

Federal Court



Cour fédérale

**Date: 20100707**

**Unrevised certified translation**

**Docket: IMM-6235-09**

**Citation: 2010 FC 732**

**Montréal, Quebec, July 7, 2010**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**GUILLERMO ANTONIO PEREZ GRANADOS**

**Applicant**

**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 a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated November 16, 2009, which found that the applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act, thereby rejecting his claim for refugee protection.

Factual background

[2] The applicant is a 48-year-old citizen of El Salvador who fears that he will be persecuted and subjected to a risk to his life by reason of his political opinion because he had been an active member of the *Movimiento Estudiantiles Revolucionario Salvadoreño* (MERS), a group which denounced oppression by the right-wing government that was in power at the time as well as the paramilitary groups associated with that government, when he was studying architecture at the National University of El Salvador in Santa Lucia in 1981.

[3] The applicant attended meetings, distributed pamphlets and raised public awareness about the government's abuses. He alleges that one of his friends was murdered by the paramilitaries and that he himself was targeted by them.

[4] As a consequence, the applicant left his country in March 1984 and made his way to Mexico. He remained in Mexico until April 1985 before making his way to the United States, where he remained until December 1986, after which he arrived in Canada on December 19, 1986, and claimed refugee protection. In accordance with the rules that were in effect at that time, he applied for permanent residence on October 29, 1990. On June 20, 2001, the exemption on humanitarian and compassionate grounds component was approved. However, because of the criminal offences for which the applicant was convicted in 1990, 1992 and 1996, and because of his failure to obtain a pardon from the National Parole Board, his application for permanent residence was denied. On December 14, 2006, the applicant was declared inadmissible on grounds of criminality. On February 7, 2007, the applicant was contacted in order to reactivate the examination of his claim for refugee protection.

[5] The applicant alleges that, even now, he still fears his country's military and paramilitaries, as well as people of his generation who, at the time, held political views that were diametrically opposed to his own, because if he were to return to his country they might recognize him and seek revenge.

[6] The applicant acknowledges that, over the course of the past 23 years he has spent in Canada, the situation in his country has changed; nonetheless, he still fears that he may be persecuted, given that the same people he fears (the military and paramilitaries) are still there today.

#### Impugned decision

[7] The panel acknowledged that the applicant's refugee claim was indeed related to one of the Convention grounds, as enumerated in section 96 of the Act. However, the panel emphasized that it was of the view that if the applicant were to return to his country of origin, there was little chance he would be persecuted because circumstances had since changed.

[8] The panel determined that the conditions that the applicant once feared no longer exist today, thus eliminating any serious possibility that he would be persecuted if he were to return to El Salvador.

[9] The panel did sympathize with the applicant's situation, noting that he had been unable to obtain permanent resident status in Canada in spite of the fact that he has lived here for 23 years, but

stated that, unfortunately, it had no jurisdiction with regard to humanitarian and compassionate grounds.

### Relevant statutory provisions

[10] The following provisions of the Act are relevant in this case:

#### Convention refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

#### Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

#### Person in need of protection

**97.** (1) A person in need of protection is a person in Canada whose removal to their country

#### Personne à protéger

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Issue

[11] In this application for judicial review, the only issue is whether that panel's decision that the applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act because of the real and durable change of circumstances in El Salvador since 1984 is reasonable or not.

Standard of review

[12] According to the Supreme Court of Canada, at paragraph 53 of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, when a tribunal is reviewing legal and factual issues that cannot be readily separated, the reviewing court will show deference to the tribunal. The applicable standard of review in this case is reasonableness. At paragraph 47, the Supreme Court of Canada stated the following:

[47] [R]easonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] Moreover, this Court recognized that as a specialized administrative tribunal, the panel has expertise in matters within its jurisdiction. Courts must accord deference to the decisions of these tribunals when they are based on the application of sections 96 and 97 of the Act, since it is a question of mixed fact and law which is to be reviewed on the standard of reasonableness (*Acosta v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 213 [2009] F.C.J. No. 270 (QL)).

[14] As for the changes in circumstances, this Court has already held that changes in circumstances were a question of fact and should therefore be accorded deference (see *Sahiti v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 364, [2005] F.C.J. No. 450).

#### Analysis

[15] The question raised by a claim for refugee protection is not whether the claimant had reason to fear persecution in the past, but rather whether he now, at the time his claim is being decided, has substantial grounds to fear persecution in the future.

[16] In this regard, the applicant alleges that he would face the same problems today as he did when he left in 1984. The respondent, for his part, submits that the panel was correct in noting that several significant changes had occurred since then, because the evidence indicates that the signing of peace accords in February 1992 put an end to the civil war that had been going on since 1981.

[17] The applicant argues that the panel should have further pursued its analysis. The Court disagrees. In its decision, the panel assessed the documentary evidence – including *The Europa*

*World Year Book 2009*; 2009; “El Salvador”, and United States Department of State, February 25, 2009, “El Salvador,” *Country Reports on Human Rights Practices for 2009* – and concluded that “[t]he documentation as a whole does not state that the people involved in the militant left movement of the eighties, including the claimant’s group, the MERS, would face a risk today because of their political opinion” (panel’s decision, at para. 9). The panel further noted that there had been significant and durable changes considering that there has not been any further conflict between the guerrilla forces and the government since 1992 and that the party that has been in power since 2009, the *Frente Farabundo Marti para la Liberacion Nacional* (FMLN), is now a legitimate political party whose members have integrated into civil society.

[18] Given that the panel specifically examined El Salvador’s political evolution in its analysis, the Court finds it difficult to see how the panel committed any error in its assessment of the documentary evidence. The panel not only determined that there had been a change, it also noted that this change, based on the documentary evidence in the record, meant that people who had been associated with the militant left in the eighties were no longer at risk today.

[19] As this Court has noted many times, it is up to the claimant to demonstrate a well-founded fear of persecution (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74, at para. 47).

[20] In the case at bar, the documentary evidence confirms that significant and durable changes have occurred in El Salvador and that the applicant’s fear is no longer founded. Moreover, at the



hearing before the panel, counsel for the applicant confirmed that the perceived threat to the applicant [TRANSLATION] “[n]o longer exists today” (Tribunal Record, p. 102).

[21] For all these reasons, this Court finds that the panel committed no error that would justify the intervention of this Court. The parties did not propose a question of general importance and the matter does not contain any.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES AS FOLLOWS:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Richard Boivin”

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Judge

Certified true translation

Sebastian Desbarats, Translator

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

**DOCKET:** IMM-6235-09

**STYLE OF CAUSE:** GUILLERMO ANTONIO PEREZ GRANADOS  
v. M.C.I.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** July 6, 2010

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

**DATED:** July 7, 2010

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