Date: 20070829

Docket: IMM-402-07

Citation: 2007 FC 868

Montréal, Quebec, the 29th day of August 2007

Present: the Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

ANDRES ALEJANDRO RAMIREZ CEVALLOS
CARMEN GERARDA RAYGADA TRELLES
DANIELA EUGENIA RAMIREZ RAYGADA
and
DIEGO ANDRES RAMIREZ RAYGADA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The case at bar concerns an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), from a decision by the Immigration and Refugee Board, Refugee Protection Division (the Board), on January 3, 2007 which had the effect of dismissing the applicants' claim for refugee status.

[2] The applicants are asking this Court to set aside the Board's decision and order that the matter be sent back for hearing before a panel of different members.

Facts

[3] The principal applicant, Andres Alejandro Ramirez Cevallos, his wife, Carmen Gerarda Raygada Trelles, and their children, Daniela Eugenia Ramirez Raygada and Diego Andres Ramirez Raygada, are all citizens of Peru. They arrived in Canada on March 19, 2003, and on that date claimed refugee status.

[4] The facts on which the application is based arose when the principal applicant created a charitable organization known as the "Junta Vecinal Talarita" in the town of Piura in Peru.

[5] In 2002, in connection with his position as president of that organization, the principal applicant approached the parliamentary representative for the region, one Humberto Requena Oliva (representative Requena) seeking funds to establish programs to assist the needy. Representative Requena allegedly promised financial assistance if he submitted his application with 200 signatures, and this was done. However, the representative's promise never materialized.

[6] On November 28, 2002, when the applicant went to the representative's office to inquire about his application for financial assistance, the latter's secretary told him the money had in fact been received by the representative but he had used it for other purposes.

[7] Shocked by the turn of events, the applicant said he then accused the representative of embezzlement and abuse of authority. He said he even filed a complaint with the public prosecutor's office and the mayor of Piura, but the latter refused to intervene.

[8] From that time onwards, the applicant said he was threatened by the police, who he said arrested him on false charges and tortured him. The applicant also alleged that his eldest son was attacked by plainclothes police officers.

[9] The applicant said he then resigned his employment and moved to his uncle's residence to get away from his attackers. At the same time, the applicant's wife said she hired a lawyer to get information about the investigation concerning her husband, but with no success.

[10] Some time later, the applicant said he was again the victim of threats. The applicant and his family accordingly took the necessary action to obtain passports and fled to Lima, where they said their attackers located them and threatened them again. The applicants accordingly left Peru for Canada on March 15, 2003 and arrived on March 19, 2003.

[11] It should be noted that the applicants' refugee status claim was denied by the Board once on September 2, 2004, but that decision was set aside by Sean Harrington J. of the Federal Court, who referred the applicants' file back for reconsideration.

Impugned decision

[12] On January 3, 2007 the Board again dismissed the applicants' refugee status claim on the ground that it did not believe the essential points in the principal applicant's story.

[13] Although the Board accepted that the applicant had created a charitable organization in Piura and might have had some problems with a representative who promised him financial assistance, it did not believe that the applicant was the subject of reprisals on account of those problems.

[14] The Board's doubts turned, *inter alia*, on the lack of evidence submitted by the applicant regarding the embezzlement complaint he allegedly filed against representative Requena. In view of the lack of documentary or other evidence to corroborate the applicant's story, the Board found it hard to accept that representative Requena, a member of the Frente Independiente Moralizador (FIM) party, an opposition party, felt the need to pursue the applicant and have him threatened and arrested by the local authorities.

[15] There is also the fact that representative Requena, like the other members of his party, was defeated in the elections of April 9, 2006, thereby in the view of the Board losing any power over the local authorities. In these new circumstances, the Board considered that the applicants could not

only return safely to Peru, but that the principal applicant could even, if he wished, proceed with his embezzlement complaint against former representative Requena.

[16] While the Board accepted the medical evidence submitted by the principal applicant, indicating injuries suffered by himself and his son, it noted that such evidence did not in itself establish that the injuries were inflicted by police officers at representative Requena's request.

[17] The Board attached no evidentiary value to Exhibits P-20, P-21, P-24 and P-30, letters of support to the applicant from members of his family, on the ground that these were not impartial documents. It also rejected Exhibit P-30, an information filed by the applicant's uncle on October 5, 2006, since the Board thought it unlikely that the applicant was still being sought by the authorities four years after his departure from the country. However, the Board noted that the latter document contradicted document P-29, which stated that as of May 25, 2004 no criminal or investigative reports existed against the applicant.

[18] Finally, the Board noted that the applicants could readily relocate elsewhere in Peru, since their persecutor, former representative Requena, is no longer in a position of authority and has no means of locating them.

Issue

[19] The only question raised in the case at bar is whether the Board erred in its view of the facts.

Standard of review

[20] It is settled law that the standard of review applicable to questions involving the weighing of facts and findings on credibility is patent unreasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (QL)).

Analysis

[21] The applicant maintained in the case at bar that the Board had erred in its assessment of the evidence put forward.

[22] First, he stressed that the Board erred when it stated that representative Requena refused to give the organization of which he was president a grant. The applicant is right, since his testimony always indicated that the grant came not from the representative, but from international and/or government aid, and that representative Requena had not refused to give his association a grant. The issue also was always whether the representative had diverted money intended for his association.

[23] In the respondent's opinion, the question of the source of funds is not relevant here. After re-reading the Board's reasons, the Court concurs in its view on this point. The reasons show very clearly that the Board did not pay undue attention to the source of the funds intended for the association of which the applicant was president, and accepted the fact that he could have had problems with the representative as the result of embezzlement.

[24] The applicant further maintained that the Board erred in concluding that he had no evidence representative Requena had diverted funds intended for him. However, for his part the respondent properly pointed out that the applicant himself admitted that he had no evidence to show that the representative had diverted funds intended for his association and no documentary evidence to show that a funding application had in fact been submitted to the representative.

[25] Inasmuch as the applicant admitted in his testimony that he had no evidence to corroborate his allegations of embezzlement against representative Requena, the Board can hardly be blamed for concluding as it did.

[26] The applicant further submitted that he gave more than sufficient explanation to justify the refusal of other members of the association to report the representative, namely their fear of reprisals. However, the Board did not in any way reject the applicant's explanations of the reasons behind the refusal of other members of the association to file complaints. The respondent further maintained that this point was only noted by the Board in order to assess the likelihood of the

applicant's allegations, namely that the representative feared allegations of embezzlement by the applicant and for that reason felt he needed to persecute him.

[27] The approach taken by the respondent is confirmed simply by reading the Board's reasons. What mattered to the Board was the fact that, in view of the lack of evidence from the applicant, his complaint had not been accepted, regardless of the fact that other members of the association had refused to file complaints. In such circumstances, it became unlikely that the representative felt a need to silence the applicant. The reasons explaining the refusal of members of the association to assist the applicant in his actions were of no relevance in the reasoning employed by the Board.

[28] The applicant then submitted that the Board was wrong to conclude that the mayor and prosecutor had refused to accept his complaint, since the evidence says nothing about this.

[29] For his part, the respondent submitted that the applicant's Personal Information Form (PIF) mentioned the fact that the applicant had tried to file a complaint both with the prosecutor and the mayor and that both had refused to accept the complaint. On its face, the applicant's PIF confirms the respondent's submissions and makes it difficult to dispute this finding by the Board.

[30] The applicant further submitted that the evidence put forward did not allow the Board to conclude that the FIM was an opposition party. Although the evidence before the Board did not mention it, the applicant contended that the president of the FIM was a very good friend of the party in power, the Peru Possible party.

[31] The respondent considered that in fact the documentary evidence allowed the Board to conclude that the FIM was an opposition party, in the sense that in the 2001 elections the PP party had obtained 53.1 percent of the vote in the presidential elections; with one exception, the cabinet was formed solely from members of that party; the FIM received only 9.9 percent of the vote; and the PP party won 45 out of 82 seats and the FIM 12. What is more, the most recent evidence indicates that the FIM won no seats in the Congress in the 2006 elections.

[32] The evidence that the FIM and the PP party were in fact allied, referred to by the applicant in his written argument, was not before the Board. Accordingly, it is hard for the Court to use evidence which the Board did not have as a basis for concluding that the Board was patently mistaken. On the contrary, the evidence in the record which was analysed by the Board actually supports its conclusion that the FIM was only a minority party within the government.

[33] The applicant further submitted that the Board wrongly found that it was not plausible for the representative to have sent persons to find him and that the latter had no reason to go after him, as these conclusions were not supported by the evidence. The applicant added that the evidence before the Board did not in any way establish that the other FIM members were defeated in the April 2006 elections. The applicant further argued that the Board could not validly conclude he would be in a good position if he went back to Peru. In support of this argument, the applicant referred the Court to a newspaper article which mentioned the presence of former representative Requena in Congress in September 2006.

[34] In response to these various arguments, the respondent noted first that the applicant had the burden of establishing that his fear was valid. He added that, inasmuch as the applicant confirmed at the hearing that representative Requena had been defeated in the April 2006 elections and no FIM members had been in Congress since those elections, the applicant could not reasonably contend that he feared the Peruvian authorities on account of the representative's authority over them. The respondent further noted that the only evidence of political activity by former representative Requena since the 2006 elections was his presence at the submission of a project to Congress. Thus, in the respondent's submission, the Board was entirely justified in concluding that representative Requena had lost his influence over the Peruvian authorities.

[35] The Court concurs in the viewpoint adopted by the respondent. The documentary evidence supports it, and in fact the applicant admitted it: representative Requena was defeated in the last elections. Additionally, Exhibit P-2, which consists of a press review dealing with the elections held in Peru in 2006, confirms that the FIM was unable to elect any of its members to Congress. From this standpoint, the Board could reasonably conclude that it was unlikely the applicant would be threatened by former representative Requena, since the latter had no political influence over the existing authorities.

[36] The applicant further argued that the Board erred in not attaching any evidentiary value to Exhibits P-16 and P-17, medical reports mentioning the injuries he and his son had sustained. The

applicant in fact contended that these documents had never been disputed and that the Board should have taken them into account in weighing the facts.

[37] This argument does not stand up, as on the contrary the Board took this evidence into account in its assessment of the facts, but in view of its conclusions on the credibility of the applicant's story it was right to say that the documents only showed that the applicant and his son had both been injured, without establishing that their injuries were caused by persons in the pay of representative Requena.

[38] The applicant then argued that the Board erred when it concluded that the information filed by the uncle on October 5, 2006, Exhibit P-30, contradicted Exhibit P-29, a document establishing that as of December 17, 2002 no criminal or investigative report related to the applicant.

[39] The Court does not see how these two documents contradict each other. However, this conclusion by the Board is not the principal basis for rejecting Exhibit P-30, as it appeared that Exhibit P-30 was rejected not on this ground but because the Board considered it unlikely that the applicant was still being sought by the authorities four years after leaving the country. Accordingly, the error noted by the applicant is not conclusive as such.

[40] Finally, the applicant submitted that the Board erred in deciding that the applicants could relocate elsewhere in Peru without fear of being located by the former representative, since the latter had no further political power over the authorities. In support of this argument, the applicant

maintained that the former representative is still active in politics and so still has power over the authorities.

[41] After re-reading the evidence and the Board's decision, and weighing the pros and cons of the two parties' arguments, the Court finds no unreasonable error that would justify its intervention in the case at bar, especially as the assessment of the facts and the conclusions to be drawn from them very largely depend on the credibility given to the oral evidence heard. The Board, which heard this evidence, was in a better position to assess the evidence, and the applicant did not persuade the Court that its assessment was unreasonable.

[42] For these reasons, therefore, the Court must dismiss the application, and since the parties properly submitted no questions for certification, no question will be certified.

JUDGMENT

THE COURT ORDERS that:

1. The application is dismissed;
2. No question is certified.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-402-07
STYLE OF CAUSE:	ANDRES ALEJANDRO RAMIREZ CEVALLOS *ET AL.* and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	July 12, 2007
REASONS FOR JUDGMENT BY:	LAGACÉ D.J.
DATED:	August 29, 2007

APPEARANCES:

Jean Cantin	FOR THE APPLICANT
Patricia Nobl	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Jean Cantin Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT