

Date: 20050415

Docket: IMM-8297-04

Citation: 2005 FC 511

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 15, 2005

PRESENT: THE HONOURABLE MR. JUSTICE HARRINGTON

BETWEEN:

**ANDRES ALEJANDRO RAMIREZ CEVALLOS
CARMEN GERARDA RAYGADA TRELLES
DANIELA EUGENIA RAMIREZ RAYGAGA
DIEGO ANDRES RAMIREZ RAYGAGA**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This involves a principal applicant and his family, who are all Peruvian nationals. The Refugee Protection Division of the Immigration and Refugee Board (the panel) determined that

the applicants were neither Convention refugees under section 96, or persons in need of protection under section 97 of the *Immigration and Refugee Protection Act*, S.C. (2001) c. 27.

FACTUAL BACKGROUND

[2] Mr. Cevallos and his family claim to fear persecution due to their political opinions and their membership in a social group, the family.

[3] Andres, the principal applicant, was the chair of a neighbourhood committee in Talarita, in the city of Piura, Peru. He alleges that because he defended the rights of the neighbourhood's inhabitants and he reported a representative for misappropriation of funds and abuse of power, he was persecuted by the representative and the police collaborating with him. The representative reportedly promised some money to the committee for improvements in the community, and he allegedly kept that money for his own ends.

[4] He alleges being threatened by the representative, detained and tortured by the police from December 17 to 19, 2002, on false charges. Fearing for his life and that of his family, the applicant obtained passports for his children and family, and left for Lima in January 2003. As they had been tracked by the authorities, the applicants decided to leave Peru. They headed to the United States and arrived at the Canadian border on March 19, 2003, where they claimed refugee status.

IMPUGNED DECISION

[5] During the hearing before the panel, it was determined that there were too many inconsistencies in the applicant's oral testimony to believe the merits of his story.

[6] The panel determined that the applicant's explanations about the activities that he had organized in his community as chair of the neighbourhood committee in Talarita were [TRANSLATION] "difficult, vague, and hesitant".

[7] The explanations of the funds granted by the authorities were implausible. According to the panel, it would be implausible for the authorities to give financial assistance to a neighbourhood committee against which they themselves continuously set up obstacles to prevent it from legally existing.

[8] Some companies made donations to his committee to help with the necessary equipment to undertake the services offered. When asked to explain why the companies would give donations to an organization that is not legally registered, the applicant testified that companies wanted to help the community and that they probably received tax exemptions. The panel did not find his explanation of the tax system to be satisfactory.

[9] Nor did the panel believe the applicant's testimony that he reportedly had a petition signed by 200 people from the neighbourhood to the representative in support of his request for financial assistance, and that he allegedly kept no copy for his records.

[10] The applicant's lawyer in Peru went to the DIRCOTE (special antiterrorism unit) office for the first time as a friend to learn about the applicant's detention, and for the second time as counsel to receive information on the subject's case. The panel deemed that it was inconsistent for the lawyer to show up at the police station without identifying himself as a lawyer, and furthermore, the applicant had not submitted any letter or report indicating the result of his lawyer's efforts, leaving the tribunal to believe that he had not been detained or tortured by DIRCOTE.

[11] When invited to explain why the new chair of the committee reportedly mentioned the incidents that had occurred with the representative in a letter addressed to the applicant after he arrived in Canada, the applicant supposedly gave no explanation.

[12] The applicant had also testified that he decided to leave Peru in February 2003, whereas he had obtained passports for his children in January, indicating that he did not have any subjective fear.

[13] These findings by the panel are clearly errors.

ANALYSIS

[14] The Court can accept the argument that some insignificant or decisive errors cannot invalidate the decision as a whole (*Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437 (QL)).

[15] However, it is difficult for the Court to accept that any finding submitted by the panel to support its refusal of a refugee claim is inconsistent with the evidence on record. The Court must intervene in such cases, as set out in *Kathirkamu v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 592 (QL), “The Board’s decision is filled with so many errors and so few of its credibility findings can be supported that the decision must be sent back for rehearing from a differently constituted panel.”

[16] Some examples of inconsistencies that were not supported by the evidence include: (1) the applicant testified that the committee would occasionally offer free breakfasts for underprivileged children on Sundays, which is contrary to what the panel understood, that the breakfasts were offered in the morning before school; (2) the applicant also testified that his committee organized street barbecues that families from the neighbourhood attended and that the profits from those barbecues went to families in the same neighbourhood. However, the applicant did not say that the families that participated in the barbecues were the same families that were aided by the fundraising. (3) The applicant testified that he received the passports for his children a month before his departure from Peru because he planned on leaving, but decided to move to Lima to see if the situation improved. He gave a clear explanation for the one-month delay before he left for Canada. (4) Finally, when pushed to answer why companies made donations to his committee, he explained that they wanted to help the community and that they probably received tax exemptions. The panel seemed to have forgotten that the application was a refugee claim and not a review of the Peruvian tax system.

[17] Not only must we presume that an applicant tells the truth (*Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.)), but there is not a single shred of evidence to justify the panel's refusal to believe Mr. Cevallos. When a decision is made in the absence of evidence to support it, it is a patently unreasonable error.

ORDER

The Court orders that the application for judicial review be allowed. The Board's decision is dismissed, and the matter is sent back for rehearing by a differently constituted panel so that it can make a new decision on the matter. No serious questions of general importance are certified.

"Sean Harrington"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8297-04

STYLE OF CAUSE: ANDRES ALEJANDRO RAMIREZ CEVALLOS
CARMEN GERARDA RAYGADA TRELLES
DANIELA EUGENIA RAMIREZ RAYGAGA
DIEGO ANDRES RAMIREZ RAYGAGA AND
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: APRIL 15, 2005

APPEARANCES:

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