

B E T W E E N:

ANGEL JUAN FERNANDEZ AMPUERO

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

REED, J.:

The applicant seeks to have a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board set aside. That decision found him not to be a convention refugee.

Counsel for the applicant argues that the Board misconstrued the evidence and made negative inferences based on those misconstructions. He also argues that the Board found parts of the applicant's evidence implausible when there was no reason to find it to be so.

The applicant was employed in an administrative capacity (architect) with the National Police in Oruro, Bolivia. He had been in such employ since 1981. His evidence was that, while he was on assignment in Pisiga, at the Chile/Bolivia border, on April 16, 1995, he and two friends overheard UMOPAR (officers of the U.S. - backed Bolivian Narcotic Police Force) discussing a drug transaction with a truck driver who

seemed to be transporting sulphuric acid into Bolivia from Chile. Sulphuric acid is used to process cocaine. The truck driver and the officers were allegedly discussing bribes and payoffs going all the way up to the commander of UMOPAR. The applicant stated that he and his companions were discovered by the officers and threatened that they would be killed if they revealed what they had heard. He states that he reported these events to his departmental commander, Colonel Garcia, the day after his return to Oruro from Pisiga. His reporting of this event subsequently led to his arrest by UMOPAR officers, beatings by them and an attempted transfer by truck to Cochabamba. In the course of that transfer he escaped and eventually entered Canada.

The Board's rejection of the applicant's claim focused on three aspects of the evidence: (1) the applicant's reporting the events of April 16, 1995 to his superior (the departmental commander), Colonel Garcia, when he suspected that his superior was involved in police corruption; (2) his explanation of how he had escaped from the UMOPAR officers; (3) his failure to contact his brother who was in Canada and who had also escaped from Bolivia and sought refugee status here.

It is important to note, first, that the Federal Court when reviewing decisions of Federal tribunals and decision makers does not evaluate the evidence *de novo*. Section 18.1 (4) (d) of the *Federal Court Act* provides that decisions are only set aside, as a result of the mis-characterization of factual matters where the Court: is satisfied that the federal board, commission or other tribunal ... based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; (underlining added)

With respect to the first area in which the Board found the applicant's evidence not to be credible, it stated that the applicant had a "deep knowledge" of police corruption and that the events he encountered on April 16, 1995 would not have been considered by him to be extraordinary. Counsel argues that characterizing the applicant's evidence as demonstrating that he had a "deep knowledge of corruption practices" is a mis-characterization of the evidence. It is argued that the evidence discloses that the applicant had suspicions that the police were involved in the drug trade and that members took bribes to facilitate that activity.

The transcript reveals that the applicant said he had "deep concerns" about corruption in the police force. It also reveals that he stated on several occasions that he knew of the corruption and that he had for many years operated on the basis that he could not trust anyone in the police force. He also suspected his supervisor of being involved in the corruption.

It may be that the use of the word "deep" in connection with "knowledge" is a bit of an overstatement of the evidence but it would be erroneous for a reviewing Court to treat this as an error that justifies setting the decision aside, in the light of the evidence as a whole. Whether the Board characterized the applicant's awareness of corruption, as suspicion or knowledge, as deep or more superficial, is secondary to the central element of its conclusion. The Board did not believe that a person who had such knowledge or suspicions would report the incidents of April 16, 1995, to his supervisor, especially, when he suspected the supervisor of also being involved in corruption. I will quote the relevant portions of the transcript:

RCO But, why, knowing the extent of the corruption, knowing the inability to trust anyone in the police force, would you have chosen to report one incident, one set of suspicions and not the other? [the other refers to his failure to report his suspicion that one of the friends who had been with him on April 16, 1995, had not committed suicide but had been murdered]

CLAIMANT Can you say that again, please:

RCO Well, you were able to relay your fears or suspicions about how you couldn't trust anyone in the police force and go to your department commander, go to your colonel Wilfredo Garcia, your departmental commander to report what happened in Pisiga, but ---

CLAIMANT Yes, he was my superior and it was one of my duties to keep him informed.

RCO I'm just trying to wonder in my own mind, to seek clarification from you as to why you'd report that first incident in Pisiga, but not what you had strong suspicions about regarding Mario's death.

CLAIMANT Yes, I had assessed the facts and I'd realized that almost everyone was now part of this corruption and I could not afford to trust anyone. Even more so, after Mario's death.

RCO So then, was there in fact a change in your perceptions between the visit ---

MACADAM Well, I just wonder if we could just pursue that and I'm still not clear. Earlier sir, you said that you suspected Garcia of being involved in this kind of corruption and so I'm still not clear, why --- why did you -- certainly you've had to give a report on the reason you went to Pisiga, but why --- why not simply omit from your report any reference to this drug thing, especially if you suspected Garcia of being involved in it?

CLAIMANT Yes, it was my life and my personal and physical integrity that was at risk because of what I have been told in Pisiga. That made me anxious.

MACADAM Well, maybe you don't understand the question, sir, because what you've just told me doesn't answer the question. So, I'll try it one more time. You've told us that you suspect Garcia of being involved in this corruption. So, I can understand that you had to give a report to him on the reason you were sent to Pisiga and presumably, that's the drawings for the new station. But, based on what you've told us, there was no reason that you would have to tell him that you saw this drug transaction or what --- so why would you mention it at all to him in those circumstances?

CLAIMANT I just want to know whether he was aware of this and if his reaction would be different. Because, had he not been part of the corruption, he would in turn, report to his superiors.

Another finding of the Board that relates to the April 16 incident and for which it is stated there is no support, is the Board's conclusion that given the applicant's knowledge, he would not have considered the events of April 16, 1995, to be extraordinary. He stated in his evidence that while he had been aware of corruption in the police force relating to the drug trade he had not personally encountered it before April 16, 1995. His evidence was that he was surprised at hearing the conversation, and stunned to receive death threats. The Board wrote:

In view of his experience and contacts, *the panel is not persuaded* that the claimant could have considered the event to be extraordinary. (emphasis added)

The Board did not misconstrue the evidence. There is no reason to think that it did not understand what the applicant had said. It simply did not believe the applicant's evidence. It was not persuaded to believe the applicant's assertion that he had been surprised and stunned. This type of assessment of the evidence is particularly within the scope of the Board's authority. It is the Board who sees and hears the witnesses and who has considerable experience in assessing these types of cases. I could not find that the Board erred in the conclusion it reached.

The second area in which the Board did not find the applicant's evidence credible was his evidence about how he escaped. He and one of the companions who had witnessed the April 16, 1995 events, Carlos, were arrested, the other companion, as noted, having been killed (or committed suicide). The applicant and Carlos were being transferred to Cochabamba for disciplinary action. The truck stopped on route;

the applicant did not know why. The UMOPAR officers let him and his companion out of the truck; he did not know why. The applicant and Carlos ran away. He was a marathon runner and escaped. His companion was killed. He was assisted by an athletic club and left Bolivia to participate in a marathon. The club made the arrangements for him. The Board stated that the "claimant's evidence concerning his escape on foot and Carlos' death is implausible".

Counsel for the applicant argues that it would be unreasonable for the applicant to know why the truck stopped and why the UMOPAR officers let the two of them out of the truck - that would be speculation on his part. Counsel also argues that the Board ignored the fact that it was dark and the location in question was in rough and rocky terrain. The Board's decision reads, in part:

The claimant did not give persuasive evidence concerning Carlos' death and his own escape on this occasion. The UMOPAR agents stopped the truck for no apparent reason and allowed the claimant and Carlos out of the truck. The claimant was able to successfully run from the captors though Carlos was hit by bullets as he ran. While the panel has considered the claimant's experience as a marathon runner in this matter, we are not satisfied that this evidence is probably true. It is not plausible that three UMOPAR agents clandestinely transporting two witnesses to UMOPAR corruption would allow those witnesses to escape in the manner described by the claimant.

I do not believe the Board ignored the evidence about the nature of the terrain and the time of night. It simply did not believe an unarmed man could escape from three armed officers. This is a matter of credibility which a Court, on review of a tribunal decision, does not set aside lightly. I do not find there to be grounds that would allow me to set the decision aside as a result of the Board's conclusions on this aspect of the evidence.

Lastly, the Board's conclusion that it was not credible that the applicant had not contacted his brother before leaving Bolivia is again a question of credibility and a weighing of the evidence. The Board did not ignore the applicant's explanation as to why he did not contact his brother. It simply disbelieved him. This is not a situation in which a reviewing Court is entitled to set aside the Board's decision.

For the reasons given this application must be dismissed.

"B. Reed"
Judge

Toronto, Ontario
October 2, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-1-97

STYLE OF CAUSE: ANGEL JUAN FERNANDEZ AMPUERO

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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REASONS FOR ORDER BY: REED, J.

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FEDERAL COURT OF CANADA

Court No.: IMM-1-97

Between:

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