

Date: 20070412

Docket: IMM-3283-06

Citation: 2007 FC 382

Montréal, Quebec, the 12th day of April 2007

Present: the Honourable Mr. Justice Martineau

BETWEEN:

JESUS ANTONIO ROSAS CARRASCO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is challenging the legality of the decision by the Refugee Protection Division (the RPD) of the Immigration and Refuge Board (the panel) on April 26, 2006 concluding that the applicant is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The applicant is a citizen of Mexico who says he fears persecution on account of his membership in a particular social group, namely homosexuals. In the impugned decision the panel decided that there was no basis for allowing the protection application because even if the facts alleged by the applicant constituted discrimination, they did not reach the level of persecution, the applicant's past conduct was inconsistent with that of a person who had a real fear of persecution and there was a possibility of internal flight to Mexico City.

[3] At the hearing of the instant application for review counsel for the applicant acknowledged that the reasons given by the panel generally supported its conclusions, and that the latter were not *prima facie* patently unreasonable. Nevertheless, the applicant maintained that the tape of the hearing before the panel could not be found and it was now impossible for the Court to determine whether the panel's conclusions were based on the evidence. Consequently, the applicant submitted that on this ground alone the Court should quash the panel's decision so that a new hearing could be held by another member of the RPD.

[4] As there is no right to a tape recording expressly recognized by law, the lack of transcripts does not in itself constitute a basis for quashing the decision of an administrative tribunal. Rather, the Court must determine in each case whether the record as presented by the parties allows it to properly dispose of the application for review (*Canadian Union of Public Employees, Local 301*, [1997] 1 S.C.R. 793, at para. 81; *Kandiah v. Canada (Minister of Citizenship and Immigration)*, [1992] F.C.J. No. 321 (F.C.A.)). For example, it has already been held that the absence of transcripts may prevent the Court from properly disposing of an application for judicial review

where the credibility of the applicant is in question (*Gokpinar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1065, at para. 10).

[5] After reviewing the panel's record as a whole and the detailed affidavit of the applicant, I consider that despite the absence of transcripts the record at present before the Court allows me to properly dispose of the application for review.

[6] In the case at bar, the applicant's credibility is not in question, nor was it alleged that the panel failed to observe any principle of procedural fairness at the hearing. Additionally, I do not think it is necessary to have the transcripts of the hearing here to decide whether the panel's decision was unreasonable.

[7] I note that the panel's conclusion regarding an internal flight alternative is based on documentary evidence in the record and is a determining aspect of the panel's refusal to allow the applicant's application for refugee status. It is for the applicant to show the panel that he is seriously in danger of being persecuted throughout the country, including Mexico City (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1172, at para. 5 (F.C.A.)). It further appeared from the reasons that the panel considered the applicant's testimony and rejected his suggestion he would probably be just as much at risk in Mexico City as in his home town. Finally, the affidavit filed in support of the application for review at bar does not provide any material pertaining to the applicant's personal situation that would be likely to affect the validity of the panel's general reasoning.

[8] In all respects, the applicant did not persuade the Court that the panel made a reviewable error, whether with regard to the absence of persecution, the absence of a subjective fear or the possibility of an internal flight alternative, and I concur entirely with the respondent's argument that the application at bar is without foundation.

[9] For all these reasons, the application for judicial review is dismissed. No question of general importance was raised by the parties and none arises in the case at bar.

ORDER

THE COURT ORDERS THAT:

- The application for judicial review is dismissed;
- No question is certified.

“Luc Martineau”

Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT**SOLICITORS OF RECORD**

DOCKET: IMM-3283-06

SYLE OF CAUSE: JESUS ANTONIO ROSAS CARRASCO v. MCI

PLACE OF HEARING: MONTREAL

DATE OF HEARING: April 4, 2007

REASONS FOR ORDER AND ORDER BY: The Honourable Mr. Justice Martineau

DATED: April 12, 2007

APPEARANCES:

Gisela Barraza	FOR THE APPLICANT
Patricia Deslauriers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

507 Place d'Armes Montréal, Quebec H2Y 2W8 Telephone: (514) 289-2378 Fax: (514) 845-5546	FOR THE APPLICANT
DEPARTMENT OF JUSTICE Montréal Regional Office Guy-Favreau Complex 200 René-Lévesque Blvd West East Tower, 12th floor Montréal, Quebec H2Z 1X4 Telephone: (514) 283-8772 Fax: (514) 496-7876	FOR THE RESPONDENT