

Date: 20070926

Docket: IMM-4727-06

Citation: 2007 FC 969

Toronto, Ontario, September 26, 2007

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MAIKEL CHAVARRIA CHAVARRIA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Maikel Chavarria Chavarria is a citizen of Costa Rica who sought refugee protection in this country, claiming to fear persecution at the hands of his former girlfriend and her father. The Board rejected his claim, finding that his story was not credible, and that, in any event, state protection was available to him in Costa Rica.

[2] Mr. Chavarria asserts that the Board's decision should be set aside, as the Board failed to properly take into account the psychological evidence before it, and to consider the impact that his psychological condition may have had on his testimony. He further submits that a number of the

Board's negative credibility findings were patently unreasonable. Finally, Mr. Chavarria contends that the Board erred in following a case identified as a jurisprudential guide in relation to the question of the availability of state protection in Costa Rica, and erred further by applying the wrong test for state protection.

[3] For the reasons that follow, I am not persuaded that the Board erred in finding that Mr. Chavarria's story was not credible. Given that the Board did not accept the underlying basis for Mr. Chavarria's claim, the issue of state protection need not be addressed.

Background

[4] After separating from his wife, Mr. Chavarria says that he became involved in a relationship with a woman named Mauren. Mauren quickly became very jealous and possessive, and would become hysterical if she thought that Mr. Chavarria was with his wife, or when he went out without her.

[5] Mr. Chavarria realized that the relationship could not continue. When he told Mauren that he wanted to end the relationship, he says that she threatened to kill herself unless he reconsidered his decision. She also threatened to tell her father, who was a former police delegate, that Mr. Chavarria had raped her.

[6] According to Mr. Chavarria, he was subsequently attacked by two police officers in the presence of Mauren's father, which led him to believe that she had orchestrated the attack. Mr. Chavarria says that he was beaten unconscious, and had to seek treatment at a clinic in San José.

[7] Mr. Chavarria then sought refuge at his uncle's home. While living there, he says that two uniformed members of the Rural Guard informed him that an arrest warrant had been issued on the charge of rape. Mr. Chavarria says he escaped through the back garden to a friend's home. While hiding there, he learned that the police were still seeking him.

[8] Mr. Chavarria testified that he then approached the Ombudsman's office in order to make a complaint. However, he was told that it would take between three and four years before his complaint could be processed. As a consequence, he decided not to file a complaint. Instead, he purported to reconcile with Mauren, in order to allow him to plan his escape from Costa Rica.

[9] Mr. Chavarria left Costa Rica, arriving in Canada on April 24, 2003. He made his refugee claim shortly thereafter.

[10] Mr. Chavarria's first refugee hearing took place in 2003, and resulted in the rejection of his claim. That decision was set aside by order of Justice O'Keefe, and a second refugee hearing was held in 2006. That decision, which was also negative, is the decision underlying this application for judicial review.

Standard of Review

[11] The dispositive issues on this application all relate to the Board's appreciation of the evidence, and its assessment of Mr. Chavarria's credibility. As such, the relevant findings are reviewable against the standard of patent unreasonableness.

The Board's Treatment of Dr. Pilowsky's Report

[12] Mr. Chavarria submits that while the Board accepted Dr. Pilowsky's conclusion that Mr. Chavarria suffered from chronic Post Traumatic Stress Disorder as well as chronic major depression, the Board failed to appreciate the impact that these conditions had on his testimony.

[13] Specifically, Mr. Chavarria points to references in Dr. Pilowsky's report to matters such as his forgetfulness, his inability to concentrate and his avoidance of discussions regarding his past trauma, submitting that the Board should have taken Dr. Pilowsky's professional assessment into account, before concluding that his testimony was vague, inconsistent and not straightforward.

[14] There are a number of reasons why I do not accept Mr. Chavarria's submission. First of all, the references in Dr. Pilowsky's report to matters such as his alleged forgetfulness, inability to concentrate and avoidance of discussions regarding his past trauma are not observations made by Dr. Pilowsky, but are included in a list of symptoms reported to Dr. Pilowsky by Mr. Chavarria.

[15] Dr. Pilowsky's report, which was prepared in relation to Mr. Chavarria's 2006 refugee hearing, makes no reference to any problems that he might have in testifying at his upcoming

hearing, nor does it suggest that his psychological condition had any bearing on his ability to testify at his previous refugee hearing.

[16] Moreover, the problems identified by the Board in its decision in relation to Mr. Chavarria's testimony did not arise from any inability to recall specific events, or any confusion on his part. Nor was Mr. Chavarria unwilling to discuss purportedly traumatic events. Rather, for the most part, the Board was concerned by the material inconsistencies between Mr. Chavarria's Personal Information Form (or "PIF"), his testimony at his 2003 refugee hearing, and his testimony at his 2006 refugee hearing.

[17] Finally, although Mr. Chavarria has filed a lengthy affidavit in support of his application for judicial review, nowhere in the affidavit is there any suggestion that his testimony before the Board was negatively affected in any way by his psychological condition.

The Board's Credibility Findings

[18] In a lengthy and detailed decision, the Board identified numerous instances in which Mr. Chavarria's testimony was found not to be credible, explaining the reasons for its conclusions in this regard.

[19] I agree with Mr. Chavarria that the Board did err in finding an inconsistency between Mr. Chavarria's testimony at his first and second refugee hearings in relation to whether he had actually commenced divorce proceedings in Costa Rica at the time that he testified at his first refugee

hearing. A review of the transcript from the 2003 hearing discloses that his evidence on this point has remained consistent.

[20] That said, there were numerous, material differences between Mr. Chavarria's testimony at the two hearings. By way of example, at his first hearing, Mr. Chavarria testified that he had actually met Mauren's father, whereas at his second hearing, he denied having met him, stating that he had only seen him from a distance. The Board did not accept this evidence, observing that Mr. Chavarria had testified at his first hearing that Mauren's father had actually spoken to him.

[21] Similarly, Mr. Chavarria's story evolved over time in relation to matters such as whether he had ever sought legal advice while he was still in Costa Rica, and whether he had ever approached the Ombudsman's office for help.

[22] Having reviewed the relevant portions of the transcripts of both hearings, as well as the documentary evidence, I am satisfied that the Board's conclusion that Mr. Chavarria's story was not credible was one that was readily available to it on the record.

[23] Having found that it was not patently unreasonable for the Board to reject the underlying basis for Mr. Chavarria's claim, it is not necessary to address the issue of state protection.

Conclusion

[24] For these reasons, the application for judicial review is dismissed.

Certification

[25] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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AND JUDGMENT:** Mactavish J.

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