

Date: 20070625

Docket: IMM-3381-06

Citation: 2007 FC 676

Ottawa, Ontario, the 25th day of June 2007

PRESENT: THE HONOURABLE MR. JUSTICE DE MONTIGNY

BETWEEN:

**VARGAS BARRIENTOS ALFREDO
FUENTES LOEZA PATRICIA
VARGAS FUENTES LUIS ENRIQUE
VARGAS FUENTES IVAN ALFONSO
VARGAS FUENTES CESAR ALFREDO**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated May 31, 2006, ruling that the principal applicant (the applicant), Mr. Alfredo Vargas Barrientos, his wife and his children were neither “Convention refugees” nor “persons in need of protection” under subsection 97(1) of the *Immigration and Refugee Protection Act*.

FACTS

[2] Mr. Vargas set up a thriving ceramics factory that, at the time that he left, employed approximately 40 people. The business had two branches in Mexico, and its products were exported abroad.

[3] The applicant claims that he began receiving anonymous telephone calls starting in mid-September 2005, demanding that he pay certain amounts of money in exchange for protection. Following his refusal, on October 6 of the same year, as he was leaving work, he was allegedly kidnapped and detained by five police officers. He was then allegedly detained for two weeks, until his family paid the requested ransom.

[4] Despite payment of this amount, the threats allegedly continued and his assailants again demanded money from him. It was then that he decided to go into hiding with his family at his sister-in-law's home in another city in Mexico. Three days later, his new residence was allegedly discovered, and his assailants allegedly demanded again that he pay them a large amount of money. Mr. Vargas immediately fled once more and found refuge at another family member's home in another part of Mexico. All to no avail. He was found once more, and the extortion demands intensified. His report to police having had no effect, he decided to seek refuge in Canada.

IMPUGNED DECISION

[5] First, the panel found that there is no nexus between the extortion of which Mr. Vargas claimed to be a victim and any of the five grounds in the Convention. This finding is not being challenged in the present case.

[6] In addition, the panel noted a certain number of contradictions, inconsistencies and omissions in the applicant's story:

- During his initial statement upon his arrival in Canada, the applicant claimed to fear organized violence in his country. He made no mention of the police allegedly being involved in his kidnapping. In later statements, he explained that he was detained by corrupt, off-duty police officers. However, he was unable to identify the police force to which these officers belonged, initially saying that he had seen the letters "P.J.", then "P.E.J.", and finally saying that he did not make a distinction between the federal police and the state police and that he was not able to read the letters on the uniforms because he had been locked in a room the whole time.
- The panel also found that the applicant and his family did not provide the Mexican authorities with credible information that would have enabled them to offer the applicant protection, since he was unable to name his assailants and had not sought help from the special kidnapping investigation unit.
- During the hearing, the applicant claimed that he had twice complained to the authorities. However, his Personal Information Form (PIF) mentioned only one

of these instances of reporting to the authorities. When questioned about this lapse, the applicant stated that this was a mistake, that he had not been feeling well and that he had forgotten to mention it.

- The applicant also contradicted himself regarding when his problems started. He first told the immigration officer that his problems started in August 2005, and then later wrote on his PIF that they actually started on September 11, 2005.

[7] Accordingly, the panel found that it did not believe any part of the applicant's story of persecution. For that reason, and because absence of state protection was not proven, the panel rejected the principal applicant's claim for refugee protection and, by extension, the claims of his wife and children.

ISSUES

[8] The applicants have raised the following two issues:

- Did the RPD err in considering the issue of state protection?
- Did the RPD err in finding that the applicant was not credible?

ANALYSIS

[9] There is no question that the appropriate standard of review for a decision dealing with the assessment of an applicant's credibility is patent unreasonableness. It is a question of fact, one that the RPD is clearly in a better position to assess than this Court. The panel's decision in this regard must therefore be given a great deal of deference, and may not be called into question unless it was

made in a perverse or capricious manner or without regard for the material before the panel:

Aguebor v. Minister of Employment and Immigration (1993), 160 N.R. 315 (F.C.A.). The applicants are not challenging the application of this standard of review in this case.

[10] After reviewing the file and the parties' written and oral arguments, I have come to the conclusion that it was reasonable for the panel to find that the applicant's inconsistencies, contradictions and omissions seriously undermined his credibility. Even though some of the reasons put forward by the panel for questioning the credibility of the applicant's story may seem less convincing than others, it does not change the fact that the evidence must be considered as a whole: *Sylla v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 793 (F.C.A.) (QL); *Wen v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 907 (F.C.A.) (QL); *Singh v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1272, [2002] F.C.J. No. 1724 (QL). Considered from this perspective, the panel's decision is entirely justifiable and is certainly not patently unreasonable.

[11] It strikes me as especially improbable that the applicant, detained in a room for two weeks, could not identify his assailants. The different versions he has given of this story can only increase doubt as to the truth of it. First of all, it is difficult to imagine that police officers who become involved in these kinds of illegal activities would have been able to keep their service vehicle and their uniforms to perpetrate the wrongdoing. However, supposing that they did not have the presence of mind to better conceal their identities, it is difficult to understand why the applicant was unable to recognize their uniforms and the police force to which the individuals belonged.

[12] The different dates provided by the applicant as to when the problems started, as well as the confusion surrounding the number of reports that he allegedly made to Mexican authorities, seem to me to be equally suspect. These are all important elements of his claim, and he was unable to give a clear and convincing version of them; worse still, he changed his story according to the questions he was asked. He even tried to attribute the fact that the second report to authorities was not mentioned in the PIF to a translation error, even though it was clearly a lapse on his part.

[13] In summary, the panel's decision was not patently unreasonable in the circumstances, even though it could certainly have been more thorough and better reasoned. The reasons stated for rejecting the applicant's claim are not all of equal weight, and among them are some that, considered separately, might seem overly petty and insignificant. But considered as a whole, they support the panel's decision not to believe the applicants' story.

[14] Under the circumstances, it is not necessary to consider the issue of state protection.

ORDER

THE COURT ORDERS that:

- The application for judicial review be dismissed;
- There is no question to be certified.

“Yves de Montigny”

Judge

Certified true translation
Gwendolyn May, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3381-06

STYLE OF CAUSE: VARGAS BARRIENTOS ALFREDO ET AL. v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal

DATE OF HEARING: June 19, 2007

REASONS FOR ORDER BY: The Honourable Mr. Justice de Montigny

DATED: June 25, 2007

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