

Federal Court



Cour fédérale

Date: 20110614

Docket: IMM-6671-10

Citation: 2011 FC 678

Ottawa, Ontario, June 14, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ERMENEGILDO ROCCA GARCIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2008, Mr. Ermenegildo Rocca Garcia fled Peru after he was threatened by the Shining Path guerrilla group. He sought refugee protection in Canada, but a panel of the Immigration and Refugee Board dismissed his claim after concluding that state protection was available to him in Peru.

[2] Mr. Garcia argues that the Board erred in its treatment of the evidence of state protection. In particular, he points out that he went to the police in Peru, but they told him that they could not help him, and that he ought to flee Peru. Accordingly, Peru, he says, was not willing or able to protect him if the Shining Path tried to make good on their threats. Mr. Garcia asks me to quash the Board's decision and order a new hearing. However, I cannot find a basis for overturning the decision and must, therefore, dismiss this application for judicial review.

[3] The sole issue is: Was the Board's conclusion that state protection was available to Mr. Garcia unreasonable?

II. The Board's Decision

[4] The Board began by reviewing the various legal principles relating to state protection, beginning with the proposition that the issue of state protection relates to the objective branch of the definition of a refugee. The Board then outlined in considerable detail the various state agencies charged with law enforcement and counter-terrorism in Peru.

[5] The Board then summarized the events involving Mr. Garcia. Members of the Shining Path threatened him believing, mistakenly, that he was his nephew, who owned a glass installation business. He was told to pay \$20,000 within two days or he and his daughter would be killed. Mr. Garcia went to the police, who told him they could not protect him and recommended that he go as

far away as possible. Mr. Garcia asked a more senior officer for help, but got the same answer. Still, the officer said he would investigate.

[6] The Board noted that there are agencies in Peru which receive complaints from persons dissatisfied with the response of the police. In addition, Mr. Garcia never followed up with the police to see whether the investigation bore any fruit. When his sister subsequently received threatening phone calls, Mr. Garcia did not report them to the police. Based on these circumstances, the Board concluded that Mr. Garcia had not presented clear and convincing evidence that state protection was unavailable in Peru.

III. Was the Board's conclusion that state protection was available to Mr. Garcia unreasonable?

[7] The Board began by framing the issue correctly – the question whether state protection is available relates to the objective part of the definition of a refugee. Where state protection is an issue, the claimant's subjective fear of persecution will not be considered well-founded unless he or she presents clear and convincing evidence of a lack of state protection. The ultimate question in any refugee claim is whether the claimant has shown a well-founded fear of persecution, that is, more than a reasonable chance of persecution, if returned to his or her country of origin.

[8] In my view, the Board's conclusion that Mr. Garcia had not met the burden of proving his claim was reasonable. He had approached a local police detachment, once, to report threats from a terrorist organization. The documentary evidence shows that Peru has established an elaborate state apparatus to respond to crime and terrorism. While various problems persist, including corruption

and a lack of resources, there are agencies to which citizens can turn if threatened by the Shining Path or dissatisfied with the response they receive from local police.

[9] Mr. Garcia argued that in the face of an immediate threat, it would be unreasonable to expect him to try to shop around for state protection from other agencies instead of simply going to the local police (citing *Barajas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 21). In the circumstances, given that he had removed himself from the threat and had an opportunity to pursue other sources of protection, I cannot conclude that the Board's approach placed an undue burden on him.

[10] Based on the evidence before the Board, I cannot conclude that its conclusion was unreasonable. It fell within the range of possible, defensible outcomes, based on the facts and the applicable law.

IV. Conclusion and Disposition

[11] The Board's decision that Mr. Garcia had failed to show an absence of state protection was not unreasonable based on the evidence before it. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6671-10

STYLE OF CAUSE: ERMENEGILDO ROCCA GARCIA v MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: June 1, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: June 14, 2011

APPEARANCES:

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