

Date: 20090505

Docket: IMM-3866-08

Citation: 2009 FC 455

Ottawa, Ontario, May 5, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

ANTONIO YNES ALEMAN PENA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 14, 2008, wherein the applicant was found not to be a *Convention refugee* nor a *person in need of protection* under sections 96 and 97 of the Act on the basis that his claim was not credible.

I. The facts

[2] The applicant, a citizen of Cuba, left his country for Canada in February 2006 and made his claim for asylum on May 23, 2006.

[3] In 1983, the applicant would have been unfairly accused of fraud and sent to jail for almost two years. He later returned to work as an administrator for his government and worked for minimum wage.

[4] According to his scenario, in December 2004, he started a second job, delivering rental videos to certain customers. He was arrested by the police a second time in September 2005, and jailed for one day because the videos he was delivering were allegedly considered anti-revolutionary. Released after one day, he was told to report to the police station every week.

[5] Arrested again on October 3, 2005 for failing to report, he would have been told that he would be trialed and imprisoned for delivering anti-revolutionary videos. Four months later, he managed to leave Cuba for Canada where his daughter was living.

II. Issue

[6] Did the Board make an unreasonable decision in determining that the applicant was not credible?

III. Analysis

Standard of review

[7] As a result of the recent decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, 164 A.C.W.S. (3d) 727 (*Dunsmuir*), it is now trite law that credibility and fact findings are reviewable on the reasonableness standard. This is a deferential standard, leaving administrative tribunals a margin of appreciation as long as its decision falls within the range of “acceptable and rational solutions”. As the Supreme Court of Canada put it, reasonableness is concerned with “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, para. 47).

Credibility issue

[8] The present case is clearly one of credibility as the Board, at the very beginning of its decision, indicated that it did not find the applicant’s testimony and story of persecution to be credible.

[9] The applicant contends that the Board wrongfully dismissed his case in alleging credibility issues, and accuses the board member not to have taken into consideration the predominant motive for his claim.

[10] The Court has read the file and the transcript of the hearing and concludes that the Board was founded to draw several negative findings with regards to the applicant's credibility and to relate most of them to contradictions and implausibility bearing on central elements of his asylum claim and the appreciation of his story.

[11] The applicant had the burden to convince the Board that the allegations of his claim were well-founded; but unfortunately, he failed to do so "on a balance of probabilities".

[12] Based on criteria of rationality and common sense, it was open to the Board to find it implausible for instance that the applicant was able to deliver videos three times a week during eight months while having to report weekly to the police who waited all this time before arresting him.

[13] It was also open to the Board to take into consideration contradictions between his testimony and his Personal Information Form, with regards to what the police told him and incidents involving the police and regarding his alleged anti-revolutionary activities (*Abbasi v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 58 (Q.L.)).

[14] The applicant contends that the Board lacked the expertise to conclude that the three subpoenas produced in evidence by the applicant in support of his story requesting him to appear at the Popular Municipal Court were not trustworthy. The Board did not need an expert to see that two of these subpoenas bore manual alteration of the year, and that although bearing different dates, the three subpoenas had identical content with no indication of order, and that he had been accused of

committing “illegal economic activity” for not having, as he finally admitted, the permit to deliver videos.

[15] The Board did not need to be an expert to also conclude that those documents had no connection with the applicant’s contention that they were issued as a result of his alleged anti-revolutionary activities.

[16] The assessment of those documents, contrary to the applicant’s contention, was well within the Board’s expertise. “The issue of credibility is a question of fact that is within the expertise of the Board members who may question the authenticity of a document when there is enough evidence supporting this conclusion.” (*Akindele v. Canada (Minister of Citizenship and Immigration)* 2002 CFPI 37). Here, the Board founded its conclusion on several inconsistencies and improbabilities that were evident in the documentation provided by the applicant.

[17] The applicant is asking more or less this Court to analyse and appreciate the proof and conclude differently than the Board did. However, this is not the role of this Court. The Board with the benefit of its expertise has heard the applicant and is therefore in a much better position than this Court to weigh the evidence, its weaknesses and strength, and decide on its acceptability and the applicant’s credibility.

[18] The reasons given by the Board are not to be read hypercritically nor was the Board required to refer to each piece of evidence received (*Cepeda-Gutierrez v. Canada (Minister of Citizenship*

and Immigration), [1998] F.C.J. No. 1425). The Court reviewing the Board's decision on a standard of reasonableness only has to verify whether the decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and the law.

[19] The present affair turns on the applicant's failure to establish with credible and trustworthy evidence the main subject of his claim. Unfortunately for the applicant, the Board found that he was totally untrustworthy and lacking any credibility about his own personal situation; after reviewing the evidence, the Court cannot see that this finding of the Board was unreasonable.

IV Conclusion

[20] Overall, the applicant failed to show this Court that the impugned decision is unreasonable. Therefore, this application for judicial review will be dismissed.

[21] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS, THE COURT dismisses the application.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3866-08

STYLE OF CAUSE: ANTONIO YNES ALEMAN PENA v. M.C.I.

PLACE OF HEARING: Ottawa, Ontario

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

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