

**Date: 20080418**

**Docket: IMM-4099-07**

**Citation: 2008 FC 507**

**Toronto, Ontario, April 18, 2008**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**LUIS ARMANDO RUELAS AGUILERA, ROSA LINDA FLORES MOLINA,  
FERNANDA DICE RUELAS FLORES, LUIS ARMANDO RUELAS FLORES  
and VALERIA RUELAS FLORES**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Refugee Protection Division of the Immigration and Refugee Board found that Luis Armando Ruelas Aguilera, his wife Rosa Linda Flores Molinda and their three children were not Convention refugees or persons in need of protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Board found that there was insufficient, trustworthy or credible evidence to support their claim. In short, the Board did not believe the evidence offered by Mr. Aguilera concerning the circumstances prior to his family leaving Mexico.

## **I. BACKGROUND**

[3] Mr. Aguilera was a sales person with Nextel, a telecommunications company in Mexico. He worked in the City of Celaya in the State of Guanajuato, an area that is approximately three hours from Mexico City by bus. His mother lived in his sales area, and so he lived with his mother during the week and with his wife and three children in Mexico City on the weekends.

[4] On January 2, 2006, he was following up with a potential customer, Jose Angel Rodriguez, who had said he owned a banquet business. Mr. Rodriguez had received a negative credit check and thus Nextel would not authorize his business. While visiting him to try to sort out the credit issue, Mr. Aguilera saw American money and plastic bags containing white powder in Mr. Rodriguez' briefcase when it accidentally fell to the floor. As Mr. Aguilera left the house he saw a local politician, Mr. Ortiz, entering Mr. Rodriguez' office. Mr. Aguilera had been previously informed by Mr. Rodriguez that he had an important official coming soon to meet with him on business.

[5] Although he had been asked to wait, Mr. Aguilera decided to remove himself from the situation. As he left he bumped into two members of the local judicial police. Mr. Rodriguez called

to these police officers to stop Mr. Aguilera. Mr. Aguilera claims that the police shot at him. One bullet grazed his right shin. They forced him to return to the house.

[6] Mr. Rodriguez and Mr. Ortiz questioned Mr. Aguilera and according to the Applicant they said that they would have to make him disappear because they could not risk letting him go free. The two police officers then drove Mr. Aguilera to an undisclosed location approximately an hour and one-half away and beat him unconscious. When he regained consciousness, he discovered that his cell phone and personal identification, which contained his home address, had been stolen.

[7] Mr. Aguilera made his way to the road and subsequently to his mother's house. He did not report the incident to the local police as two of its officers had been involved in the attack. He also refused medical treatment at a hospital for fear of having the incident reported to the police. Instead, he treated his wounds with herbal medicine remedies. He did subsequently have a front tooth, which had been knocked out during the incident, replaced by a dentist in Mexico City.

[8] A few days after the attack, Mr. Aguilera returned to Mexico City. On January 9, 2006, he filed a denunciation with the police in Mexico City. He never personally followed up with the police to determine if anything had been done about his complaint. However, he did subsequently discover on the internet a wanted poster showing Jose Angel Rodriguez, his potential customer, as being wanted on charges of murder.

[9] Shortly after the filing of the denunciation Mr. Aguilera began to receive death threats from an unknown man on his home telephone on almost a daily basis.

[10] Two months later, on March 13, 2006, Mr. Aguilera fled Mexico for Canada. He came alone, as the threats had been made solely against him and his family was unable to raise sufficient funds for all of them to leave Mexico. He filed for refugee protection. He testified that he believed that someone had come to his house in the intervening two months between the time the threats began and his leaving Mexico, but he was unable to testify to that with certainty.

[11] The threatening phone calls continued after his departure. His wife moved within Mexico City but the threatening phone calls followed her. When his daughter was the target of a kidnap attempt by the judicial police, his wife and the three children fled Mexico for Canada. She and the children arrived in Canada on June 26, 2006.

## **II. DECISION**

[12] While the Refugee Protection Division accepted that the Applicants were citizens of Mexico, it did not accept as true Mr. Aguilera's story of assault, robbery and intimidation by the judicial police. Adverse credibility findings were made by the Board because Mr. Aguilera, the primary applicant, was proactive in documenting his wounds, in making the denunciation and in arranging for passports for his family and travel for himself, yet did nothing to remove himself from the family home in Mexico City for the two months prior to his departure. It was the view of the Board that a person fearing for his safety and receiving threatening calls at home would flee the

home. The Board was of the opinion that it was unlikely that Mr. Aguilera's failure to leave Mexico City for two months after the beginning of the alleged threatening phone calls was because he was "tremendously stressed" and did not know what to do – the explanation he gave to the Board.

[13] The Board also found that it was implausible that a wanted man, Mr. Rodriguez, would operate a business in public view under the same name that was on the wanted poster presented in evidence by Mr. Aguilera.

[14] The Board held that there was insufficient credible evidence to support a well-founded fear of persecution for the claimants.

### **III. ISSUES**

[15] The Applicants argue that the Board erred in two respects.

[16] First, it was argued that the Board ignored relevant evidence that was placed before it, namely, the negligent representation by his former and recently disbarred counsel, the psychological report relating to Ms. Flores, the testimony and evidence of Ms. Flores, and the post-hearing disclosure letter from Mr. Aguilera's sister-in-law.

[17] Second, the Applicants alleged that the Board erred in that it speculated or drew unreasonable inferences from the evidence before it.

[18] For reasons that follow, I am not convinced that the Board's decision is reviewable for any of the reasons advanced by the Applicants.

#### **IV. DID THE BOARD IGNORE RELEVANT EVIDENCE?**

[19] It was suggested that the Board focused at the hearing on the failure of Mr. Aguilera to mention Mr. Ortiz, the local official, in his initial story to the Immigration Officer. The explanation given for this omission was the negligence of his first counsel.

[20] It was argued that the omission in the Point of Entry Notes of any reference to Mr. Ortiz was corrected by Mr. Aguilera in his supplemental narrative filed by new counsel before the Board hearing.

[21] While it is true, as was pointed out by counsel, that the Applicants were questioned by the Board about this omission, there is nothing in the Board's decision to suggest that it did not fully accept the Applicants' explanation that the omission was the fault of his first and recently disbarred lawyer. In fact, there is nothing at all in the record or in the decision that suggests that this early omission played any role in the Board's ultimate findings with respect to credibility.

[22] As such, I cannot find that there is any merit to the argument that the Board ignored the supplemental narrative or gave any weight to the omission in the POE Notes.

[23] The Applicants also argued that the Board ignored the psychological report that was tendered in evidence. The report in question was a report dated April 6, 2007, and provides a psychological assessment of Rosa Linda Flores Molina, Mr. Aguilera's spouse. As with most such assessments, it is based on facts provided by the person being assessed.

[24] The assessment concludes that "Ms. Flores satisfies diagnostic criteria for major depressive episode of moderate severity (296.22) and chronic posttraumatic stress disorder (309.81) in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (4<sup>th</sup> ed., *DSM-IV*)". Counsel submits that the findings of this assessment support Mr. Aguilera's assertion that he did not flee from his house in Mexico City as he was "tremendously stressed and did not know what to do" and that this assessment ought to have been, but was not, considered by the Board.

[25] Justice James O'Reilly summarized the relevant case law with respect to the obligation of a Board to refer to documentary evidence in paragraphs 5 and 6 of *Min v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1676:

The Board is not obliged to refer to every document before it. However, the more important the document, the greater the duty on the Board to consider it expressly: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (T.D.) (QL). With respect to medical and psychological reports, the Board must consider them if it makes credibility findings on grounds for which that evidence is relevant: *Bernardine v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1187, [2002] F.C.J. No. 1590 (T.D.) (QL).

For example, before the Board draws an adverse inference from a claimant's demeanour, it must consider an expert's opinion that helps

provide an explanation for that behaviour: *Sanghera v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 87 (T.D.) (QL). On the other hand, if the Board does not believe that a psychological opinion explains the claimant's testimony, it is entitled to give it little or no weight: *Dekunle v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1112, [2003] F.C.J. No. 1403.

[26] The evidence alleged to have been overlooked relates only to Ms. Flores and says nothing of the psychological state of Mr. Aguilera at the relevant time. It was argued that the psychological state of Ms. Flores, presumably based on the same experiences as Mr. Aguilera, reflects in some manner the family's psychological state and further supports the evidence he gave that these events did cause him tremendous stress.

[27] I do not find that argument persuasive. The assessment relates directly and only to Ms. Flores and relates to a period subsequent to the events in Mexico described by her husband. Had the assessment been of Mr. Aguilera's psychological state, I might have been persuaded that it was an "important document".

[28] I do not find that the psychological report tendered by the Applicants was an important document vis-à-vis the psychological state of Mr. Aguilera and, as such, it does nothing to support his evidence that he was tremendously stressed during the two month period prior to his departure for Canada.

[29] Accordingly, it was not unreasonable for the Board to fail to mention the assessment report in its reasons and I can find no error as alleged in this respect.



[30] It was also argued that the Board ignored the evidence and testimony of Ms. Flores. It is trite law that reasons need not summarize all the evidence before a tribunal: *Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (F.C.A.). In this case, counsel did not point out anything in her testimony or evidence of note that might have suggested a different result. In fact, the best that can be said of her evidence is that it was consistent with her husband's evidence.

[31] In my view, in such circumstances, it cannot be assumed that the Board ignored her evidence.

[32] Lastly, it was argued that the Board ignored a post-hearing disclosure - a letter dated April 27, 2007, from Mr. Aguilera's sister-in-law in Mexico. In that letter she says that she had recently received a phone call from an unnamed person who, on being told that Mr. Aguilera was no longer in Mexico, stated that were he there, they would "put an end to the problem on [sic] their own way". She tried to report this to the local police but was told it was not a problem and she should change her phone number. She also inquired as to what had happened to the previous denunciation Mr. Aguilera had filed and was told that this would only be provided if a bribe was paid.

[33] The Board, in its reasons for decision, states:

Post-hearing evidence in the form of a letter from the principal claimant's sister-in-law was received and taken into consideration in the panel's deliberations.

[34] It was suggested that it was ambiguous whether by this the Board meant that it had considered the content of this document when deliberating on the conclusion it would reach based on the evidence presented, including the letter, or whether the Board had merely considered whether to accept this post-hearing evidence in accordance with the Board's Rules, without turning its mind to the content of the letter. It was argued in this case that when the post-hearing evidence was submitted the Board owed a duty to the Applicants to advise them whether it was accepting the evidence as tendered and further, it owed a duty to hear their submissions on the new evidence.

[35] This document was tendered to the Board with a cover letter from the Applicants' counsel that stated, in relevant part:

The letter goes to the heart of the issue of credibility and, in our respectful submission, acts a [sic] further remaining credible evidence which supports our client's claim.

We trust you find this information helpful. Should you have any questions or require additional information please do not hesitate to contact our office.

[36] Accordingly, it appears that counsel had already made his submissions with respect to this new evidence when it was tendered to the Board. I cannot accept that in those circumstances the Board is under any duty to provide counsel who submitted the post-hearing evidence with a further opportunity to make submissions on that evidence.

[37] While it would have been preferable had the Board stated what, if any weight it gave to this new evidence, there is no reason not to accept the Board at its word when it wrote that it was taken into consideration in its deliberations, i.e. when deliberating on the outcome of the hearing.

#### **V. DID THE BOARD SPECULATE OR DRAW UNREASONABLE INFERENCES?**

[38] The Applicants argue, in part, that the Board, in the following passage, rejected the Applicants' uncontradicted evidence regarding Mr. Rodriguez and substituted its own "perverse speculation".

The panel determines that it is implausible that a fugitive wanted for murder would attempt to open a very public business such as a banquet business and at the same time operate an alleged drug business in the shadows.

[39] The Board need not accept testimony merely because it is uncontradicted. It may rely on reason, common sense and rationality: *Aguebor v. (Canada) Minister of Employment and Immigration* (1993), 160 N.R. 315 (F.C.A.).

[40] Mr. Justice Luc Martineau provided an overview of the law respecting findings of credibility in *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] F.C.J. No. 162 (QL) at paragraphs 9 – 11:

Normally, the Board is entitled to conclude that an applicant is not credible because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in "clear and unmistakable terms"....

Furthermore, the Board is entitled to make reasonable findings based on implausibilities, common sense and rationality.... The Board may

reject uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence....

However, not every kind of inconsistency or implausibility in the applicant's evidence will reasonably support the Board's negative findings on overall credibility. It would not be proper for the Board to base its findings on extensive "microscopic" examination of issues irrelevant or peripheral to the applicant's claim....

(citations removed)

[41] In my view, the inference drawn by the Board with respect to the implausibility of the alleged circumstances regarding Mr. Rodriguez was one reasonably open to it on the evidence before it.

[42] The parties agree that the test to be applied in this application is whether the decision of the Board was reasonable, as recently held by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[43] The Supreme Court of Canada held that where the standard is reasonableness a spectrum of possible answers is available, and the reviewing Court should show deference to the decision-maker's role as the delegate of Parliament. The decision should be vacated only where it does not fall within the range of possible reasonable decisions on the evidence.

[44] In this case I cannot conclude that the decision of the Board was beyond the range of reasonable decisions based on the evidence, nor can I find that it ignored relevant evidence or drew unreasonable conclusions from it.

## **VII. CERTIFIED QUESTION**

[45] Counsel for the Applicants asked that this Court certify the following question: “Have the rules of procedural fairness been breached by a failure of the RPD to specifically advise the Applicants that it has accepted tendered post-hearing evidence.”

[46] The threshold for certifying a question is whether there is a serious question of general importance which would be dispositive of an appeal. In my view, the proposed question would not be dispositive of an appeal in this case as I find that there is no evidence that the Board failed to consider the newly tendered evidence. In fact, I find that the Board did consider that evidence.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4099-07

**STYLE OF CAUSE:** LUIS ARMANDO RUELAS AGUILERA ET AL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 15, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN, J.

**DATED:** April 18, 2008

**APPEARANCES:**

Gleb Bazov FOR THE APPLICANTS

Manuel Mendelzon FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

ROBERT I. BLANSHAY FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

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