPD’s decision; moreover, the RPD’s findings are completely divorced from the context of the narrative and the inherent logic of the case.

[25] The principal applicant’s narrative was not considered as a whole.

[26] The RPD made errors regarding its understanding of the contract between Telesis and Hotesa, the company with which the principal applicant had problems.

[27] An error was also made regarding the understanding of Telesis and its activities. Specifically, Telesis had to verify the [TRANSLATION] “credit record” of the company it did

business with, not the company's shareholders. In addition, Hotesa had previously been a client of Telesis.

[28] It was not only the relationship between the two companies that was misunderstood; the RPD also completely misunderstood the companies themselves, as entities, and their businesses.

[29] In addition, the police complaint is proof in and of itself and was misunderstood by the RPD.

[30] It appears that the principal applicant was entrapped by the questions put to him at the hearing.

[31] The case itself seems to have been taken out of the logical context based on the chronology and the establishment of the facts.

#### X. Conclusion

[32] For all the above reasons, the applicants' application for judicial review is allowed, and the matter is referred back to a differently constituted panel for reconsideration.

#### Obiter

[33] As an example, there is no need to look further than the recommendations of the Cliche Commission to see how people can be blinded without understanding the situation in which they

find themselves in the context of their work. They often cannot see the forest for the trees, which obscure from view the most obvious truths, truths which only become known after the fact, rather than while the corrupt situation is unfolding.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the applicants' application for judicial review be allowed and that the matter be referred back to a differently constituted panel for redetermination, with no question of general importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Michael Palles

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

**DOCKET:** IMM-6108-13

**STYLE OF CAUSE:** JOSE ANTONIO MENENDEZ PARRA, MARIA JOSE MADRIGAL DE MENENDEZ, MARCO JAVIER MENENDEZ MADRIGAL, DIEGO ENRIQUE MENENDEZ MADRIGAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** AUGUST 20, 2014

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** AUGUST 21, 2014

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