

Date: 20090512

Docket: IMM-4854-08

Citation: 2009 FC 486

Ottawa, Ontario, May 12, 2009

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

ERNESTO LOPEZ SALGUERO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, R.S., 2001, c. 27, of a decision of the Refugee Protection Division of the Immigration and Refugee Board (panel) dated September 22, 2008, which found that the applicant was neither a Convention refugee nor a person in need of protection.

[2] For the following reasons the application for judicial review will be allowed.

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[3] The Court is satisfied with the explanations given by the applicant in order to seek an extension of time to file his application for leave and judicial review. In fact, it was due to his illness and inability to contact his attorney that the application was filed late.

[4] The applicant's claim for refugee protection was rejected by the panel because his story was not deemed credible and because the panel was not convinced there was a lack of state protection by the Mexican authorities.

[5] In this case the applicant is a journalist who fears returning to his home country as he had witnessed the transport of children's corpses and had deduced that it was linked to organ trafficking. He was subsequently threatened and was involved in a car accident in which some members of his family were injured. Experts would later conclude that his car's brake lines had been severed.

Standard of review

[6] The respondent maintains that the applicable standard of review regarding the panel's lack of credibility finding is that of unreasonableness (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 707, [2008] F.C.J. No. 893 (QL)).

[7] When considering matters of credibility and weighing of evidence, it is well established under subsection 18.1(4)(d) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, that the Court will only intervene if the decision is based on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before it (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[8] Assessing credibility and weighing of evidence fall under the jurisdiction of the administrative panel, which must take the claimant's subjective fear of persecution into account (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14). Before *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the applicable standard of review in similar circumstances was patent unreasonableness. Since then, it is reasonableness.

[9] The appropriate standard of review in matters of state protection is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d) 392 at paragraphs 9 to 11; *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14 and *Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721, [2008] F.C.J. No. 908 (QL) at paragraph 3).

[10] In this case, the panel considered only highly selective facts in the applicant's narrative. Nonetheless, the applicant's PIF contains several significant facts which were omitted and not taken into consideration by the panel.

[11] Furthermore, the panel twice mentions: "... There is certainly nothing in the documentary evidence to indicate that journalists in Mexico are at such risk that they are murdered and that no state protection is available to them." (paragraph 10 of the decision). In fact there are documents in Mexico's National Documentation Package which suggest the very opposite. These documents

were neither mentioned nor considered by the panel, yet this evidence was at the very heart of the claim.

[12] The panel should have considered all of the evidence, especially the documentary evidence which might have allowed them to conclude that the facts described by the applicant regarding his fear of persecution and the lack of state protection were true.

[13] While one assumes that a panel has examined all of the evidence, where there exists significant evidence which contradicts the panel's findings, it must provide reasons to explain why this evidence is deemed to be neither relevant nor reliable (*Simpson v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 970, [2006] F.C.J. No. 1224 (QL) at paragraph 44).

[14] No questions for certification arise from this matter.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed. The matter is referred for reconsideration by a newly constituted panel.

“Michel Beaudry”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4854-08

STYLE OF CAUSE: ERNESTO LOPEZ SALGUERO
and THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 5, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Beaudry J.

DATED: May 12, 2009

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