Date: 20060410

Docket: IMM-9766-04

Citation: 2006 FC 391

BETWEEN:

JORGE LUIS RESTREPO BENITEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] The Applicant is a citizen of Columbia. He fled that country on the 8th of July, 2002, and arrived in Canada the same day, having transited through Panama and Cuba. He made a claim to Convention refugee or like protection in Canada on the day of his arrival. He based his claim on an alleged well-founded fear for his life at the hands of the ELN, a guerrilla organization in Columbia.

[2] In a decision dated the 3rd of November, 2004, the Refugee Protection Division (the "Board") of the Immigration and Refugee Board rejected the Applicant's claim for

protection. The Applicant sought judicial review of that decision. These reasons follow the hearing of a portion of the Applicant's application for judicial review.

BACKGROUND

[3] In 1992, the Applicant moved to the municipality of San Pablo in the Department of Bolivar in Columbia and commenced a business based on buying and selling of cattle, as well as on the production and selling of cheese. Early in 1998, the ELN began to extort money from the Applicant in the amount of roughly US $250.00 per month.

[4] The Applicant's business began to decline in 2001 to the point where he could no longer support himself and at the same time pay extortion money to the ELN. He feared for his life. He flew to Costa Rica in July of 2001, with family members, and acquired false Costa Rican passports with the intent of using them to come to Canada. He transited to Mexico where his passport was determined to be false. His entry to Mexico was rejected. He was deported back to Columbia, arriving in October, 2001.

[5] The Applicant continued to meet the ELN extortion demands every month until December of 2001. Effective with the new year 2002, the extortion demands increased fourfold. For January of 2002, the Applicant alleges that he only paid the ELN the original extortion amount equivalent to US $250.00 and promised to make up the difference. He never did make up the difference.

[6] At the same time, that is to say in January, 2002, paramilitaries began to demand protection money from the Applicant. He made only one (1) monthly payment to the paramilitaries. He was not pressed by them for further payments.

[7] The ELN began to make up for the shortfall in extortion monies paid by the Applicant by stealing cattle from his farm.

[8] By early June, the Applicant concluded that his position was untenable and that his life was in danger. His flight to Canada followed.

THE DECISION UNDER REVIEW

[9] In its reasons for decision, the Board wrote:

> The panel finds that the claimant is not a Convention refugee as he does not have a well-founded fear of persecution. The panel finds that if removed to Columbia the claimant would not face a risk to his life or a risk of cruel and unusual treatment of punishment beyond the risk faced generally by other individuals in Columbia. No evidence was adduced that could lead the panel to find that substantial grounds exist to believe that he will be subjected personally to a danger of torture.

[10] The Board determined that the Applicant's testimony before it was not consistent with the background to his claim, as summarized above, that is reflected in his Personal Information Form Narrative. It went on to detail the inconsistencies that it identified and the various explanations for those inconsistencies provided at hearing by the Applicant, each of which the Board rejected. The Board concluded its reasons with the following brief paragraph:

> Having considered all the evidence before it the panel finds that it lacks credible evidence on which to find the claimant's life would be at risk or that he would be at risk of cruel and unusual treatment or punishment in Columbia beyond the risk

> faced generally there by all persons as a result of violence attendant on the ongoing civil war there.

THE ISSUES

[11] Procedural issues surrounding "reverse-order questioning" or the Chairperson's Guideline 7 were raised on behalf of the Applicant. Those issues were bifurcated from the substantive issues on this application for judicial review and were heard by a different judge. They will be the subject of separate reasons and a separate order. The sole remaining issue argued before me was presented on behalf of the Applicant in the following terms: "Did the Tribunal err by making unreasonable findings with respect to the applicant's credibility and the well-foundedness of his fear?"

ANALYSIS

a) Standard of Review

[12] The Board's determination regarding the Applicant's credibility and thus the well-foundedness of his claim is, I am satisfied, a determination to which great deference should be given. Thus, the appropriate standard of review is patent unreasonableness. In *Chowdhury v. Minister of Citizenship and Immigration*[1], my colleague Justice Noël wrote at paragraph [12] of his reasons:

> The decision of the RPD as to the Applicant's entitlement to refugee protection is primarily based on the credibility of his allegations. It is well established that the standard of review as to the assessment of credibility of an applicant by the RPD is patent unreasonableness (see *Thavarathinam v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1469, [2003] F.C.J. No. 1866 (F.C.A.), at para. 10; *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) at para. 4).

b) Credibility

[1] 2006 FC 139, February 7, 2006, [2006] F.C.J. No. 187 (not cited before the Court).

[13] Counsel for the Applicant urged that the Board engaged in a microscopic review of the Applicant's Personal Information Form narrative and his testimony, intent to the point of over-zealousness in identifying discrepancies and then in questioning the Applicant at the hearing with respect to perceived inconsistencies and in rejecting the Applicant's explanations. In substance, the Board concluded that many of the Applicant's explanations were simply implausible.

[14] In response, counsel for the Respondent referred me to the often relied upon decision of *Aguebor v. Canada (Minister of Employment and Immigration)*[2] where Justice Décary, for the Court, wrote at paragraphs 3 and 4 of his reasons:

> It is correct, as the Court said in *Giron*, that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or "credibility".
>
> 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. ….
>
> [citation omitted]

[15] I have reviewed the Applicant's Personal Information Form Narrative and the transcript of the hearing before the Board against the written submissions of counsel and his oral submissions at hearing before me. On the basis of that review, I am satisfied that the decision under review was open to the Board, against a standard of review of patent unreasonableness.

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[2] [1993] F.C.J. No. 732 (F.C.A.) (QL).

CONCLUSION

[16] In the result, this application for judicial review will be dismissed, to the extent that it is based on the sole issue discussed above. Counsel for the Respondent, when consulted at the close of hearing, raised no question for certification. By contrast, counsel for the Applicant proposed certification of a question relating to the appropriateness of what he characterized as "over-zealousness" on the part of the Board in pursuit of discrepancies or implausibilities in the totality of an applicant's evidence. I am satisfied that, on the facts of this matter, taking into account the totality of the record and counsels' submissions at hearing, this matter turns on its particular facts. No serious question of general importance that would be determinative of an appeal of my conclusion herein is warranted. In the result, no question will be certified.

"Frederick E. Gibson"
JUDGE

Ottawa, Ontario,
April 10, 2006

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-9766-04
STYLE OF CAUSE:	JORGE LUIS RESTREPO BENITEZ and MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 13, 2006
REASONS FOR ORDER:	GIBSON J.
DATED:	April 10, 2006

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