

Federal Court



Cour fédérale

Date: 20101213

Docket: IMM-1947-10

Citation: 2010 FC 1273

Ottawa, Ontario, December 13, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

DAVID FELIPE RODRIGUEZ MORENO

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to s. 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision of the Immigration and Refugee Board (the Board) made on March 4, 2010, where it determined that the applicant is not a Convention Refugee nor a person in need of protection.

[2] The application for judicial review shall be dismissed for the reasons outlined below.

[3] The claimant is a citizen of Colombia who entered Canada on September 24, 2009 and claimed protection. He fears that if returned, he would be persecuted by the Fuerzas Armadas Revolucionarias De Colombia (FARC).

[4] The Board dismissed the applicant's claim mainly on the basis of state protection and credibility findings.

[5] The Board's consideration of evidence is a matter of fact which attracts reviewable standard of reasonableness (*Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205, 357 F.T.R. 139 at paras 35 to 39). This Court has also held that the Board's decisions on both credibility and state protection should be reviewed on the same standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 (QL) at para 14; *Guzman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 490, [2008] F.C.J. No. 624 (QL) at 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 S.C.R. 190 para 47).

[6] In the case at bar, the Board, relied on country conditions documents to conclude that Colombia is a functioning democracy where citizens have recourses to security forces when they require protection from criminal acts. It found that the applicant failed to rebut the presumption of state protection with clear and convincing evidence. The Board emphasized that the applicant did not report the threats that he had received from the FARC to any responsible authorities despite the

advice from his benefactor and the Mayor of the city where he lived. The Court is of the opinion that there is no reviewable error here.

[7] As to the credibility findings, the Board gave cogent reasons why it concluded that the applicant was not a credible witness. Its logical conclusions are supported by the evidence except for one that is the applicant's visits to the USA. The applicant is right when he says that they occurred before the incidents with the FARC members. This error is not determinative on its own.

[8] It is not for this Court to reweigh conclusions drawn by a Board who saw and heard an applicant testify and gave responses to the concerns put to him (*Dunsmuir*, para 53, *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (FCA), para 4).

[9] No question of general importance was submitted and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1947-10

STYLE OF CAUSE: DAVID FELIPE RODRIGUEZ MORENO
AND THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 6, 2010

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: December 13, 2010

APPEARANCES:

Alla Kikinova

FOR THE APPLICANT

Tamrat Gebeyehu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Loebach
London, Ontario

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT