

Federal Court



Cour fédérale

**Date: 20110708**

**Docket: IMM-6992-10**

**Citation: 2011 FC 849**

**Ottawa, Ontario, July 8, 2011**

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

**BETWEEN:**

**YOANY ALEXANDER ROJAS  
YOWELL MARIETY ZARATE GRANDA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants seek an order setting aside a November 3, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board of Canada (the Board), which found the applicants to be neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, 2001, c. 27 (IRPA)*. For the reasons that follow, the application for judicial review is granted.

[2] It is well established that findings of fact and findings of credibility are the domain of administrative tribunals. It is the tribunal members who hear the witnesses and observe their demeanor when testifying. They gauge their reaction to questions on cross-examination and they hear their explanations when confronted with implausibilities or inconsistencies. These factors constitute, in part, the rationale for a reasonableness standard in respect of judicial review of administrative bodies and the deference to be accorded their decisions in these areas: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339. The threshold that must be crossed before a court will interfere is thus high.

[3] In this case, the reasons for the decision do not meet the threshold. The Board found the applicants not to be credible. The Board based this finding in part, on the "utter lack of corroborating documents". There was evidence on the record of corroborating documents, including a declaration from the principal applicant's (Yoany Alexander Rojas – "the applicant") employer, his mother, a friend and his brother. While they may be given lesser weight given their provenance, they were nonetheless corroborative of the applicant's testimony. The Board does not specify what corroborating evidence was missing, nor did it confront the applicant as to concerns with respect to the content of the corroborative evidence (raising a concern of procedural fairness to which I will turn shortly) or at any time ask for an explanation as to why certain documents which the Board might consider to be corroborative were not produced.

[4] It is useful to contrast what transpired in this case with the situation considered by Justice Roger Hughes in *Reyna Flores v Canada (Citizenship and Immigration)*, 2010 FC 874 where he wrote:

As to the first matter raised, confronting the applicant, I have reviewed the Tribunal Record including in particular the transcript of the hearing. I find that the applicant was given ample opportunity to explain his testimony and was questioned by the Member on the relevant points of his evidence such that an ample opportunity was given for any explanation. As to corroboration, it is argued that, particularly since the new Act in 2001, corroboration may not be essential however where there is doubt as to the evidence given it is not improper for the Board to ask for corroboration or to take lack of corroboration into account where assessing credibility. I find that the Board made no reviewable error in handling the evidence as it did and that the conclusions which it reached were reasonable.

[5] The same cannot be said here. There was little examination, if any on the provenance of the documents, the applicant's involvement in their preparation or the implications of their content.

[6] Negative inferences cannot be drawn solely from the failure to produce corroborating documents: *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12. While it is possible that the Board sought to frame its analysis within the exception to this principle, namely that a failure to produce corroborative documentation is a proper consideration where it does not accept the applicant's explanation for failing to produce that evidence when it would reasonably be expected to be available. If that was the case, precision was required as to the nature of the documentation expected and a finding made to that effect.

[7] The Board also rejected a document, submitted by the female applicant, emanating from the Attorney General's office as a document of convenience and concluded that it was a fabrication "to simply further her claim but not based on truth." These concerns were not put to the witness, which again raises a concern as to procedural fairness. It is however, sufficient for the purposes of these reasons to note that that there is nothing in the record, nor on the face of the document that would

give rise to a doubt as to its integrity. Nor was any explanation given as to how the conclusion was reached that the documentation was a fabrication and that, in consequence, the female applicant was not credible.

[8] Finally, the Board concluded that the applicant was not credible because “nothing had happened to the applicant’s family in Columbia since his departure.” This is not in accordance with the evidence. The applicant testified that his mother had been contacted and threatened while in Medellín. Again, as this finding formed, in part, the foundation for the determination that the applicant was not credible, the finding on credibility is not supported by the evidence.

[9] This application for judicial review is granted and the matter remitted to a differently constituted panel of the Board’s Refugee Protection Division.

[10] There is no question to be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a differently constituted panel of the Board's Refugee Protection Division. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

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Judge

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

**DOCKET:** IMM-6992-10

**STYLE OF CAUSE:** YOANY ALEXANDER ROJAS  
YOWELL MARIETY ZARATE GRANDA v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** June 21, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J.

**DATED:** July 8, 2011

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