

Date: 20051205

Docket: IMM-3519-05

Citation: 2005 FC 1643

Ottawa, Ontario, December 5, 2005

PRESENT: THE HONOURABLE MR. JUSTICE HARRINGTON

BETWEEN:

**ANDREA QUIROZ TRUJILLO
SERGIO ALBERTO MESA OSORIO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

HARRINGTON J.

[1] The events that took place on January 26, 2001 are of paramount importance in this case. Andrea Quiroz Trujillo is from Colombia; she was not granted refugee status. Accordingly, this Court must rule on the application for judicial review filed by the applicants, who are husband and wife.

[2] Over the course of several years, the applicant's family – especially her father – was targeted by the Revolutionary Armed Forces of Colombia (FARC) to the point that the father left the house in order to hide from them. This case deals with extortion accompanied by threats of death and bodily harm, among other things. During this period, Andrea had left to study at the University, but had come back home in the meantime. On January 26, 2001, there was a telephone call for her father. As her father was absent, she took the call for him. The caller, who was probably a member of FARC, threatened the applicant's father and suggested that he should leave. Andrea got hold of her father, and they went to the police station, where Andrea signed a written complaint.

[3] The panel determined that Andrea was not credible, focusing particularly on the evidence of her written complaint. The panel noted that the complaint did not bear the official seal, and said that it had doubts regarding the contents of the complaint.

[4] As regards the seal, the report had been stamped by a police officer. Andrea said that the copy she submitted to the panel was the copy she had received, and that she did not have another copy. She stated that, if the panel had doubts about the authenticity of the document, it could verify the truth of her claim with the police.

[5] As regards the contents of the complaint, the panel was concerned with the fact that the applicant's father's presence at the police station had not been noted in the complaint, and that the father had not signed his daughter's complaint. The Court wonders how the father could have signed a document testifying to a telephone call he had not witnessed. Why then should the report note his presence at the police station?

[6] The panel's decision to reject the applicant's claim was based on the fact that it did not believe the applicants' allegations. Although the panel determined that the applicant's testimony contained contradictions, other than those concerning the complaint to the police, that adversely affected her credibility, in justifying a determination of lack of credibility those contradictions cannot be separated from the incident that took place on January 26, 2001.

[7] In justifying the rejection of the claim, the panel based its decision on the Federal Court of Appeal ruling *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] F.C.J. No. 604; [1990] 3 F.C. 238 (C.A.). This decision refers to the old *Immigration Act*, R.S., 1985, c. I-12. At the time, the Convention Refugee Determination Division included first-level and second-level panels. Applicants had to establish that their claims were credible at the first level before proceeding to the second level. If they did not, their claims could be dismissed. In writing for the Court, Mr. Justice MacGuigan states in paragraphs 7 and 8:

¶ 7 The concept of "credible evidence" is not, of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a tribunal linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to "country reports" from which nothing about the applicant's claim can be directly deduced), a tribunal's perception that he is not a credible witness effectively amounts to finding that there is no credible evidence on which the second-level tribunal could allow his claim.

¶ 8 I would add that in my view, even without disbelieving every word an applicant has uttered, a first-level panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim on which a second-level panel could uphold that claim. In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony. Of course, since an applicant has to establish that all the elements of the definition of Convention refugee are verified in his case, a first-level panel's

conclusion that there is no credible basis for any element of his claim is insufficient.

[8] While the principle asserted by Mr. Justice MacGuigan was noted and discussed by Mr. Justice Denault in *Foyer v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1591 (QL) and Mr. Justice Evans of the Federal Court of Appeal in *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2002] 3 F.C. 537; 2002 FCA 89, it is still important to consider the context of a decision. We should note that the facts in this case are different. The reasoning in the above-mentioned decisions does not apply, because the applicant's credibility did not rest solely on her testimony and the conditions in the country. Despite its interpretation of her testimony, the panel had before it extrinsic evidence in the form of the police report, which enabled it to launch an in-depth investigation into the application.

[9] As the panel suggested that the documents were fraudulent, it had the burden of investigating this matter. There is a rebuttable presumption that such documents are valid (*Osipenkov v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 59 (QL); 2003 FCT 56. Accordingly, it would have been appropriate for the panel to conduct an investigation to this effect (see *Sitoo v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1850 (QL); 2004 FC 1513, *Quintero v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 686 (QL); 2004 FC 565).

[10] It may be that the police report is not credible. However, there are no facts before this Court supporting such an allegation. It may also be that Andrea never received a phone call on January 26, 2001. However, it is irrational to come to such a conclusion simply because her father did not sign the complaint at the police station. In the circumstances surrounding this case, the panel's decision is patently unreasonable.

[11] Although the applicants raised a question for certification at the hearing, that question must be supported when it is under appeal. As the application is allowed, it is not necessary to certify a question in this case.

ORDER

1. The application for judicial review is allowed.
2. The matter is sent back to a differently constituted panel of the Immigration and Refugee Board for rehearing and redetermination on the merits of the applicants' refugee claim.

“Sean Harrington”

Judge

Certified true translation
Magda Hentel

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3519-05

STYLE OF CAUSE: ANDREA QUIROZ TRUJILLO AND SERGIO
ALBERTO MESA OSORIO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 23, 2005

REASONS FOR ORDER: The Honourable Mr. Justice Harrington

DATED: December 5, 2005

APPEARANCES:

Michel Le Brun FOR THE APPLICANTS

Marie-Claude Paquette FOR THE RESPONDENT

SOLICITORS OF RECORD:

MICHEL LE BRUN FOR THE APPLICANTS
Counsel
Montréal, Quebec

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec