

Federal Court



Cour fédérale

**Date: 20101012**

**Docket: IMM-1585-10**

**Citation: 2010 FC 1005**

**Ottawa, Ontario, October 12, 2010**

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

**BETWEEN:**

**IVAN ARTURO PARASI AGUIRRE  
BEATRIZ ENRIQUETA RUBIO DE PARASI  
and IVAN AARON PARASI RUBIO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision of the Refugee Protection Division (the Board), dated February 25, 2010, where Ivan Arturo Parasi Aguirre (the principal applicant), Beatriz Enriqueta Rubio De Parasi (the principal applicant's wife) and Ivan Aaron Parasi Rubio (the principal applicant's son) were found not to be Convention refugees or persons in need of protection.

[2] The applicants are citizens of Peru. The origin of the applicants' problems began in the early 1990s when the principal applicant's brother-in-law took up a municipal political position, and faced threats from terrorist groups resulting in his leaving the country in 1992.

[3] From 1994 to 1998, there were no incidents reported by the applicants. However, they began to be targeted in 1998. The first incident reported was the trashing of their supermarket while they were on vacation. The caretaker blamed the Shining Path.

[4] In 1999, the applicants alleged that their supermarket was again looted, and on April 1, 2000, the principal applicant was attacked on the street. Two weeks after this incident, terrorists threw rocks at the principal applicants' home and at his son.

[5] The principal applicant contacted the police on the above three occasions, but received no assistance.

[6] The applicants fled from Peru to the United States in May 2000, and came to Canada in 2007 where they all claimed refugee status.

[7] The Board dismissed the applicants' applications on issues of credibility, inconsistencies, contradictions and the fact that the applicants faced a generalized risk.

[8] The Board found that the applicants were credible with respect to what they had experienced, but were not credible with respect to the agent of harm. They were unable to establish that the harm they endured was the result of specific and extended targeting directed at the family and the business by the Shining Path.

[9] The Board found that the claimants were subject to crime and random attacks because of their perceived wealth, but that perceived wealth could not be considered to be a Convention ground for a finding of refugee status.

[10] Questions of credibility are questions of fact and therefore attract a standard of reasonableness (*Aguirre v Canada (Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ No 732, para 14; *Guzman v Canada (Citizenship and Immigration)*, 2008 FC 490, [2008] FCJ No 624, para 10). Accordingly, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47).

[11] The Board drew its conclusion on the credibility of the applicants, on inconsistencies between oral testimony pointing to the Shining Path, and the documentary evidence which states that during the years in question the Shining Path was almost inactive. Also, on inconsistencies between the oral testimony of the principal applicant and what was said to the Immigration Officers (IOs) in writing and in interviews and inconsistencies between the oral testimony of the principal applicant and the first Personal Information Form (PIF).

[12] The applicants refer to *Shaheen v Canada (Citizenship and Immigration)*, 2001 FCT 670, para 13, where the Court states that :

The discrepancies relied on by the Refugee Division must be real (*Rajaratnam v. M.E.I.*, 135 N.R. 300 (F.C.A.)). The Refugee Division must not display a zeal "to find instances of contradiction in the applicant's testimony... it should not be over-vigilant in its microscopic examination of the evidence" (*Attakora v. M.E.I* (1989), 99 N.R. 168 at paragraph 9). The alleged discrepancy or inconsistency must be rationally related to the applicant's credibility (*Owusu-Ansah v. Minister of Employment and Immigration* (1989), 98 N.R. 312 (F.C.A.)). Explanations which are not obviously implausible must be taken into account (*Owusu-Ansah, supra*)

[13] In the case at bar, I do not think that the inconsistencies found by the Board are "microscopic". I find that they are indeed rationally related to the applicants' credibility. The Board was not satisfied with the answers given by the applicants on the question of why they changed their testimony regarding the responsible agent for the alleged attacks.

[14] In addition, the Board did not simply base its findings on the inconsistencies between the principal applicants' oral testimony and its interactions with the IO, but it also took into account the country condition documents. Details can be found in paragraphs 10 to 25 of the decision. The Court is of the opinion that the conclusions drawn by the Board are supported by the evidence.

[15] As to the determination by the Board that the applicants faced generalized risk as any individuals in Peru, the Board gave cogent reasons and cited *Cius v Canada (Citizenship and Immigration)*, 2008 FC 1, paras 18-21. The Court's intervention is not warranted.

[16] In regards to the alleged breach of natural justice, the applicants submit that they had legitimate expectations that only the replacement PIFs would be considered at the hearing. Instead, the Board examined both the first PIF and the amended PIF. They rely on *Levanaj v Canada (Citizenship and Immigration)*, 2006 FC 330, [2006] FCJ No 400, para 34.

[17] The facts in that case are different from the case at bar. Here, the applicants were given notice at the beginning of the hearing that the first PIF would be looked at.

[18] As a result, I find that there was no breach of procedural fairness.

[19] The applicants propose the following questions for certification:

1. In deciding whether a decision is reasonable as defined by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, [2008] SCR 190 and *Canada (Citizenship and Immigration) v Khosa*, [2009] SCJ No 12
  - a. Does an RPD decision lack (a) justification or (b) transparency if it does not refer to specific, relevant evidence?
  - b. Is an RPD decision intelligible if the discussion of the evidence consists of little more than a blanket statement that the RPD has “considered all of the evidence”?

2. Is it (a) procedurally unfair or (b) contrary to the principles of natural justice or (c) unreasonable to search microscopically for inconsistencies between a Personal Information Form that was not translated back to the claimants and an amended Personal Information Form?
3. Is the RPD entitled to deem that a claimant is not credible and complaining about the conduct of a consultant or counsel if the claimant does not file a formal complaint with a regulatory body or take action?
4. For the purpose of section 96 of the *Immigration and Refugee Protection Act*, can capitalists constitute a particular social group in a country where capitalists are persecuted?
5. Is *Roma v Canada (MCI)*, [2006] FCJ No 728 the law and that it may be unreasonable for the RPD to make negative credibility findings because a claimant
  - a. is more general in identifying the agent of harm on arrival in Canada than in a Personal Information Form or at the hearing? or
  - b. becomes more certain of the identity of the agent of harm in light of new information received between the time of arrival in Canada and the refugee hearing?

[20] I agree with the respondent that these questions should not be certified because either they are not questions of general importance or they have been settled by the jurisprudence.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application is dismissed. No question is certified.

“Michel Beaudry”

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Judge



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

**DOCKET:** IMM-1585-10

**STYLE OF CAUSE:** **IVAN ARTURO PARASI AGUIRRE**  
**BEATRIZ ENRIQUETA RUBIO DE PARASI**  
**IVAN AARON PARASI RUBIO**  
**and**  
**THE MINISTER OF CITIZENSHIP AND**  
**IMMIGRATION**

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** September 30, 2010

**REASONS FOR JUDGMENT:** BEAUDRY J.

**DATED:** October 12, 2010

**APPEARANCES:**

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