

Federal Court



Cour fédérale

**Date: 20171108**

**Docket: IMM-1706-17**

**Citation: 2017 FC 1019**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Montréal, Quebec, November 8, 2017**

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

**BETWEEN:**

**JORGE CASTILLO CAMBARA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] The applicant himself acknowledged that he came to Canada for financial reasons. The panel noted this in its decision.

Also, when the panel asked him whether he had come to Canada for financial reasons, the claimant spontaneously answered, [TRANSLATION] “It was to pay him,” meaning Roberto. He

hesitated and then added, [TRANSLATION] “And to be with my wife. The goal is to be with my wife.”

(RPD’s Reasons, at paragraph 19.)

[2] The RPD did not err in finding that the applicant did not have a well-founded fear of persecution because he did not claim protection in any other country “as quickly as possible” (*Pissareva v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2001 (QL), at paragraph 27).

## II. Nature of the matter

[3] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on March 28, 2017, by the Refugee Protection Division [RPD or panel] of the Immigration and Refugee Board. In that decision, the RPD concluded that the refugee claimant did not qualify as a refugee within the meaning of the *Convention Relating to the Status of Refugees* [the Convention] or as a person in need of protection. The RPD therefore dismissed the refugee claim based on section 96 and subsection 97(1) of the IRPA.

## III. Facts

[4] The applicant, age 36, is a citizen of Cuba.

[5] On July 8, 2016, the applicant married a Canadian citizen of Cuban origin. In July 2016, the applicant was allegedly fired from his job after telling his employer that he was leaving for Canada to be with his spouse.

[6] In order to leave Cuba, the applicant allegedly borrowed \$8,000 from Roberto Garcia Lopez. The applicant was to repay Roberto \$10,000, including \$2,000 in interest.

[7] On August 17, 2016, the applicant left Cuba and went to Mexico with a work visa. However, the applicant apparently never received the salary promised by his employer in Mexico. He therefore left for the United States and claimed protection from that country in order to cross the Canadian border legally.

[8] On August 19, 2016, the applicant was denied entry into Canada. Thus, on August 23, 2016, he applied for protection in Canada to achieve his alleged goal of being with his spouse.

[9] On September 5, 2016, the applicant apparently learned from his mother that Roberto, his lender, had allegedly made threats against him to obtain repayment of the \$2,000. The applicant states that he fears Roberto because he is a gangster. Since being in Canada, the applicant alleges to have repaid \$1,500 to Roberto.

#### IV. Decision

[10] On March 28, 2017, the RPD dismissed the refugee claim based on section 96 and subsection 97(1) of the IRPA. The panel concluded that the applicant lacked credibility in

general. He apparently improvised and changed his testimony at the hearing. The panel found that the applicant's primary objective was financial in nature. Convinced that the applicant's reasons for coming to Canada were financial, the panel therefore rejected his explanations.

[11] The panel found that the applicant did not satisfactorily demonstrate that he fears the police or a representative of the Cuban state. The panel therefore dismissed the refugee claim under paragraph 97(1)(a) of the IRPA. Ultimately, the panel found that, if the applicant had truly feared for his life in Cuba, he would have taken advantage of his claim for protection in the United States to ensure his safety. The panel also noted that the applicant had not sought protection in Mexico. That decision is the subject of this application for judicial review.

#### V. Issue

[12] This case raises just one issue: is the RPD's decision reasonable?

[13] The Court considers the standard of review applicable to the RPD's finding on the applicant's credibility and on the assessment of the evidence to be that of reasonableness (*Devanandan v. Canada (Citizenship and Immigration)*, 2016 FC 768, at paragraph 15; *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 NR 315 (FCA), at paragraph 4).

[14] The Court can intervene only if the RPD's reasons are not justified, transparent or intelligible. To satisfy the standard of reasonableness, the decision must fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v.*

*New Brunswick*, 2008 SCC 9, at paragraph 47 [*Dunsmuir*]; *Irma v Canada (Minister of Citizenship and Immigration)*, 2013 FC 641, at paragraph 27).

VI. Relevant provisions

[15] The following provisions are relevant in this case.

**Convention refugee**

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**Person in need of protection**

**97** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**Définition de réfugié**

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Personne à protéger**

**97** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

### **Decision on Claim for Refugee Protection**

**107** (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

### **Décision sur la demande d'asile**

**107** (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

VII. Submissions of the parties

A. *Submissions of the applicant*

[16] The applicant argues that the RPD's decision is unreasonable. It should not have concluded that the applicant was not credible and that he did not truly fear for his life. The applicant states that his conduct was always that of a person who feared for his safety if he were to return to Cuba. The RPD also allegedly erred in concluding that the applicant could have found refuge in the United States or Mexico. The applicant explains that the protection of those countries is not a determining factor in itself and that the panel should have found that his explanations at the hearing were credible.

[17] The applicant also submits that the panel should not have found that he improvised his account during his testimony. At the hearing before the RPD, the applicant allegedly made a mistake, among others, in his response to a question about a date, but he quickly corrected it before being confronted about the contradiction. According to the applicant, there is no perfect testimony (*Desmond v. Canada (Citizenship and Immigration)*, 2007 CanLII 68307 (CA IRB), at paragraph 16). The applicant finds that his testimony related the same facts as his written account (*Zhou v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 70, at paragraph 9).

B. *Submissions of the respondent*

[18] The respondent argues that it was reasonable for the panel to dismiss the refugee claim. The applicant admitted to fearing a specific individual, a gangster, not a social group or the

Cuban state. The burden was on the applicant to show that he was a person in need of protection, and the panel was not satisfied that he had discharged that burden.

[19] The respondent also submits that “[t]he purpose of the refugee system both in international and domestic law is not to provide an easy means for immigrants to find a new and more desirable country of residence; it is to furnish a safe haven to those who rightly fear they will be persecuted in their country of origin” (*Akthar v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 513 (QL), at paragraph 18). The claim process aims to protect people who truly need it (*Urbanek v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 556 (QL), at paragraph 4 [*Urbanek*]). The respondent is of the opinion that the applicant did not need Canada’s protection, as his primary goal was to come to Canada for financial reasons.

The panel found that this clearly demonstrates that the claimant is seeking a way to immigrate to Canada, because his wife does not have the means to sponsor him.

(RPD’s Reasons, at paragraph 22.)

[20] The respondent also argues that the applicant’s testimony was not credible in general, as significant gaps were noted regarding elements central to his refugee claim. The RPD is a specialized tribunal and “the Court owes deference to findings of credibility made by the RPD” (*Paul v. Canada (Citizenship and Immigration)*, 2015 FC 1324, at paragraph 13); the RPD has the advantage of observing and hearing the claimant at the hearing. After hearing the explanations provided by the applicant, the RPD deemed them to be unsatisfactory.



[21] Lastly, the respondent submits that, at the hearing, the RPD found the applicant's conduct to be inconsistent with that of a person with a reasonable fear of persecution. The applicant explained that he allegedly sought protection in Canada, rather than in Mexico or the United States, because his spouse is in Canada. The respondent submits that the applicant's explanation "is an unacceptable reason to delay seeking asylum in another country and strongly indicates a lack of subjective fear of persecution" (*Gebetas v. Canada (Citizenship and Immigration)*, 2013 FC 1241, at paragraph 32). It was open to the panel to consider the fact that the applicant had not taken "serious measures" to protect himself in Mexico and the United States (*Mardones v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 351 (QL), at paragraph 2).

### VIII. Analysis

[22] For the reasons that follow, this application for judicial review is dismissed.

#### A. *Is the RPD's decision reasonable?*

[23] The Court is satisfied that the RPD could reasonably conclude that the applicant lacked credibility in general, particularly because he changed his responses a few times. The RPD noted inconsistencies and contradictions in the applicant's testimony that were central to his refugee claim and that could not justify why the applicant should obtain protection from Canada, including:

- The applicant replied that he did not claim protection in Mexico because the salary is not good and he does not have any family there, though he alleges that he feared for his life and safety (Reasons for Decision, at paragraph 16);

- The applicant himself admitted that he came to Canada for financial reasons, not to seek refuge (Reasons for Decision, at paragraph 19);
- The applicant also mentioned spontaneously that he came to Canada to pay Roberto, his lender. However, he changed his testimony to add that the goal was also to be with his wife (Reasons for Decision, at paragraph 19);
- The applicant abandoned his application for protection in the United States, saying in his testimony: [TRANSLATION] “I have no one in the United States. Here, in Canada, I have my wife” (Reasons for Decision, at paragraph 23);
- The applicant also stated in his testimony that he apparently only claimed asylum in the United States so that he could travel and come to Canada (Reasons for Decision, at paragraph 24).

[24] Following these inconsistencies, the RPD gave the applicant an opportunity to provide explanations for them. However, it deemed them to be unsatisfactory. The Court notes that the RPD can consider inconsistencies when assessing a claimant’s credibility (*Selvam v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 513, at paragraph 29). “However, the inconsistencies must be rationally related to the applicant’s credibility and must be major enough by themselves to call into question the applicant’s credibility” (*Kambanda v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1267, at paragraph 42).

[25] In this case, the RPD also concluded that the applicant had no subjective fear, as the inconsistencies and changes in his testimony were related to important facts in his account. For instance, the applicant, who alleged that he fears for his life and safety, did not claim protection in Mexico after leaving Cuba and abandoned his claim for asylum in the United States. In addition, the applicant himself acknowledged that he came to Canada for financial reasons. The panel noted this in its decision.

Also, when the panel asked him whether he had come to Canada for financial reasons, the claimant spontaneously answered, [TRANSLATION] “It was to pay him,” meaning Roberto. He hesitated and then added, [TRANSLATION] “And to be with my wife. The goal is to be with my wife.”

(RPD’s Reasons, at paragraph 19.)

[26] The Court reiterates that the panel has the opportunity to hear witnesses and observe their demeanor (*Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319, at paragraph 42 [*Rahal*]). In this case, the RPD concluded that the applicant’s demeanor was that of someone who did not fear for his life, given the factual nuances in the evidence. In short, “the RPD [could] legitimately have regard to witness demeanor, including hesitations, vagueness and changing or elaborating on their versions of events” (*Rahal*, at paragraph 45). It must also be kept in mind that the applicant specified in one of his responses to the member that he is not in Canada for one of the five reasons for which a claimant can seek refugee status in Canada, as set out in the Convention.

[27] Finally, without wanting to be repetitive, the Court points out that the claim process serves to protect people who truly need it (*Urbanek*, at paragraph 4). The Court finds that the fact that the applicant did not claim protection in Mexico because the salary left a lot to be desired and did not pursue the asylum process in the United States because he has no family in that country cannot justify his choice to travel to Canada to claim refugee protection (*Garavito Olaya v. Canada (Citizenship and Immigration)*, 2012 FC 913, at paragraph 54). The RPD did not err in finding that the applicant did not have a well-founded fear of persecution because he did not claim protection in any other country “as quickly as possible” (*Pissareva v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2001 (QL), at paragraph 27).

[28] For these reasons, there are no grounds for the Court to intervene in this case, as it was up to the specialized tribunal to decide on the applicant's claim based on the evidence on record. The RPD's decision is reasonable and falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at paragraph 47).

IX. Conclusion

[29] This application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review is dismissed. There is no question of importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
This 11<sup>th</sup> day of October 2019

Lionbridge

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

**DOCKET:** IMM-1706-17

**STYLE OF CAUSE:** JORGE CASTILLO CAMBARA v. THE MINISTER  
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