

Federal Court



Cour fédérale

Date: 20090924

Docket: IMM-1276-09

Citation: 2009 FC 961

Ottawa, Ontario, September 24, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CELIA LAURA MORALES RAMIREZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Morales Ramirez fled Mexico because she was raped by her lover, who was also her boss, and because she was molested by two of her mother's lovers. Her refugee claim was refused because the Member of the Refugee Protection Division of the Immigration and Refugee Board did not believe her. This is the judicial review of that decision.

[2] Ms. Morales Ramirez raises two interrelated issues. Before the close of the hearing the Member was asked to recuse himself on the grounds of apparent bias. He refused. This bias is said to have coloured his findings on credibility, his disregard of medical evidence and his disregard of country conditions.

[3] In my opinion no apparent bias was shown, and it was reasonably open for the Member, on the record before him, to disbelieve her allegation that she had any sort of relationship with her boss, much less that she was twice raped.

APPEARANCE OF BIAS

[4] At the outset of the hearing reference was made to the Gender Guidelines, and it was agreed that Ms. Morales Ramirez's counsel was to examine-in-chief. There was no Refugee Protection Officer present.

[5] Ms. Morales Ramirez had every opportunity to put her case forward. The only interruptions by the Member of the Refugee Protection Division were minor and were to clarify a few points. It was only when the Member began to question her that the transcript reveals antagonism, but antagonism initiated by her own counsel. The Member was interrupted nine times.

[6] The questions were in no way aggressive, nor was the questioning prurient. The Member had a duty to get to the truth and he did so in a matter of fact way. Actually it was this "matter of fact" style which caused Ms. Morales Ramirez, at the resumption of the hearing, to claim that she was not being believed and that she was being mocked. She was entitled to be treated with respect

and she was. If she thinks she was entitled to a hug and that the Member was required to say “I feel your pain,” she was sadly mistaken. The transcript suggests that the antagonism was caused by an overprotective counsel. The Member could have been far more pointed in questioning and could have been far more rigorous and extensive before going over the line (*Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1065, [2005] F.C.J. No. 1322 (QL)).

[7] The universally accepted test as to whether there is a legitimate apprehension of bias, in this case arising from the Member’s behaviour, is that set out by Mr. Justice de Grandpré in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at p.394 (*Committee for Justice and Liberty*):

“... the apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information...that test is "what would a informed person, viewing the matter realistically and practically--and having thought the matter through--conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.””

[8] The fact that it is a psychologist’s opinion that Ms. Morales Ramirez is under stress is not relevant. She may well be under stress. However it was the duty of the Member, not a psychologist hired by the applicant, to determine whether the events in question actually happened.

CREDIBILITY

[9] The basis of the Member’s decision is as follows:

The panel finds that the claimant failed to provide sufficient credible or trustworthy evidence to support her allegation of a relationship with Mr. Acevedo Reyes based on the omission in her Port of Entry (POE) and Personal Information Form Narrative (PIF) that Mr.

Acevedo Reyes was a police officer, and based on the lack of other credible or trustworthy evidence in support of the relationship.

[...]

Even if the panel found that the claimant had a relationship with Mr. Acevedo Reyes, the panel finds that the claimant did not provide sufficient credible or trustworthy evidence to support her allegation of rape based on credibility concerns with the claimant's testimony related to the timing of the first rape; the credibility concerns with the medical report; credibility concerns with the claimant's allegations related to her reporting the rape; and credibility concerns with the claimant's testimony of the timing of the second rape in November.

[...]

The panel finds that the claimant has not provided sufficient credible or trustworthy evidence in support of her allegations of a pattern of molestation by her mother's partners based on differing descriptions of the molestation in her PIF, oral testimony, and psychological report; and based on omissions from the PIF and psychological report that she moved to her aunt's for a period of 6 months as a result of the abuse.

[10] Based on the record, these findings are within the realm of the reasonable, and are not to be disturbed (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. No. 109).

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1276-09

STYLE OF CAUSE: Celia Laura Morales Ramirez v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 16, 2009

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: September 24, 2009

APPEARANCES

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