

BETWEEN:

AUGUSTIN CORVERA,

Plaintiff;

- AND -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Defendant.

REASONS FOR ORDER

(Delivered orally on the Bench
at Vancouver, B.C. on May 9, 1997, as edited)

McKEOWN J.

The applicant, a citizen of El Salvador, seeks judicial review of the decision of the Immigration and Refugee Board, (the Board), dated August 9, 1996 wherein the Board determined that the applicant was not a Convention refugee.

The issues are whether the findings of the Board in respect to credibility, changing country conditions, state protection and internal flight alternative were open to it.

The Board made two findings against the applicant with respect to credibility. The first finding related to his brother having been "grabbed" by the military to "fill my vacancy" after the claimant left. In my view, the Board's finding in this respect was open to it.

The second finding was with respect to his children. There was one statement that the applicant had stated that the children had been persecuted because of him.

There is no testimony by the applicant to that effect. However, this error is not central to the result, which is dependent on the findings of the Board with respect to change in country circumstances and state protection.

The change in country circumstances were considered by the Board, and the Board found that the circumstances in El Salvador had changed so that the applicant no longer had a fear of persecution should he return to El Salvador.

Yusuf v. M.E.I. (1995), 179 N.R. 11 at 12 (F.C.A.) supports the proposition that the Board's finding of changed circumstances is a question of fact and not of law. The Board's findings with respect to the changed circumstances in El Salvador were open to it.

The issue of state protection was also dealt with by the Board. The Board followed the law as set out in *Attorney General of Canada v. Ward*, [1993] 2 S.C.R. 689, although it is not specifically referred to in its decision. Under *Ward*, absent a complete breakdown of state apparatus, it is presumed that a state can protect its citizens. This is a presumption that is rebuttable in the event that the applicant provides the Board with clear and convincing evidence of the state's inability to protect him.

In this case the Board found that the applicant could receive protection from El Salvador. It acknowledged that there were instances of police misconduct, and also that there was a breakdown in civil obedience in El Salvador. Notwithstanding these problems with respect to state protection, the Board was satisfied:
There is no indication that this citizen of El Salvador, former member of its armed forces could not obtain protection from the authorities.

In my view, this finding was also open to the Board.

In light of the finding that the applicant had not established a well-founded fear of persecution today in El Salvador as a result of the changed circumstances and the availability of state protection, I do not have to deal with the internal flight alternative, which was dealt with very briefly in the Board's decision.

The application for judicial review is dismissed.

"William P. McKeown"

Judge

TORONTO, ONTARIO

June 27, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-3321-96

STYLE OF CAUSE: AUGUSTIN CORVERA

- and -

MINISTER OF CITIZENSHIP
AND IMMIGRATION

DATE OF HEARING: MAY 9, 1997

PLACE OF HEARING: VANCOUVER, B.C.

REASONS FOR ORDER BY: McKEOWN, J.

DATED: JUNE 27, 1997

APPEARANCES:

Ms. Antya Schrack

For the Plaintiff

Ms. Wendy Petersmeyer

For the Defendant

SOLICITORS OF RECORD:

101-5125 Victoria Drive
Vancouver, B.C.
V5P 3V1

For the Plaintiff

George Thomson
Deputy Attorney General
of Canada

For the Defendant

FEDERAL COURT OF CANADA

Court No.: IMM-3321-96

Between:

AUGUSTIN CORVERA

Plaintiff

- and -

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Defendant

REASONS FOR ORDER