

Federal Court



Cour fédérale

Date: 20121010

Docket: IMM-3019-12

Citation: 2012 FC 1183

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, October 10, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CELSO HUMBERTO FLORES MORALES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] Considering that his subjective fear lacks credibility, the applicant did not prove that he has a well-founded fear of persecution. This is shown by a clear difference between the applicant's actions and statements.

II. Introduction

[2] This decision follows the applicant's application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated February 27, 2012.

III. Remark to consider

[3] Although the applicant swears to the truth of his narrative, the affidavit supporting the applicant's record is in French and was not translated for his purposes. Since it did not meet the requirements of the law in this respect, no probative value could be given to this document.

IV. Facts

[4] The applicant, Celso Humberto Flores Morales, citizen of Guatemala, was a corn and coffee farmer.

[5] The applicant alleged that in 2007, the Maras, members of a criminal group, extorted him for 400,000 quetzales to be paid within three months so that the Maras would allow him to continue operating his business without interference.

[6] According to his allegations, following the three extortion threats, the applicant reported his situation to the police, who advised him to pay the required amount.

[7] The applicant moved his family to his father's home and left to work in the city. His brother-in-law continued to operate the applicant's business.

[8] It was only in 2008 that the applicant left Guatemala for the United States, where he worked illegally.

[9] During his stay in the United States, following the new threats received by his family, the applicant crossed the border and arrived in Canada five months later.

[10] In the meantime, the applicant's brother-in-law also decided to leave Guatemala for the United States where he lived for one year before being murdered after he returned to Guatemala in July 2011.

V. Analysis

[11] The applicant lived in the United States for more than five months without requesting protection. The applicant explained his situation by saying that his work in the United States was illegal.

[12] The Court notes that the applicant sought refugee protection in Canada only after his visa to the United States had expired.

[13] His entire account shows a lack of subjective fear because he did not claim protection in the United States at the first opportunity after he left his country.

VI. Conclusion

[14] Given that there was a reasonable decision containing a demonstrated lack of credibility that the RPD arrived at through the inherent logic of evidence (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190), the Court dismisses the applicant's application for judicial review (see *Andres Antonio Martinez Zapata v Minister of Citizenship and Immigration*, 2011 FC 156, paragraphs 21 and 22).

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. There is no question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3019-12

STYLE OF CAUSE: CELSO HUMBERTO FLORES MORALES
v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 10, 2012

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

DATED: October 10, 2012

APPEARANCES:

Manuel Antonio Centurion FOR THE APPLICANT

Jean-Philippe Verreau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Manuel Antonio Centurion FOR THE APPLICANT
Counsel
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec