

Federal Court



Cour fédérale

Date: 20160419

Docket: IMM-4541-15

Citation: 2016 FC 433

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 19, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

EDWIN JOFFRE FUEL MARTINEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] of a decision made by a Refugee Protection Division immigration officer [RPD or the panel], which concluded that the applicant [Mr. Martinez] is not a Convention refugee or a protected person. The applicant is attempting to have this decision set aside and have his file re-evaluated by another immigration officer.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The applicant is a citizen of Ecuador. He says he arrived in Canada on June 10, 2015, the day he requested asylum. This request was eventually denied on September 4, 2015.

[4] Mr. Martinez is the third spouse of Ms. Cabrera, a Colombian woman. Between March 4, 2001 and August 2, 2002, Ms. Cabrera's father, first spouse and brother were apparently assassinated by the Revolutionary Armed Forces of Colombia [FARC]. Ms. Cabrera then took refuge in Ecuador in 2004. In 2005, her second spouse was apparently assassinated in Columbia.

[5] Mr. Martinez says he met Ms. Cabrera for the first time on September 26, 2006.

[6] On February 26, 2007, another one of Ms. Cabrera's brothers was assassinated in Colombia.

[7] On June 17, 2007, the applicant claims he was threatened by two individuals who told him he should stop seeing Ms. Cabrera. Mr. Martinez says he complained to the authorities following this incident.

[8] On August 14, 2008, Ms. Cabrera settled in Canada after she was granted refugee status by the Canadian Embassy in Ecuador.

[9] On April 16, 2009, during a trip to Ecuador, Ms. Cabrera and Mr. Martinez got married.

[10] In March 2015, the applicant claims he was accosted, beaten and threatened because he had helped Ms. Cabrera's family escape and settle in Ecuador. These are the circumstances under which the applicant claims he resigned from his job and left the city.

II. Analysis

[11] The only question raised by this application is whether it was reasonable for the panel to conclude that the applicant's allegations that he had been threatened by FARC because of his relationship with Ms. Cabrera and her family were not credible.

[12] It is well established in law that the Court must show restraint with respect to the panel's conclusions regarding credibility because the determination of credibility "is the heartland of the panel's jurisdiction" (*Toma v Canada (Minister of Citizenship and Immigration)*, 2014 FC 121, at paragraphs 9-10, citing Mr. Justice Martineau in the matter of *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 7).

[13] The panel concluded that, generally speaking, the allegations made by Mr. Martinez, an educated man employed as an assistant business manager in a bank, were not credible because he was not able to provide satisfactory explanations for the many contradictions and omissions noted by the panel between his testimony, his Basis of Claim Form [BOC] and the draft of his story in his agenda.

[14] The applicant maintains that the panel erred in carrying out a detailed examination of facts concerning questions that were irrelevant or peripheral to his claim for refugee protection. He also maintains that the panel did not consider his explanations regarding the errors he made in his agenda notes.

[15] Unless there are grounds for questioning an applicant's testimony, it is presumed to be true. However, in this case, there are grounds for questioning Mr. Martinez's testimony because of the contradictions at the heart of his claim for refugee protection, specifically, the date his relationship with Ms. Cabrera began.

[16] Therefore, it was reasonable for the panel to consider the applicant's credibility to be compromised because he was unable to provide satisfactory explanations for the three contradictory dates he provided as the start of his relationship with Ms. Cabrera, specifically September 2005, January 2006 and September 2006.

[17] Moreover, the panel noted that Ms. Cabrera had not mentioned Mr. Martinez in her application for permanent residence in Canada in 2008, although he claims that they were in a common-law relationship at that time. This fact on its own is not a deciding factor, but it is taken in the context of the contradictory facts presented by the applicant.

[18] In light of these facts, the panel concluded that corroborating evidence was needed to establish the existence of the relationship between Ms. Cabrera and Mr. Martinez: *Toure v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1388 at paragraph 11. It was

therefore reasonable for the panel to draw a negative inference from the applicant's failure to provide documentary evidence to support his allegation that he had been living with Ms. Cabrera at the time of the first incident in June 2007, which, according to his testimony, led him to leave his home.

[19] The applicant maintains that the panel erred in drawing only negative conclusions in spite of the evidence presented that corroborates his story; however, the applicant did not explain the nature of the evidence that supposedly corroborates his story, not to mention the fact that he has not submitted any evidence on this subject to the court file.

[20] Moreover, the applicant did not submit any objective evidence to support his allegations that he complained to the authorities in 2007, and he did not explain why he was unable to obtain this corroborating evidence.

[21] The applicant also omitted significant facts that he was unable to adequately explain. When the panel questioned him about other incidents that occurred after those of June 17, 2007, he started relating the incidents of February 2015. According to the narrative of facts in his agenda, he apparently omitted an important incident that occurred in 2008. When questioned about this omission, the applicant simply said: "Perhaps it was nerves and confusion." A fairly inadequate reply.

[22] Consequently, it was reasonable for the panel to conclude that the applicant's credibility was tarnished as a result of the contradictions and omission of important facts.

JUDGMENT

THE COURT ORDERS THAT the application for judicial review is dismissed and no question is certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4541-15

STYLE OF CAUSE: EDWIN JOFFRE FUEL MARTINEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: ANNIS J.

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