

Date: 20050812

Docket: IMM-7630-04

Citation: 2005 FC 1086

BETWEEN:

**MARLENE CAMPOS GARCIA,
SOFIA OREGON CAMPOS,
WILBERT OREGON CAMPOS,
JENNIFER PALOMA OREGON CAMPOS,
GASPAR OREGON JUAREZ**

Applicants

-and-

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER

PINARD J.

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the IRB) dated July 2, 2004, that the applicants are not “Convention refugees” or “persons in need of protection” as defined under 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] Marlene Campos Garcia, her children, Sofia, Wilbert and Jennifer Paloma Oregon Campos and her husband, Gaspar Oregon Juarez (the applicants) are citizens of Mexico. They allege that they have a well-founded fear of persecution in their native country based on their

membership in a particular social group, and that they are “persons in need of protection” because they would be personally subjected to a risk to their lives and danger of torture if they were to return to Mexico.

[3] The IRB found that the applicants’ story regarding the alleged persecution at the hands of Joaquin Tamex Zuniga was “a complete fabrication”. In a context where the IRB supposedly gave the applicant Marlene Campos Garcia “the benefit of the doubt” with regard to the violence she suffered at the hands of Mr. Zuniga, I find that it was absolutely excessive for the panel to have called it a “complete fabrication”.

[4] Further, it is my opinion, in the circumstances, after reviewing the evidence, that the panel based this finding on minor or secondary implausibilities which do not justify a finding of a general lack of credibility (see *Lubana v. Minister of Citizenship and Immigration* (February 3, 2003), IMM-2936-02, 2003 FCT 116). One must bear in mind that the testimony of a claimant pursuant to the Act is presumed to be true (*Maldonado v. Canada (M.E.I.)*, [1980] 2 F.C. 302 (C.A.)) and that presumption, in this case, was clearly not rebutted.

[5] Accordingly, the application for judicial review is allowed and the matter is referred to a differently constituted panel of the IRB for reconsideration and redetermination.

“Yvon Pinard”
JUDGE

OTTAWA, ONTARIO
August 12, 2005

Certified true translation
Kelley Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7630-04

STYLE OF CAUSE: MARLENE CAMPOS GARCIA, SOFIA OREGON CAMPOS, WILBERT OREGON CAMPOS, JENNIFER PALOMA OREGON CAMPOS, GASPAR OREGON JUAREZ v. MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 28, 2005

REASONS FOR ORDER: Pinard J.

DATE OF REASONS: August 12, 2005

APPEARANCES:

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