

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120124

Docket: A-236-11

Citation: 2012 FCA 25

**CORAM: EVANS J.A.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

JOSE VALLE LOPES

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Toronto, Ontario, on January 24, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on January 24, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120124

Docket: A-236-11

Citation: 2012 FCA 25

**CORAM: EVANS J.A.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

JOSE VALLE LOPES

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 24, 2012)

SHARLOW J.A.

[1] We have not been persuaded that the judgment of the Federal Court (2010 FC 403), or the decision of the Immigration Division of the Immigration and Refugee Board that was under review in the Federal Court, was based on any error of law or any factual finding that was not reasonably open to the Board.

[2] Nor are we persuaded that the record discloses any basis upon which this Court should reverse the finding of the Federal Court that the proceedings before the Board were not fatally flawed by an abuse of process, bad faith, or the incompetence of counsel.

[3] The certified question reads as follows:

Did the Board err in rejecting the defence of duress by applying a purely objective standard of assessment, that being the assessment that because of the multiple deaths that had occurred, the risk to the applicant of his own death was irrelevant to the assessment?

[4] This question is not dispositive because it is based on an incorrect premise. The Board did not use a purely objective standard to assess the defence of duress. Nor is it a serious question of general importance because it is focussed on the particular facts of this case. Accordingly, we decline to answer the question.

[5] The appeal will be dismissed.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-236-11

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE O'KEEFE
DATED MAY 20, 2011, DOCKET NO. IMM-240-09).**

STYLE OF CAUSE: JOSE VALLE LOPES v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 24, 2012

**REASONS FOR JUDGMENT
OF THE COURT BY:** EVANS, SHARLOW & LAYDEN-
STEVENSON J.J.A.

DELIVERED FROM THE BENCH BY: SHARLOW.J.A.

APPEARANCES:

Timothy Wichert FOR THE APPELLANT

Martin Anderson FOR THE RESPONDENT
Susan Bhattacharyya

SOLICITORS OF RECORD:

Jackman and Associates FOR THE APPELLANT
Barrister & Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada