

Date: 20040729

Docket: IMM-5826-03

Citation: 2004 FC 1043

Ottawa, Ontario, this 29th day of July, 2004

PRESENT: THE HONOURABLE MADAM JUSTICE SNIDER

BETWEEN:

**ELISA MARIA PALACIOS MARTINEZ,
FREDERYCK ALFONSO FRANCO PALACIOS
(a.k.a. Frederyck Alfon Franco Palacios)
BRENDA BERENICE FRANCO PALACIOS**

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

SNIDER J.

[1] Ms. Elisa Maria Palacios Martinez, the principal Applicant, and her two children, are citizens of Mexico who claim to have a well-founded fear of persecution at the hands of persons who threatened the principal Applicant's husband.

[2] In a decision dated June 26, 2003, a member of the Immigration and Refugee Board, Refugee Protection Division (the "Board member") determined that the Applicants were not Convention refugees or persons in need of protection. The Board

member found that state protection is available to the Applicants should they return to Mexico. In addition, the Board member did not believe the principal Applicant's allegation that the Judicial Police and government officials were her agents of persecution.

[3] During the course of the hearing, counsel for the Applicants raised two concerns:

1. The Board member's comments and abrupt departure from the room during the hearing indicated that the Applicants were not receiving a fair hearing.
2. During a break in the hearing, the interpreter expressed the opinion to the Applicants that the Board member was hard of hearing.

[4] After some discussion, the Board member continued the hearing in spite of these concerns.

[5] The Applicants seek judicial review of the decision, on the basis that they did not receive a fair hearing. Neither of the key substantive conclusions by the Board is contested.

Issue

[6] This application raises one issue:

1. Did the Board member exhibit a reasonable apprehension of bias, thus violating the principles of natural justice?

Analysis

[7] Put simply, in the Applicants' submission, their case was not *heard* by an *impartial* decision-maker.

[8] The test for reasonable apprehension of bias is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?" (*Committee for Justice and Liberty v. National Energy Board* (1978), 68 D.L.R. (3d) 716 (S.C.C.)). This test has been imported into the immigration context (*Ahumada v. Canada (Minister of Citizenship and Immigration)* (2001), 199 D.L.R. (4th) 103 (F.C.A.) at 109; *Arthur v. Canada (Minister of Employment and Immigration)* (1992), 98 D.L.R. (4th) 254 (F.C.A.) at 260; *Mahendran v. Canada (Minister of Employment and Immigration)* (1991), 14 Imm. L.R. (2d) 30 (F.C.A.)).

[9] The Applicants submit that the Board member suddenly and angrily left the hearing room; that he made a hostile comment on his way out about not "getting the story straight"; and, that the parties "better get it straight" upon his return. With respect, these allegations are not borne out upon a careful review of the hearing transcript. The Board member did express some frustration and did state that he was not getting the story straight. He did not, however, threaten the parties that they "better get it straight" when he returns. Further, when counsel raised concerns about the Board member's sudden and unexplained departure, the Board member disclosed that he had an urgent need to use the washroom. In this context, I am not persuaded that the Board member would not decide the Applicants' claims fairly. A Board member's expression of some frustration at being unable to fully understand the evidence before him or her does not give rise to a reasonable apprehension of bias (*Mahendran, supra*).

[10] The Applicant also asserts that the Board member has a hearing problem and failed to address counsel's concerns as to how this impediment impacted the fairness of the hearing. During a short break, the interpreter at the hearing allegedly commented at length about the Board member having a hearing problem. After the break, counsel expressed concern about the interpreter's comments. Once the problem was raised by counsel at the hearing, the Board member assured all parties that he does not have a hearing problem.

[11] The Applicants referred to various incidents recorded in the transcript that

allegedly support a conclusion that the Board member was having difficulty hearing the parties. However, the Respondent also referred me to places where parties, other than the Board member, asked that questions or comments be repeated. I also note that, in spite of making very serious allegations at the hearing, the interpreter did not swear an affidavit describing his experience working with the Board member.

[12] Upon carefully reviewing the entire hearing transcript and the decision, I am not persuaded, on a balance of probabilities, that the Board member possesses a hearing problem that would give rise to a breach of natural justice. Further, the Applicants did not point me to any place in the testimony or in the decision of the Board member that would indicate that they were unable to present their case. Indeed, in spite of the concerns raised by counsel, the principal Applicant and even the interpreter at the hearing, the Board member directed the parties back to a hearing of the evidence which concluded in a normal fashion. In addition, the decision of the Board member did not ignore or misconstrue any of the evidence, which one might expect to have happened if a serious hearing problem existed.

[13] I am satisfied that the Applicants received a fair hearing of their case. To put this conclusion into the context of the test for apprehension of bias, an informed person, viewing the matter realistically and practically—and having thought the matter through—would not conclude that it was more likely than not that the Board member would decide the matter unfairly. Accordingly, the application will be dismissed.

[14] Neither party proposed a question for certification. None will be certified.

ORDER

THIS COURT ORDERS THAT:

1. The application is dismissed; and,
2. No question of general importance is certified.

"Judith A. Snider"

Judge