

Date: 20071105

Docket: IMM-1656-07

Citation: 2007 FC 1119

Ottawa, Ontario, November 5, 2007

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

NELLY CAROLINA HERNANDEZ SANTOS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 of a decision of the Immigration and Refugee Board (the Board), dated December 31, 2006, in which it was determined that the applicant was neither a Convention refugee nor a person in need of protection.

ISSUES

[2] Two issues are raised by the applicant:

- a) Did the Board err by not referring the applicant's identity card to the RCMP for forensic analysis?
- b) Did the Board err by failing to consider relevant material evidence?

[3] For the reasons that follow, I find that the Board did not err. Therefore, the judicial review application shall be dismissed.

FACTUAL BACKGROUND

[4] The applicant, Nelly Carolina Hernandez Santos, purports to be a citizen of Honduras, born on August 16, 1980. She claims to be a Convention refugee and a person in need of protection on three bases: she alleges that she is a victim of spousal abuse, a target of the Mara Salvatrucha gang that killed her father and cousin, and a single mother without male protection.

[5] The applicant left Honduras on September 16, 2005 and arrived in Canada on October 7, 2005, travelling through the United States. She was intercepted after having crossed the border on foot, and interviewed by an immigration officer. She made a claim for asylum on November 12, 2005.

[6] Only a Republic of Honduras National Public Registry Identity Card was provided as proof of the applicant's identity. This card, which the documentary evidence reveals is issued by the Government of Honduras to citizens at the age of 18, bears both a photograph and a fingerprint of the cardholder.

[7] The applicant claims to have three children born in Honduras. According to her account the first was born in 1996 as a result of the applicant's rape at the hands of a gang member named Enrique Portillo. The second and third children were born in 1997 and 2000 respectively, while the applicant was in a common-law relationship with a man by the name of Oswaldo Espinal. The applicant claims that she left her children in the care of her cousin in Honduras when she left for Canada.

DECISION UNDER REVIEW

[8] The Board identified an impressive list of issues which might be fatal to her claim, but rendered its decision solely on the grounds of identity and credibility. The Board decided that the applicant failed to provide sufficient credible and trustworthy evidence to establish her personal identity, or the allegation that she is the mother of three children in Honduras.

[9] The Board concluded that the applicant did not establish, on a balance of probabilities, that she was the rightful holder of the national identity card, and therefore had not established her identity. The Board did not question the genuine nature of the document, but simply that the applicant was the rightful cardholder. The Board gave the following reasons for doubting the identity of the applicant:

- a) The presiding member did not find that the applicant was recognizable as the person in the photograph on the identity card, though she admitted there was a faint resemblance.

- b) The applicant gave evidence inconsistent with the documentary evidence about the issuance of national identity cards in Honduras. The Board found that her statement that she did not have a birth certificate at the time she obtained her national identity card to be contrary to the documentary evidence, which stated that it is necessary to present a birth certificate in order to receive the card. The Board preferred the evidence provided by the Embassy of Honduras in Ottawa.
- c) The identity card was issued on February 17, 2005. The Board concluded that the issue date on the card raised credibility questions, because the card was issued when the applicant was 24 years of age; the documentary evidence stated that all Hondurans receive that card at 18 years of age. The applicant explained this discrepancy by saying that she lost the original one.
- d) The Board drew a negative inference from the applicant's claim that she was originally issued the card in the year 2000 in order to vote in an upcoming election. The country information revealed that general elections were held in November 1997, and again in November 2001. There was no national election in the year 2000.
- e) There were inconsistencies in the oral evidence regarding the existence of the applicant's birth certificate. Initially, she stated that she did not have a birth certificate, and later stated that she had one, but did not know where it was.

[10] The Board found that, owing to the applicant's lack of credibility on the matter of identity, it was not necessary to refer the identity card to experts for a comparison of the fingerprint on the card to that of the applicant.

[11] The Board also doubted whether the applicant was in fact the mother of three children born in Honduras. She provided a birth certificate for each child with Nelly Carolina Hernandez Santos listed as the children's mother; however, the Board identified other considerations that eroded the applicant's credibility with regard to her children:

- a) Of considerable importance was the fact that when the applicant was intercepted past the Canadian border, she informed the officer that she had never used any other names, was single, never married, and had no children. At the hearing, when questioned about the statement, she explained the contradiction by saying she had told the officer that she had no *family*, but denied ever telling him that she had no children.
- b) The Board found that the applicant's evidence surrounding the birth certificates of the children to be implausible. While the first child's birth certificate bore the name of Enrique Portillo, and the second child's birth certificate bore the name of Oswaldo Espinal, the name of the third child's father was not listed on the birth certificate. The applicant explained that she had not listed Espinal's name on the youngest child's birth certificate because Espinal had beaten her while she was pregnant with the child. The Board found it implausible that she would have refused to put Espinal's name on the birth certificate, and not refused to put Portillo's name

on that of the first child, granted that the first child was conceived by rape, and Portillo was not present at the time of his child's birth.

- c) The applicant was asked at the hearing whether she had photographs of her children. She described one sent to her three months earlier, but admitted that there were none of her and her children. She could not provide any written correspondence from her children, claiming that they communicated with her only by telephone.

[12] The Board made several other negative credibility findings, based on inconsistencies in the written and oral evidence presented by the applicant:

- a) There were discrepancies in the applicant's evidence concerning the existence and whereabouts of her siblings. During the interview with Canada Border Services Agency, she stated that she had a sister in Honduras, but that she had not spoken to her in eight months. In her original PIF, she listed only one sibling, a sister, who is also mentioned in the English version of her original narrative statement. In the Spanish version of the original narrative she claimed to have one brother and one sister. After retaining counsel the applicant submitted an amended PIF in which she listed a second older sister. At the hearing she tried to reconcile the discrepancies by implying that her deceased father had told her that she may have other siblings. The Board did not accept this explanation.
- b) The applicant's unfamiliarity with the city of San Pedro Sula also resulted in a negative inference of credibility on the part of the Board. She claimed to have gone to San Pedro Sula to escape the father of her first child, but described it as small city.

The Board took judicial notice of the fact that the city's population is approximately one million.

ANALYSIS

Standard of Review

[13] The applicant submits that the Board breached her right to procedural fairness by not referring the identity card for fingerprint comparison. A breach of procedural fairness would be reviewable on a standard of correctness. However, this Court has determined that the Board is not under any duty to refer identity documents for expert or forensic analysis; rather determinations relating to the validity of an identity documents are reviewable on either a standard of patent unreasonableness or reasonableness *simpliciter*.

[14] In *Ehioghiren v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 985 , [2006] F.C.J. No. 1244 (QL) at paragraph 7, Justice Phelan wrote:

While there is some debate about whether identity findings should be subject to review on a standard of patent unreasonableness (see: *Gasparyan v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 863, [2003] F.C.J. No. 1103 (QL); *P.K. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 103, [2005] F.C.J. No. 130 (QL); and *Najam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 425, [2004] F.C.J. No. 516 (QL)) or reasonableness *simpliciter* (see: *Rasheed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, [2004] F.C.J. No. 715 (QL)), this case does not turn on that issue. For purposes of this analysis, I have adopted the reasonableness *simpliciter* standard although the Board's finding on identity is intermingled with credibility findings based on the Applicant's PIF and his testimony.

See also *Niyongabo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 363, [2006] F.C.J. No. 459, at paragraphs 21-23.

[15] Following *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A) (QL), determinations regarding credibility are reviewed on the standard of patent unreasonableness.

[16] Whether the overall decision regarding the applicant's identity is reviewed on the standard of patent unreasonableness or reasonableness *simpliciter*, I am not of the opinion that the Board committed a reviewable error in this case.

Did the Board err by not referring the applicant's identity card to the RCMP for forensic analysis?

[17] The Board did not err by refusing to send the ID Card to the RCMP to have the fingerprint on the card compared to the applicant's fingerprint.

[18] The respondent submits that the Board is entitled to assess the claimant's identity without the benefit of expert evidence, relying on the Court's decision in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 590, [2001] F.C.J. No. 911 (QL) at paragraphs 16-20. The respondent further cites *Hossain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 160 (F.C.T.D.), and *Jin v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 126, [2006] F.C.J. No. 181, in support of the argument that the Board is not required to conduct a forensic assessment of the applicant's identity card.

[19] In *Hossain*, above, at paragraph 4, Justice Tremblay-Lamer wrote:

[...] [T]he panel is not obliged to conduct an assessment as long as there is enough evidence to cast doubt on the authenticity of the document [...]

[20] In *Jin*, above, at paragraph 19, Justice Barnes made a similar finding:

[...] While it is correct that the Board itself is not an expert in the field of forensic analysis, it also has no duty to submit suspect documents for expert assessment provided that there is sufficient evidence before it to cast doubt upon their authenticity. [...]

[21] The applicant's submission suggests a distinction between the principles outlined in the aforementioned cases, and the facts of the case at bar. In the present case, the Board found that the identity card was in fact genuine; there was no doubt as to the validity of the document. Rather, the issue was whether the document-holder was in fact the person identified on the card.

[22] It is my opinion that this distinction is not determinative. The decision not to obtain the expert evidence confirming the identity of the applicant was based on well-reasoned findings impugning the applicant's credibility. I see no reason that the principle established in *Hossain* and *Jin* should not find application in the present case.

[23] I am sympathetic to the applicant's submission that she should have been given time to produce evidence relating to the fingerprint on her own behalf. However, I would note that the

burden of establishing identity falls to the applicant, and that the identity card was the only piece of evidence tendered to this end.

[24] Further, it is my opinion that the reasons given by the Board with regard to the applicant's lack of credibility are sufficient to dispose of the case, even if her identity were established conclusively. I therefore find that the Board did not err in failing to obtain expert evidence relating to the fingerprint.

Did the Board err by failing to consider relevant material evidence?

[25] The applicant submits that the Board did not properly consider documentary evidence that contradicted the evidence from the Embassy of Honduras in Ottawa, relating to procedures associated with the issuance of identity cards in Honduras. There is no indication that the Board failed to thoroughly consider the documentary evidence. It is open to the Board to prefer country documentation indicating that all Hondurans are issued identity cards at the age of 18 over documentation indicating otherwise. Essentially, the applicant is asking this Court to reweigh the evidence before the Board, which is not the role of the Court.

[26] Specifically, the applicant takes issue with the Board's negative credibility inference drawn from the fact that the card was issued when the applicant was 24, despite the fact that it accepted the document to be genuine. If the document is indeed genuine and issued by the Honduran government, it is unreasonable to doubt that it was issued in violation of the usual practice. While I would accept that this particular inference may be patently unreasonable, it cannot be isolated from

the other reasons given by the Board in such a way as to render the entirety of the decision unreasonable. The Board provided ample reasons for its negative finding of credibility.

[27] For these reasons, I find that the Court's intervention is not warranted.

[28] The Applicant submits the following question for certification:

Does the duty of fairness and natural justice require an immigration tribunal to conduct or offer to counsel the opportunity to submit an identity card for a forensic comparison where the identity card is accepted as valid and genuine, in the proper name of the holder and possesses a fingerprint of the true holder of that card, where the tribunal questions whether the person before it is the true owner/holder of that identity card and identity is the central issue?

[29] The respondent opposes such a question. The Court agrees with the respondent's submissions that this question does not transcend the interests of the parties and does not give rise to a serious question of general importance.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1656-07

STYLE OF CAUSE: **NELLY CAROLINA HERNANDEZ SANTOS and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: November 5, 2007

APPEARANCES:

Robert J. Kincaid FOR APPLICANT

Helen Park FOR RESPONDENT

SOLICITORS OF RECORD:

Robert J. Kincaid Law Corporation FOR APPLICANT
Vancouver, British Columbia

John Sims, Q.C. FOR RESPONDENT
Deputy Attorney General of Canada
Vancouver, British Columbia