

Federal Court



Cour fédérale

Date: 20100223

Docket: IMM-4545-09

Citation: 2010 FC 195

Montréal, Quebec, February 23, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**PEREZ ROCHA Jose Miguel
LARA BALDERAS Maria Guadalupe
PEREZ LARA Daniela**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision dated August 18, 2009, by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the panel), that the applicants are not Convention refugees.

[2] The male applicant, Jose Miguel Perez Rocha, his wife, Maria Guadalupe Lara Balderas, and their daughter, Daniela Perez Lara, are all citizens of Mexico. They allege that they fear death at the hands of René Ballesteros. The applicant was at fault for a car accident on August 23, 2003. Mr. Ballesteros was the victim. In August 2004, a court found the applicant guilty and ordered him to pay compensation to Mr. Ballesteros. Dissatisfied with the compensation awarded, Ballesteros demanded more money from the applicant and threatened to kill him.

[3] The applicants fear that if they are sent back to their country, they will be killed by Mr. Ballesteros.

[4] The panel rejected their claim because it found the applicants not to be credible and found that they did not reasonably explain their delay (15 months for the principal applicant) in claiming protection in Canada.

[5] The inconsistencies in the evidence raised by the panel with respect to the credibility of the applicants is detailed and set out in the decision. These inconsistencies do not relate to incidental or secondary aspects. They are at the heart of the applicants' claim. The panel had the benefit of hearing the testimony and of gauging the witnesses' reactions and answers. (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, at para. 4 (QL)).

[6] The panel's findings concerning the effect of the delay in applying for protection is related to the applicants' credibility (*Valera v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1384, [2008] F.C.J. No. 1775, at para. 13 (QL)). This is a question of fact and the appropriate

standard of review is reasonableness (*Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 487, [2009] F.C.J. No. 617 (QL); *Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). Consequently, the Court will only intervene if the decision does not fall within a range “of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47).

[7] In *Huerta v. Canada (Minister of Employment and Immigration)* (1993), 157 N.R. 225 (F.C.A.) (QL), the Federal Court of Appeal stated that the “delay in making a claim to refugee status is not a decisive factor in itself. It is, however, a relevant element which the tribunal may take into account in assessing both the statement and the actions and deeds of a claimant”. It is clear in its reasons that the panel considered the applicants’ explanations, but rejected them.

[8] The panel did not accept the explanation that the applicants lacked knowledge to file their claim, nor the fact that they simply were waiting for things to calm down. The applicants did not submit any evidence in this case that showed that the panel erred on this point. Even though in other circumstances, the Court has already found that even longer delays were not determinative, in this case, I can conclude no such thing. The delay in claiming refugee status may certainly raise doubts as to the subjective fear of the applicants.

[9] In this case, the evidence demonstrated that the female applicants returned to their country after staying in Canada.

[10] The panel may conclude that the fact of returning to the country where the male applicant feared persecution makes the existence of such a fear unlikely (*Kabengele v. Canada (Minister of Citizenship and Immigration)* (2000), 197 F.T.R. 73 at para. 41 (QL)). The panel did not accept the explanation that the female applicant did not fear returning to Mexico because only the male applicant had been directly threatened. Nothing indicates that the panel's conclusion in this regard is unreasonable or that the panel did not consider all the evidence submitted.

[11] The Court's intervention in this case is not warranted.

[12] No question of general importance was proposed and none arises from this case.

JUDGMENT

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

“Michel Beaudry”

Judge

Certified true translation
Monica F. Chamberlain

FEDERAL COURT
SOLICITORS OF RECORD

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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 22, 2010

REASONS FOR JUDGMENT
AND JUDGMENT: BEAUDRY J.

DATE OF REASONS: February 23, 2010

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