

Date: 20080114

Docket: IMM-2296-07

Citation: 2008 FC 26

BETWEEN:

**Juan Rafael BARAJAS BERNAL
Gloria Concepci GOMEZ MORONES
Elias BARAJAS GOMEZ
Sara Isabel BARAJAS GOMEZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) that the applicants are not Convention refugees or persons in need of protection, as defined under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are citizens of Mexico who came to Canada on July 14, 2006, and filed refugee claims a few days later. The claims were based on the risks alleged by the principal applicant, Juan Rafael Barajas Bernal (hereinafter the applicant).

[3] The applicant had been a member of the Party of Revolutionary Institutions (the PRI) since 1993 and worked for this organization from 1997 to 2001. He alleges that in 1994 he received the first two volumes of the inquiry into the assassination of Luis Donaldo Colosio Murrieta (hereinafter the Colosio documents), the PRI candidate in the election of that same year. The applicant kept a copy of these documents at his home.

[4] In April 2001, he was dismissed by his employer, but he successfully pursued the employer and received a favourable judgment that ordered the employer to pay him a significant amount of money. The execution was issued on June 21, 2006.

[5] It was not until July 9, 2006, that, according to the applicant, his problems began. He said that he received a call from Daniel Penaloza Duarte, an individual who worked for the PRI and who said he had gone into his house under the orders of the superior officers of the PRI, and found the documents regarding Mr. Colosio's assassination. The applicant adds that when the officials learned that he had a copy of these documents, they ordered Mr. Duarte "to make me [the applicant] and my family disappear." The applicant said that he decided that same day to flee with his family to Canada.

[6] On September 15, 2007, the applicant's brother was killed in the street. The applicant alleges that his brother's murder was connected to the threats that he himself had received, considering that his brother had filed a complaint with the Mexican police to the effect that his life had been threatened, on September 5, 2007, by two men who were looking for the applicant.

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[7] After summarizing the alleged facts, the RPD determined that the difficulties between the applicant and the PRI regarding his employment had no connection with the Convention. Further, the RPD determined that the applicant was not credible regarding the conflict between him and the PRI, or regarding the Colosio documents.

[8] The RPD points out *inter alia* that the applicant and his family had already obtained their passports before July 9, 2006. According to the RPD, the explanation of the applicant's wife that the family had planned a trip to Cuba is not persuasive. The RPD determined that the applicants intended to come to Canada before July 9, 2006, and that the "important omissions, the inconsistencies and the general lack of credibility of the claimants" justified the refusal of the refugee claim.

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[9] The applicants claim that the RPD erred in law because it determined that they had not established any connection with the Convention, despite unequivocal evidence that they received

death threats in Mexico. In my opinion, the RPD did not determine that the death threats did not establish any connection with the Convention. It decided, rather, that in regard to the conflict involving his dismissal by the PRI, the applicant had not established any connection with the Convention. On this point, I agree with the respondent that the RPD's finding is not in any way erroneous and, moreover, that same finding is not determinative since the panel did not find this part of the story credible, as appears from the reasons for the decision.

[10] I also note that, contrary to the applicants' claims, the RPD did not [TRANSLATION] "fail to mention the discovery of an analysis report that the applicant had prepared several years earlier and that the PRI members had found it at his home." The RPD considers this discovery in a separate section of the decision entitled "The Colosio Affair".

[11] The problems raised by the applicants regarding the RPD's credibility finding are that, contrary to the evidence, the RPD determined that the applicant's answers during his testimony were vague and evasive on the issue of information contained in the Colosio documents as well as for the circumstances surrounding his brother's murder.

[12] The appropriate standard of review for RPD determinations regarding an applicant's credibility is that of patent unreasonableness. The RPD can base its decision on the applicant's behaviour. The Court, which was "not present when the applicant provided [his] testimony before the Board" and cannot "observe [his] demeanour and the manner in which [he] answered the questions put to [him]", must show broad deference (*Lobo v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 597 at paragraph 13 (F.C.T.D.) (QL)). The RPD can also base its

decision on the fact that, contrary to the applicant's testimony, the applicant had left his country before the alleged problems began (*Conte v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 963, [2005] F.C.J. No. 1212 (F.C.T.D.) (QL)).

[13] Without necessarily endorsing all of the RPD's analysis of the applicant's allegations regarding his brother's murder, based on my analysis of all the evidence I cannot discard the RPD's analysis of the applicant's behaviour and his manner of answering questions. Further, in my opinion, the RPD's decision can reasonably be supported by its finding that the applicants were preparing to leave Mexico before July 9, 2006, the date that their problems allegedly began. The RPD clearly considered the explanation of the applicant's wife to the effect that the family had planned a trip to Cuba, but did not find it persuasive. Therefore it was not patently unreasonable for the RPD to determine that the applicants' credibility was tainted.

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[14] For all of these reasons, the intervention of the Court is not justified and the application for judicial review is dismissed.

“Yvon Pinard”

Judge

Ottawa, Ontario
January 14, 2008

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2296-07

STYLE OF CAUSE: Juan Rafael BARAJAS BERNAL, Gloria Concepci GOMEZ MORONES, Elias BARAJAS GOMEZ, Sara Isabel BARAJAS GOMEZ v. MINISTER OF CITIZENSHIP AND IMMIGRATION

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