

Federal Court



Cour fédérale

Date: 20131023

Docket: IMM-4859-12

Citation: 2013 FC 1070

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 23, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

VICTORIA GOMEZ, JULIO CÉSAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review against a decision rendered by Edward Aronoff, of the Immigration and Refugee Board, Refugee Protection Division (the member or the RPD) dated May 3, 2012, determined that the applicant was not a Convention refugee and was not a person in need of protection.

[2] Having carefully examined the record and taken into account the parties' written and oral representations, I believe that the applicant cannot succeed. The member did not believe the applicant's account and the applicant did not demonstrate that a significant error in assessing the evidence justified this Court's intervention. For the following reasons, the application for judicial review must be dismissed.

I. Facts

[3] The applicant is a citizen of Mexico.

[4] The applicant's father was a court officer of a civil tribunal in the state of Puebla. He allegedly collected information that police officers were torturing and even killing detainees. The documents collected allegedly involve the governor, the Attorney General and the director of the Department of Organized Crime. In May 1996, the applicant's father was allegedly fired so that this information would not become public. He died in 1999, at the age of 56 and the cause of his death remains undetermined. The applicant was persuaded that the Attorney General's Office was responsible for his father's death, which would explain why no autopsy was done.

[5] In 2006, the applicant obtained his law degree. So as to receive his degree *cum laude*, he had to write a thesis. To meet this requirement, the applicant decided to prepare a bill, based on his father's papers, which his mother had kept, to stop the system of torture used by the police in the state of Puebla. When he submitted his draft thesis in February 2007, the Attorney General (also a

professor at the Faculty of Law) had access to it and allegedly threatened the applicant, making it very clear that he had to abandon his project.

[6] On December 21, 2007, the applicant allegedly took a different route to get home. While he was at a red light, two individuals on foot climbed into his car and stole his computer (which contained a draft of his thesis), a USB key and the stereo system for his car. The applicant complained to the Attorney General's Office, which required a composite sketch of the perpetrators and expertise in the car.

[7] Two days later, two armed individuals allegedly stormed into his work and robbed and bound the three employees present. They stole the applicant's voting card, his debit card, his money, his driver's licence and his cell phone. According to the applicant, he was clearly targeted by these two robberies and the assailants allegedly also told him that he had to stop his work.

[8] On May 13, 2008, on the return of the applicant after an absence of four days, a lawyer friend allegedly informed him that his brother and three other people had been tortured so that they would reveal where the applicant had gone and that they confessed that the applicant kidnapped a family friend, on the ground that he had collaborated with the police with a view to capturing him and confiscating the information that he had received from his father. The applicant's house, where his brother lived, was apparently emptied by the police at that time. The applicant submitted that all this staging was orchestrated by the people that the applicant had information on.

[9] Realizing that his life was in danger, the applicant alleged that he hid with members of his family in other Mexican states, but the police authorities of the state of Puebla were able to track him down. On May 15, 2008, he apparently commenced proceedings to obtain the suspension of an arrest warrant that he had assumed had been issued. However, a decision rendered on July 9, 2008, that the court was not able to authorize the suspension of such a warrant because the director general of the judicial police of the state of Puebla indicate that the police never filed a preliminary report in support of a request for an arrest warrant against the applicant, so that no arrest warrant was issued and that the request was therefore moot. A week later, the applicant left his country and he made a refugee claim the very day of his arrival, on July 16, 2008.

[10] On January 25, 2010, the applicant's brother and four other co-accuseds were allegedly found guilty of kidnapping and robbery and sentenced to 26 years in prison. This decision, which seems to have 304 pages, although the applicant only submitted two short excerpts from it, indicated that an arrest warrant was issued against the applicant and another person on December 15, 2009, for kidnapping and robbery. The applicant's brother apparently appealed and the Court of appeal has not yet rendered its decision.

II. Impugned decision

[11] After summarizing at length the applicant's allegations, the RPD found that the applicant was not credible and that his claims were not corroborated by the evidence. After a carefully reasoned analysis of the applicant's testimony and the evidence submitted, the member wrote:

[19] In the opinion of the Tribunal, the narrative postulated by the claimant lacks plausibility. It is the claimant's submission that his brother Omar Rafael and the three other accuseds were arrested and tortured in an effort to have them confess that the claimant kidnapped

Armando Rios Bonilla because he had collaborated with the police in order for the claimant to be captured and the information collected by his father, confiscated. It is not believable that the claimant's brother and the three other accuseds were convicted and sentenced to 26 years in prison unless there was some concrete evidence to substantiate such charges. In addition, the direction of the Department of Organized Crime, during the month of May 2008, never filed preliminary reports in order to substantiate the issuance of an arrest warrant against the claimant. The claimant has provided no evidence whatsoever to support an allegation that the legal system in the state of Puebla is corrupt. There is no evidence to support the claimant's contention that his brother Omar Rafael and the three other accused were arrested on false charges and convicted of kidnapping for the sole purpose of arresting the claimant. It may well be that there is a warrant of arrest against the claimant outstanding in Mexico; however, in the opinion of the Tribunal, should the claimant be arrested upon his return to Mexico, there is no evidence that he would be persecuted or tortured. Moreover, the Tribunal believes that it is available for the claimant to seek the issuance of a suspension of such arrest warrant. The Tribunal concludes on a balance of probabilities, there is no reasonable chance or serious possibility that the claimant would be persecuted if he were to return to Mexico. In the same fashion, on a balance of probabilities, more likely than not, the claimant would not be subject personally to a risk to his life or to a risk of cruel and unusual treatment or punishment if he were to return to Mexico.

III. Issue

[12] The only issue is whether the RPD erred by finding that the applicant's allegations are not credible, implausible and not corroborated by the evidence.

IV. Analysis

[13] It is not disputed that the applicable standard of review when the issues raised relate to findings of fact, of law or mixed findings of law and fact is that of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*). Therefore, the Court must determine whether the RPD decision is part of the "range of possible, acceptable outcomes

which are defensible in respect of the facts and law” and whether the underlying reasons are transparent and intelligible (*Dunsmuir*, above, at para 47).

[14] An attentive review of the evidence in the record and the testimony during the hearing before the RPD shows that several of the applicant’s allegations are not corroborated, contrary to what he claimed. Therefore, the applicant stated that his father was a lawyer, that he worked as a court officer within a mixed tribunal (civil and criminal) and that he had challenged his unlawful dismissal. Further, Exhibit D-2 (a notarial document) instead established that he was dismissed because he was not a lawyer although his position required it and Exhibits D-3, D-8 and D-9 state that he did not challenge his dismissal, but rather that his pension was not paid.

[15] Moreover, some of the applicant’s statements were purely speculative and did not rely on any evidence. This is particularly the case with his claim that he was personally the target of the two robberies, as well as the death of his father who was allegedly killed because he expected to reveal the corruption of the representatives of the government of the state of Puebla.

[16] The RPD also be considered a certain number of statements from the applicant, in particular that the Head of the Organized Crime Division was present when the applicant’s brother was tortured and that he himself hit him, that his lawyer friend was also present and could have sent the applicant a letter from his brother relating these events, that the two individuals who attacked the applicant in his car knew that he would take a different route and that he would have to stop at a red light and that the applicant’s father, a court officer in a civil tribunal, was able to gather the information about the torture and murder of people who were arrested and detained.

[17] Finally, the RPD noted a certain number of contradictions and omissions in the evidence. Therefore, the applicant did not mention in his Personal Information Form (PIF) that he had been forced to tear up the first complaint that he had filed and in which he stated that he was targeted at the time of the robbery in his automobile, when this was the explanation that he had not mentioned that his attackers had been sent by the Attorney General's Office. He also stated at question 31 of his PIF that his brother had informed him in his letter that he and three other persons were tortured, that a plot was thought up to have the applicant accused and that an individual named Armando Rios Bonilla was allegedly kidnapped, while the letter does not mention this information.

[18] Considering these implausibilities, contradictions and omissions and the speculativeness of several of the applicant's statements, the RPD could have reasonably found that the applicant was not credible.

[19] The applicant also tried to argue that the member had erred by speculating on the applicant's recourse in Mexican law. It is well established that foreign law is a question of fact that must be proven: *Hernandez Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1331, at para 26 (available on CanLII); *Lakhani v Canada (Minister of Citizenship and Immigration)*, 2007 FC 674, at para 22-23, 158 ACWS (3d) 638. In this case, the member found that the applicant could commence an action to have the second arrest warrant suspended, as he had done in 2008 for the warrant that he assumed had been issued. The applicant attempted to argue that he could not take such an action because there was *res judicata*, but did not submit any evidence with respect to

Mexican law in this regard. He cannot now rely on his own negligence to dispute the RPD's finding.

[20] The applicant submitted that the RPD had failed to consider some pieces of evidence that are probative and that could have had an impact on the decision. First, he referred to his travel itinerary, the first two pages of which only two were kept in his record. On the one hand, the applicant did not give the document to the RPD, but rather to the Border Services Agency authorities on arriving in Canada. On the other hand, the applicant did not indicate what harm he allegedly experienced because of the absence of this page and has not mentioned which important information it contained.

[21] The applicant also criticized the RPD of not taking into account the evidence demonstrating the corruption of the former governor of the state of Puebla. However, I note that the documents submitted in evidence do not describe the corruption of the courts and, thus, there is no reason to believe that the applicant could not have the warrant for his arrest vacated if he was indeed not the perpetrator of the offence charged. In any event, this question seems secondary as of when the applicant failed to establish that he was targeted because of the thesis that he allegedly wanted to submit and the information in his possession. In this respect, the member was entitled to rely on common sense to question the applicant's choice of disclosing this information as part of a university thesis rather than alerting the media.

[22] Finally, I note that the applicant did not see fit to submit the Mexican court's judgment in its entirety, which convicted his brother and his co-accused for kidnapping and extortion. This

judgment could have given relevant insight into the allegations that these persons were all arrested and convicted for the sole purpose of seizing the applicant. The member could very well draw a negative inference as to the applicant's credibility on the basis of this omission.

[23] For all the above reasons, I am of the view that the applicant failed to establish the unreasonableness of the impugned decision. The applicant proposed to certify a question as to how to prove foreign law. There is no reason to grant this request, first because this question has already been the subject of several judgments and, second, because it would not be determinative for the purposes of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

“Yves de Montigny”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4859-12

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OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Felipe Morales FOR THE APPLICANT

Sonia Bédard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Felipe Morales FOR THE APPLICANT
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec