

**Date: 20080917**

**Docket: IMM-405-08**

**Citation: 2008 FC 1044**

**Montréal, Quebec, September 17, 2008**

**PRESENT: The Honourable Mr. Justice Maurice E. Lagacé**

**BETWEEN:**

**MONICA DESIRE RODRIGUEZ REYNA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), the applicant seeks judicial review of a decision dated December 24, 2007, by the Refugee Protection Division of the Immigration and Refugee Board (the Board), determining that she and her son, Juan Carlos, are neither “refugees” nor “persons in need of protection” as defined in sections 96 and 97 of the Act. Consequently, their refugee claim was denied.

[2] Given that the son, Juan Carlos, is not a party to his mother's application for judicial review, she cannot obtain the relief she seeks for him, since the son is not disputing the Board's decision.

## II. Facts

[3] A citizen of Mexico, the applicant, Monica Desire Rodriguez Reyna, alleges that she fears her ex-husband, who repeatedly assaulted her during their marriage until she left him in 1995 and took their children to live in another city.

[4] Eleven years after her separation, on July 6, 2006, the applicant obtained her passport.

[5] Two days later, on July 8, 2006, as the applicant left a supermarket, she met her ex-husband who assaulted her again and threatened her. The day after this new incident, the applicant filed a complaint with the police against her ex-husband.

[6] On July 10, 2006, without waiting for the outcome of her complaint, the applicant left her country with her daughter Asgar Manitu (21 years of age) and her son Francisco (16 years of age); her oldest daughter, Karla (24 years of age) chose to stay in Mexico.

[7] Upon arriving in Canada on July 10, 2006, the applicant and her two children claimed refugee protection, but on May 28, 2007, Asgar abandoned her refugee claim because she wanted to return to Mexico.

III. Decision of the Board

[8] After considering and commenting on the key pieces of evidence and highlighting the contradictions and inconsistencies in the applicant's testimony and that of her son as well as the implausibility of the sequence of events that occurred between July 6 and July 10, 2006, the Board determined that their story was not credible. It did not accept the allegations that her ex-husband made death threats on July 8, 2006, and did not believe that their "refoulement" to their country of origin would endanger their safety or their lives. The Board decided that the applicants were neither "refugees" nor "persons in need of protection" as defined in the Act and therefore refused their refugee claim.

IV. Issues

[9] Did the Board make an unreasonable error in its negative assessment of the applicant's credibility by determining that she was not a refugee or a person in need of protection and by finding that she would not face cruel or unusual treatment if she had to return to Mexico?

V. Submissions of the parties

[10] The applicant's key argument is that the Board erred by not assigning any credibility to her story and by completely disregarding the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* (the Guidelines) and the evidence corroborating her testimony.

[11] The Minister defends the Board's findings on the evidence; the Board is responsible for analyzing and assessing the evidence based on its expertise, and therefore there is no valid reason justifying this Court's intervention.

VI. Standard of review

[12] Decisions of administrative tribunals are now reviewable against two standards: *correctness* and *reasonableness*. Courts must show deference to the decisions of specialized administrative tribunals, which have a certain expertise in matters within their jurisdiction (see *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*)).

[13] The reasonableness standard applies to this case and does not open the door to a broader intervention. We must determine whether the impugned decision is reasonable, considering the *justification for the decision* and *whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law* (*Dunsmuir*, above, paragraph 47).

[14] Within this standard of review, can the Court determine that the Board erred when it decided that the applicant was not a *refugee* or a *person in need of protection* as defined in the Act?

VII. Analysis

[15] Based on the fact that the Board did not comment in its reasons on certain parts of the evidence that the applicant considered more important in supporting her arguments than the parts that the Board accepted in concluding as it did, the applicant claims that the Board did not consider all the evidence that it was obligated to consider, and, therefore, describes its decision as unreasonable.

[16] However, this argument ignores the presumption that the Board considered all the evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL)). This argument also disregards the fact that when the Board determines that a refugee claimant is not credible, as is the case here, it has no obligation to explain why it did not give probative value to documents that support allegations found not to be credible or trustworthy (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, at paragraph 26).

[17] In attempting to persuade the Court that the Board erred in drawing negative inferences from the evidence about her credibility, the applicant is in fact seeking to justify the pieces of evidence that the Board disregarded because it found them unsatisfactory or not trustworthy. Let us not forget that the applicant had the opportunity to fully present her case and to convince the Board, but unfortunately she did not succeed.

[18] It is not for the Court at this stage to start over, to reassess the evidence and to substitute its opinion for the Board's. The Board benefits from its expertise and especially from the unique advantage of having heard the applicant and her son testify about their claim and story. The Board is certainly more qualified than this Court to assess the credibility of the applicant and her son.

[19] The Court must verify only whether the Board's decision was justified and reasonable in the sense stated in *Dunsmuir*, above. Credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review. They cannot be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State)* (C.A.), [1997] 1 F.C. 608, 67 A.C.W.S. (3d) 978, at paragraph 24; *Dunsmuir*, above).

[20] The applicant argues that the fact that the Board's analysis of the applicant's credibility did not refer specifically to the Guidelines is an error justifying the intervention of this Court.

[21] However, it is not sufficient to state that the Board failed to specifically refer to these Guidelines in its reasons. The applicant must also demonstrate how the Board did not follow them. The Board's silence in this regard does not support a finding that the Board did not follow or consider these Guidelines at the hearing and in its analysis of the file. What matters is that the reasons for decision demonstrate that the Board was sensitive towards the applicant and that the evidence was sufficient to support its conclusion (*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1066, at paragraphs 12 and 15, 163 A.C.W.S. (3d) 444).

[22] In this case, the applicant did not demonstrate how the Board failed to show the necessary sensitivity, while the evidence was sufficient to support its conclusion; it is therefore difficult to justify the intervention of this Court.

[23] At the end of this case, the Board addressed the explanations that the applicant and her son provided during their testimony and did not believe the reasons they gave for leaving Mexico and coming to Canada to claim refugee status; the Board found them to be not credible because of inconsistencies, contradictions and implausibilities in their story, without taking into account the sequence of the later events that occurred in Mexico. Since the Board had no obligation to accept all the applicant's explanations, it could reject those that it determined were not credible or not sufficient (*Aguebor v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 732, 42 A.C.W.S. (3d) 886; *Rathore v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 42 (T.D.) (QL)).

[24] The Court is of the view that, based on the evidence, the Board was justified in finding that the applicant and her son were not credible, in deciding that they had failed to demonstrate that they were *refugees* and/or *persons in need of protection* as defined by the Act, and in dismissing their refugee claim.

[25] Consequently, the Court finds that the decision is not unreasonable, and therefore the application for judicial review is dismissed. No question of general importance was proposed and none is certified.



**JUDGMENT**

**FOR THESE REASONS, THE COURT:**

DISMISSES the application for judicial review.

“Maurice E. Lagacé”  
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Deputy Judge

Certified true translation  
Mary Jo Egan, LLB

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

**DOCKET:** IMM-405-08

**STYLE OF CAUSE:** MONICA DESIRE RODRIGUEZ REYNA  
v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 8, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** LAGACÉ D.J.

**DATED:** September 17, 2008

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