

Federal Court



Cour fédérale

**Date: 20090428**

**Docket: IMM-3718-08**

**Citation: 2009 FC 428**

**Montréal, Quebec, April 28, 2009**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**EUGENIA SANTOS RIVERA  
CARLOS JAVIER SANTOS RIVERA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27

(the Act), the principal applicant, Eugenia Santos Rivera (the applicant), and her son,

Carlos Javier Santos Rivera, both citizens of Mexico, are seeking judicial review of a decision dated

July 27, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (the Board) finding the applicants to be neither Convention refugees nor persons in need of protection within the meaning of section 96 or 97 of the Act and consequently rejecting their claim for refugee protection chiefly on the ground that their narrative was not credible.

## II. Facts

[2] The applicant made a claim for refugee protection in Canada for herself and her son, alleging a fear of her former spouse, Eduardo Rafael Guerrero, the father of her son.

[3] The applicant recounts that she and Mr. Guerrero lived in a conjugal relationship in Mexico for 13 months starting in July 1993. From that relationship was born a son, Carlos Javier, on March 11, 1995.

[4] In 1995, when she was living with Mr. Guerrero, the applicant allegedly learned that he was defrauding the employer for whom the couple was working. After admitting his wrongdoing to the applicant, Mr. Guerrero allegedly threatened her and warned her not to tell anyone.

[5] The couple's relationship then allegedly deteriorated to the point that the applicant had to move and change jobs to escape her former spouse's stalking and threats. Even then, he managed to cause other problems for her.

[6] According to the narrative in her Personal Information Form (PIF), the applicant decided to leave her country and come to Canada on June 6, 2004, after being assaulted by her ex-spouse, who wanted access to his son.

[7] In July 2004, the applicant left her son in Mexico and came alone to Canada for a few months, and then returned to Mexico without seeking refugee protection.

[8] On July 6, 2006, she allegedly filed a complaint against her ex-spouse for harassment and, less than two weeks later, left for Canada with her son and sought refugee protection for both of them.

### III. Impugned decision

[9] After analyzing all the evidence in this matter, the Board gave no credibility to the narrative on which the applicant's claim was based and found that "[translation] the applicants have not demonstrated that they were Convention refugees or persons in need of protection."

[10] Is the Board's decision unreasonable?

IV. Analysis

*Appropriate standard of review*

[11] These proceedings concern the assessment of the evidence and the lack of credibility of the applicant, which are purely factual questions reviewable on the standard of reasonableness defined in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*).

[12] The Board had the clear advantage of hearing the applicant and being able to make a fair assessment of her narrative and the explanations she gave when confronted with discrepancies and the implausibility of her story; the Board's decision must be treated with deference.

[13] That standard does not open the door to the type of intervention sought by the applicant, who is simply reiterating much the same facts already assessed by the Board, which the applicant criticizes for improperly assessing her personal situation. She is in effect asking this Court to reassess everything and to substitute its own opinion for that of the Board and arrive at a different conclusion.

[14] Unfortunately, that is not the role of this Court in an application for judicial review. On the contrary, this Court has only to examine whether or not the impugned decision is warranted having regard to the facts in evidence and the law, while the applicant must show the Court how the Board's decision is unreasonable.

[15] Within this standard of review, can the Court find that the Board erred in a capricious manner when it did not believe the applicant's narrative?

*Applicant's credibility*

[16] The applicant complains that the Board rejected her narrative because she presented no documentary evidence to corroborate her testimony, and ignored her sworn testimony for no valid reason. From its analysis of the case, the Court cannot find that the complaint has merit.

[17] The applicant overlooks the fact that her failure to produce corroborating documents is insignificant compared with the other factors irremediably damaging her credibility in the eyes of the Board, namely, important items missing from the applicant's PIF, contradictions between her narrative and her testimony, implausibilities in her narrative, her behaviour during all the events described and her lateness in filing a complaint and claiming refugee protection. Indeed, when taken as a whole, all those factors provide ample justification for the Board to doubt the applicant's story and deliver the decision that is the subject of this proceeding.

V. Conclusion

[18] For these reasons, the Court finds that no substantial grounds have been provided by the applicants to satisfy it that the impugned decision is based on erroneous findings of fact made in a perverse or capricious manner, or that the Board delivered its decision without regard for the

evidence before it, including the applicant's sworn testimony, of which the Board had to make a fair assessment (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698).

[19] On the contrary, having analyzed the case, the Court is satisfied that the decision is supported by the facts and the law, as well as by "common sense"; therefore, the decision is reasonable.

[20] Since no serious question of general importance was proposed or ought to be proposed, there is no question to be certified.

**JUDGMENT**

**FOR THESE REASONS, THE COURT:**

**DISMISSES** the application for judicial review.

“Maurice E. Lagacé”

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Deputy Judge

Certified true translation  
Brian McCordick, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3718-08

**STYLE OF CAUSE:** EUGENIA SANTOS RIVERA ET AL. v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 27, 2009

**REASONS FOR JUDGMENT:** LAGACÉ D.J.

**DATED:** April 28, 2009

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