

Federal Court



Cour fédérale

**Date: 20120106**

**Docket: IMM-2214-11**

**Citation: 2012 FC 4**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, January 6, 2011**

**Present: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**Gustavo Adolfo RODRIGUEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by Carlos Martinez of the Refugee Protection Division of the Immigration and Refugee Board (panel) submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, by Gustavo

Adolfo Rodriguez (applicant). The panel found that the applicant was not a refugee or a person in need of protection and therefore rejected his refugee claim.

[2] The applicant is a citizen of Colombia. On February 4, 2008, along with university students, he allegedly actively participated in a protest of 2 to 3 million people against the violence that the Revolutionary Armed Forces of Colombia (“FARC”, “Fuerzas Armadas Revolucionarias de Colombia”) subject the people to. The applicant alleged that the day after the protest, the vehicle in which he was travelling was intercepted by the FARC, who then arrested and detained him. The applicant also claims to have escaped. However, he did not file a complaint.

[3] Following this incident, on May 24, 2008, he left Colombia for the United States, after obtaining a visa expiring in August 2008. The applicant apparently stayed in the United States until September 8, 2008, when he left for Canada where he filed his refugee claim. The applicant claims that he fears for his life, saying that the FARC are allegedly still looking for him.

[4] In its decision dated March 7, 2011, the panel dismissed the applicant’s refugee claim, finding that he was not credible.

[5] After hearing counsel for the parties and reviewing the relevant evidence, I am of the view that the inconsistencies and contradictions briefly noted by the panel were not actually so and that the inferences drawn by the panel are not reasonable (see *Dunsmuir v New Brunswick*, [2008] 1 RCS 190).

[6] First, the panel was wrong to dismiss the copy of the complaint filed by the applicant's father with the police in Colombia. Not only was the panel incorrect by saying that this document was from 2010, although it was from 2011, but also it should have considered that the purpose of this complaint was to establish that the FARC was still looking for the applicant.

[7] Second, the panel erred in drawing a negative finding based on the applicant's delay in completing his refugee claim. The panel ignored the applicant's explanations in that regard that his uncle's refugee claim had been allowed in Canada and that he did not want to involve the travel agents and the company that helped him to leave Colombia. Not only did the panel err in ignoring these reasonable explanations, but also it was wrong to impose on the applicant a duty of seeking refugee status at the first available opportunity in a third country (see *Gavryushenko v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1209 (TD) (QL)).

[8] Third, the panel erred by remaining silent on much of the relevant evidence provided by the applicant in support of his refugee claim, specifically his student card, the explanations offered during his testimony and the documents demonstrating the presence of the FARC in universities.

[9] For all of these reasons, since the panel's decision does not seem to me to be warranted or transparent, it does not meet the standard of reasonableness as defined in *Dunsmuir*, above.

[10] Accordingly, the application for judicial review is allowed and the matter is referred back to a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board for rehearing and redetermination.

[11] I agree with counsel for the parties that this is not a case for certification.

**JUDGMENT**

The application for judicial review is allowed and the matter referred back to a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board for rehearing and redetermination.

“Yvon Pinard”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-2214-11

**STYLE OF CAUSE:** Gustavo Adolfo RODRIGUEZ v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 6, 2011

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

**DATED:** January 6, 2012

**APPEARANCES:**

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Margarita Tzavelakos FOR THE RESPONDENT

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