

Federal Court



Cour fédérale

Date: 20110517

Docket: IMM-6305-10

Citation: 2011 FC 566

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 17, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OSWALDO OROZCO BLANQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] It is up to the Immigration and Refugee Board (Board) to gauge the credibility of an applicant. To this end, this Court has held, on numerous occasions, that the omissions, inconsistencies and contradictions identified between port of entry statements, Personal Information Forms (PIF), testimony before the Board and other personal documents submitted into evidence may lead the Board to find that the credibility of all or part of an applicant's testimony is affected.

II. Judicial procedure

[2] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Board's Refugee Protection Division (RPD), dated October 18, 2010, that the applicant is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA on the basis of his lack of credibility.

III. Facts

[3] The applicant, Oswaldo Orozco Blanquez, was born on June 30, 1970, and is a citizen of Mexico. He alleges that he was personally targeted by members of the Mexican mafia, la Maña.

[4] The facts alleged by the applicant are as follows: Mr. Blanquez was working in the quality control department of Eaton Controls in the city of Reynosa (in the State of Tamaulipas in Mexico) when he first received a threatening telephone call on September 3, 2008. On September 16, 2008, after numerous other threatening telephone calls, the same individual purportedly demanded \$15,000. Mr. Blanquez then apparently spoke to a colleague, Luis Nieto Cid, about his situation and this colleague allegedly told him that he was having the same problem. The applicant purportedly quit his job on September 19, 2008, because of the constant telephone threats.

[5] On October 2, 2008, Mr. Blanquez and Mr. Cid were apparently kidnapped by a group of armed men driving four pickup trucks. The individuals purportedly took the two colleagues to an isolated location where they were allegedly beaten, threatened and then abandoned after being given

instructions on when and where to leave the money being demanded. The next day, the two men apparently collected \$5,000, left it at the location that was specified the previous day and then fled Reynosa for Rio Bravo. On October 13, 2008, they allegedly returned to Reynosa to file a complaint with the Office of the Public Prosecutor before going back into hiding in Rio Bravo.

[6] The applicant left Mexico on November 12, 2008, for Canada and claimed protection that same day.

IV. Impugned decision

[7] After observing and hearing the applicant's testimony and carrying out a detailed analysis of the evidence as a whole, the RPD found that the applicant was not credible on key points of his refugee claim. Several contradictions and omissions were apparent in the evidence submitted by the applicant and he was unable to sufficiently justify them before the RPD. More specifically, the RPD noted the following:

- a. The complaint made to police that was submitted into evidence (Police Complaint dated October 13, 2008, RPD Record at pages 48-49) includes a number of details, but fails to mention the \$5,000 that Mr. Blanquez and Mr. Cid allegedly delivered after their kidnapping;
- b. The complaint also makes no mention of the fact that, after the supposed kidnapping, they were apparently thrown from the vehicle into an isolated area and then beaten and threatened by armed assailants;
- c. The notes taken by the immigration officer at the port of entry (Schedule 1, Background Information IMM 5474, RPD Record at pages 68 to 76) do not

mention the kidnapping he was apparently the victim of or the ransom he purportedly paid. The applicant nevertheless provided some information on the extortion calls he allegedly received and the immigration officer wrote more than 13 lines on the back of the questionnaire to record this information (RPD Record at page 71);

- d. It was implausible that, between September 16, 2008, and October 2, 2008, the assailants purportedly never provided details on when and where to leave the money, while the applicant alleges that he received several threatening telephone calls demanding that he pay the money;
- e. Moreover, the RPD found that the applicant adjusted his testimony when asked why his passport was not stolen by his assailants along with his other identity documents, as he was often required to have it on him for work.

[8] For all of these reasons, the RPD did not find the applicant to be credible and rejected his claim.

V. Issue

[9] Does the RPD's decision contain an error in fact or law warranting the Court's intervention?

VI. Relevant statutory provisions

[10] The following provisions of the IRPA apply to this proceeding:

Convention refugee

96. A Convention refugee is a person who, by reason of a

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

— la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieux de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Parties' claims

[11] The applicant claims that the RPD unjustly undermined his credibility and erred by failing to rule on the reason advanced to support his fear of persecution. He adds that the RPD unjustly

undermined his credibility by rejecting his explanations on the contradictions and omissions raised, namely his claim that they were due to his nervousness.

[12] The respondent submits that it is settled law that it is open to the RPD to draw a negative inference with respect to the credibility of a refugee claimant on the grounds of omissions, inconsistencies and contradictions between port of entry statements, PIFs, testimony before the RPD and personal documents submitted into evidence, even more so when they pertain to the key elements of the claim, as is the case here. The respondent submits that the applicant's nervousness cannot explain all of the deficiencies identified by the RPD in the evidence submitted, namely with respect to the missing elements in the complaint he allegedly filed and the fact that only certain identity documents were purportedly stolen.

VIII. Standard of review

[13] The case law of the Federal Court consistently states that assessing the applicant's credibility is a question of fact reviewable on a standard of reasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 16 NR 315, 42 ACWS (3d) 886 (FCA) at paragraph 4). According to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Court may act only if the RPD's decision is found to be unreasonable because a high level of deference is owed to findings of fact made by a specialized tribunal.

IX. Analysis

[14] On numerous occasions, this Court has reiterated that it is up to the RPD, as a specialized tribunal, to assess the credibility of a refugee claimant and the evidence submitted in support of his

or her claim. Unless the applicant can show that the RPD's inferences could not have been drawn reasonably, its findings are not open to judicial review (*Aguebor*, above; *Chen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767, 148 ACWS (3d) 118 at paragraph 18).

[15] After identifying the omissions and contradictions in the record, the RPD examined the applicant's explanations and found the following, among other things:

- a. It is implausible that the omission of elements in the complaint was due to the arrogance of police officers in Reynosa. The police officers would in no way benefit from failing to include all of the information that was purportedly provided to them in the complaint;
- b. If the elements with respect to the kidnapping had actually been mentioned to the information officer, he would likely have written them down. Furthermore, an interpreter would have had no interest in failing to interpret a key point of the statement;
- c. It was implausible that the assailants told the applicant where and when to leave the money only on one occasion, at the time of the kidnapping, despite the fact that several other threatening telephone calls were apparently made between September 16 and October 2, 2008;
- d. The applicant tried to adjust his testimony before the RPD with respect to the fact that the assailants stole all of his documents, except his passport;
- e. If the kidnapping did occur, it did not occur under the circumstances described by the applicant;

- f. It was implausible that all of the deficiencies in the documents and the testimony were due to the applicant's nervousness.

[16] In this case, it is up to the RPD, as a specialized tribunal, to assess the explanations provided by the applicant with respect to the implausibilities and contradictions in the evidence. It is up to the RPD to measure the applicant's credibility and to draw negative inferences with respect to the omissions and contradictions contained in the port of entry statement and the *viva voce* testimony when they pertain to key elements of the claim and for which no satisfactory, plausible or credible explanation has been provided. Furthermore, the key elements of a claim must appear in a PIF; this is also the case for the port of entry statement. This Court has, on numerous occasions, confirmed that a failure to mention key elements may affect the credibility of all or part of a testimony:

[23] According to case law, inconsistencies between an applicant's statements at the port of entry and testimony about crucial elements of a claim are sufficient to taint his credibility: *Nsombo v. Canada (M.C.I.)*, IMM-5147-03; *Shahota v. Canada (M.C.I.)*, [2004] F.C.J. No. 1540, online: QL; *Neame v. Canada (M.C.I.)*, [2000] F.C.J. No. 378, online: QL.

(*Chen*, above)

[17] It was reasonable for the RPD to find that the applicant was not credible and that it could therefore not allow the refugee claim.

X. Conclusion

[18] Given the facts of this case, the Court's intervention is unwarranted and for these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question for certification arises.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6305-10

STYLE OF CAUSE: OSWALDO OROZCO BLANQUEZ
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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**REASONS FOR JUDGMENT
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