

**Date: 20081113**

**Docket: IMM-1540-08**

**Citation: 2008 FC 1260**

**Montréal, Quebec, November 13, 2008**

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

**BETWEEN:**

**SERGIO LUIS VALDES PEREZ  
DIANA NAVARRO VILLARREAL  
MAX VALDES NAVARRO**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Introduction

[1] The principal applicant, Sergio Luis Valdes Perez, his wife Diana Navarro Villarreal and their son Max Valdes Navarro, all three Mexican citizens, are seeking pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), a review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (panel) dated March 4, 2008, failing to recognize them as “refugees” or “persons in need of protection” within the meaning of sections 96 and 97 of the Act and accordingly refusing their refugee claim.

## II. Facts

[2] In support of their request for protection, the applicants allege that they fear returning to their country on the basis that they would be targeted by the principal applicant’s employers and by corrupt officials given the principal applicant’s decision to report the fraud perpetrated by these individuals at the expense of Mexican taxpayers.

## III. Impugned decision

[3] Based on the implausibilities and inconsistencies identified in the story of the principal applicant and that of his wife, the panel determined as follows: “Given the amount of evidence that was not credible, the panel is of the opinion that the claimants did not discharge their burden of proof.” Accordingly, it refused their refugee claim.

IV. Issue

[4] Did the panel make an unreasonable error in making a negative credibility finding in regard to the principal applicants based on the fact that they had not discharged their burden of proof?

V. Analysis

*Standard of review*

[5] The courts must treat with deference the decisions of specialized administrative tribunals where, as in this case, they have expertise in matters within their jurisdiction (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[6] The standard of *reasonableness* applies to this case, so that to justify the Court's intervention, the Court must ask whether the impugned decision is reasonable, taking into account its *justification*, and whether *the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law* (*Dunsmuir, supra*, paragraph 47).

[7] Within this standard of review and the facts in evidence, can the Court find that the panel erred in deciding that the applicants did not discharge their burden of proof and that accordingly they do not qualify for the status claimed as refugees or as persons in need of protection?

*Parties' submissions*

[8] The applicants contend that the sole finding justifying the panel's refusal of their refugee claim could be based only on perverse inferences regarding their lack of credibility and fails to take into account all of the evidence.

[9] The respondent in turn submits that the omissions, inconsistencies and shortcomings in the evidence support the panel's finding as it did in its decision.

*Lack of credibility*

[10] In attempting to persuade the Court that the panel erred in the negative findings that it made from the evidence in regard to the credibility of the applicants' story, the applicants are in fact trying to justify the parts of the evidence that the panel rejected because it found it unreliable, unsatisfactory, implausible or uncorroborated. Yet bear in mind that the applicants had every opportunity to fully present their story to the panel to persuade it, but unfortunately failed to adequately discharge their burden of proof.

[11] This Court has stated several times that "a tribunal can conclude that there is lack of credibility by basing itself on improbabilities in the refugee status claimant's account, on common sense and on reason" (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 206, at paragraph 9). Further, the lack of documents corroborating the allegations of an applicant can negatively impact his credibility (*Singh v. Canada (Minister of Citizenship and Immigration)* 2007 FC 62, 159 A.C.W.S. (3d) 568).

[12] Yet, based on the fact that the panel does not in its decision accept or remark on certain evidence that the applicants consider more important than the evidence accepted by the panel in making its finding, the applicants allege that it did not consider all of the evidence submitted and, on that basis, qualify its decision as unreasonable.

[13] This argument of the applicants fails to consider that it must be presumed that the panel considered all of the evidence submitted to it (*Florea v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. n° 598 (QL), and that once it finds and explains why it is not credible, the panel does not have an obligation as such to delve into each piece of evidence supporting the allegations to the contrary that it has not accepted because it finds that they are lacking in credibility, unreliable, uncorroborated or unnecessary to its findings (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, at paragraph 26).

[14] It is not the Court's place at this stage to repeat the exercise and reassess the evidence or substitute its opinion to that of the panel, all the more because the panel has the advantage of expertise, and above all the advantage of having heard the applicants' stories and claims. The panel is certainly more qualified than this Court to assess the credibility to assign to the applicants' stories.

[15] The Court must limit itself to verifying whether the panel's decision is justified and reasonable in the manner stated in *Dunsmuir, supra*. Decisions affecting the credibility of a party are "the heartland of the discretion of triers of fact," such that these decisions must be afforded great

deference on judicial review. They will not be set aside unless they are capricious, perverse, or fail to take into account the evidence (*Siad v. Canada (Secretary of State)* (C.A.), [1997] 1 F.C. 608, 67 A.C.W.S. (3d) 978, at paragraph 24; *Dunsmuir, supra*).

[16] After hearing the applicants' stories, the panel found that their story lacked credibility to the extent that they did not discharge the burden of proof that they had to satisfy to persuade it to the contrary, and the panel adequately explains how it arrived at this finding.

[17] In their memorandum, the applicants only provided late explanations to justify the shortcomings noted by the panel and proposed a factual interpretation alternative to that made by the panel. The applicants had ample opportunity to explain themselves in a timely fashion before the panel; unfortunately for them, their answers did not satisfy the panel. The applicants cannot submit before this Court late explanations attempting to complete or improve their evidence, or ask the Court to substitute its assessment of the facts to that of the panel.

[18] The Court must afford great deference to the panel's findings regarding the applicants' credibility, leaving the applicants with an onerous burden to persuade the Court to set aside these findings.

[19] In short, the applicants have failed to establish that the impugned decision is based on erroneous findings of fact made in a capricious or perverse manner or that the panel made its

decision without taking into account the evidence before it (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698).

[20] After hearing the arguments, analyzing the evidence as well as the decision contemplated by this proceeding, the Court can only find that the decision was justified and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law, and does not justify the intervention of this Court.

[21] No serious question of general importance was proposed, therefore no question will 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

Kelley Harvey, BA, BCL, LLB



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

**DOCKET:** IMM-1540-08

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