

Date: 20051125

Docket: IMM-3245-05

Citation: 2005 FC 1598

Ottawa, Ontario, the 25th day of November 2005

PRESENT: THE HONOURABLE MR. JUSTICE BLAIS

BETWEEN:

LUZ ALDA GONZALEZ CHAVEZ

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

BLAIS J.

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 5, 2005, that Luz Alda Gonzalez Chavez (the applicant) is not a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the Act) or a person in need of protection under section 97 of the Act.

RELEVANT FACTS

[2] The applicant is a 57-year-old citizen of Peru. She ran a grocery store with her husband in Lima. On February 16, 2002, the couple was accosted for the first time by alleged members of the Shining Path (SP), who demanded money from the couple to fund the harvest of yucca in Pucallpa. They were harassed for the next ten months.

[3] The applicant alleges that she and her husband moved and changed their telephone number to put an end to the SP's harassment. In the first week of December 2002, the applicant's husband was threatened by an SP member who, armed with a machete, ordered him to make his monthly payments.

[4] On February 24, 2003, the applicant's husband was beaten and robbed and received death threats. The applicant lodged a complaint with the police in Lima. She separated from her husband, as she felt that staying with him was too risky. The applicant left Peru on October 15, 2003.

[5] At the second hearing, the applicant told the Board that her family had just been the target of a terrorist attack and that her mother had died as a result of her wounds.

ISSUE

1. **Does the Board's decision violate the principles of natural justice because extrinsic evidence was used?**

ANALYSIS

1. Does the Board's decision violate the principles of natural justice because extrinsic evidence was used?

[6] The applicant is challenging the Board's statement that the state of Peru is doing everything it can to fight terrorism, that is, that "the Peruvian government has extended the 'state of emergency'. It has also reactivated its antiterrorist bases, arrested alleged SP members and offered a bounty on the SP members who allegedly participated in the armed confrontations".

[7] The Board justified its comments by referring to the documentary evidence. However, following a review of the documentary evidence submitted by both parties, I cannot find where the Board came across this information, except for the reference to state emergency measures. The documentary evidence adduced does not mention that anti-terrorist bases were reactivated or bounties on SP members were being offered.

[8] In *Shah v. Canada (Minister of Employment and Immigration)* (1994), 170 N.R. 238, Hugessen J.A. said at paragraph 2 that if an immigration officer relies on "extrinsic evidence, not brought forward by the applicant", the applicant must be given an opportunity to respond to the evidence.

[9] In *Dasent v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 720, [1994] F.C.J. No. 1902, Rothstein J. further defined the meaning of the term "extrinsic evidence, not brought forward by the applicant" at paragraph 22:

In the case at bar, having regard to the words "not brought forward by the applicant" used by Hugessen J.A. to qualify the term "extrinsic evidence," and his reference to *Muliadi*, I interpret the term "extrinsic evidence not brought forward by the applicant" **as evidence of which the applicant is unaware because it comes from an outside source. This would be evidence of which the applicant has no knowledge and on which the immigration officer intends to rely in making a decision affecting the applicant.**

[Emphasis added.]

[10] At paragraph 23, he added that the point is "whether the applicant had knowledge of the information so that he or she had the opportunity to correct prejudicial misunderstandings or misstatements".

[11] In my view, the Board's decision was influenced by extrinsic evidence relating to measures taken by the Peruvian authorities to enhance security. Failing to disclose extrinsic information gives the impression that an injustice was committed, and I cannot find that this breach of the principles of natural justice was negligible and did not have an appreciable impact on the final decision.

[12] For these reasons, I feel that the Court must intervene and set aside the Board's decision.

ORDER

THE COURT ORDERS that

- The application for judicial review be allowed and the decision be referred to the Refugee Protection Division for redetermination in light of this order;
- No question be certified.

“Pierre Blais”

Judge

Certified true translation
Jason Oettel

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3245-05

STYLE OF CAUSE: LUZ ALDA GONZALEZ CHAVEZ v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 16, 2005

REASONS FOR ORDER BY: The Honourable Mr. Justice Blais

DATED: November 25, 2005

APPEARANCES:

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