

Federal Court



Cour fédérale

Date: 20100914

Docket: IMM-801-10

Citation: 2010 FC 914

Ottawa, Ontario, September 14, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KARLA YANIRA HIDALGO CARRANZA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] [3] . . . where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

(As stated in *Canada (Minister of Citizenship and Immigration) v. Sellan*, 2008 FCA 381, 384 N.R.

163, by Mr. Justice Marc Nadon, his colleagues, Madam Justice Alice Desjardins and

Chief Justice Pierre Blais concurring).

II. Legal proceeding

[2] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD), dated January 25, 2010, determining that the applicant was neither a “Convention refugee” nor a “person in need of protection” as defined in sections 96 and 97 of the IRPA.

III. Facts

[3] The applicant, Ms. Karla Yanira Hidalgo Carranza, is a citizen of El Salvador, aged 27, who states that she fears persecution by reason of her political opinions.

[4] She alleges that she has been a member of the *Centro Social Comunitario Zacatecoluca* (Centre) since January 2004. In March 2007, she became its director. The purpose of the Centre was to develop socio-cultural activities and to denounce human rights violations committed by the army and members of the military.

[5] On March 5, 2008, as director of the Centre, Hidalgo Carranza made an appearance on television in which she accused the Salvadorian government of protecting the criminals who were persecuting and extorting citizens. Following this appearance, she received four anonymous death threats by telephone.

[6] On March 20, 2008, the office at the Centre was destroyed by the Salvadorian army.

[7] Following these events, Hidalgo Carranza lived in the city of San Vicente. On June 20, 2008, she left El Salvador for Canada.

[8] Hidalgo Carranza fears mistreatment at the hands of the army, the police and the Salvadorian government.

IV. Impugned decision

[9] After reviewing the documentary and testimonial evidence, the RPD determined, based on the lack of credibility, that Hidalgo Carranza was neither a Convention refugee nor a person in need of protection as defined in the IRPA.

[10] Hidalgo Carranza failed to discharge her burden of establishing that she was persecuted because of her political opinions or that she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to El Salvador. The RPD did not believe Hidalgo Carranza's story and was of the view that she fabricated the entire story in order to obtain status in Canada.

V. Issue

[11] Was the RPD's decision based on erroneous findings of fact and/or law that it made in a perverse or capricious manner or without regard for the material before it, pursuant to subparagraph 18.1(4)(d) of the *Federal Courts Act*, R.S. 1985, c. F-7 (Act)?

VI. Relevant statutory provisions

[12] The onus was on Hidalgo Carranza to present the most complete record possible so that her version of the facts could be corroborated. Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228 (Rules) states as follows:

Documents establishing identity and other elements of the claim	Documents d'identité et autres éléments de la demande d'asile
<p>7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.</p>	<p>7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.</p>

[13] Rule 7 derives from subsection 100(4) of the IRPA, which reads as follows:

Duty of claimant

100. (4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.

Obligation

100. (4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission.

VII. Submissions of the parties

[14] The applicant submits that the RPD failed to consider all the evidence and that it should have given her the benefit of the doubt on the issue of credibility.

[15] The respondent argues that the RPD's decision was completely justified in light of some contradictions and inconsistency in the testimony and the documentary evidence.

VIII. Standard of review

[16] The question of assessing Hidalgo Carranza's credibility is a question of fact within the meaning of the Federal Court's consistent jurisprudence (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 16 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.) at para. 4; *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 673, 158 A.C.W.S. (3d) 799). The standard of review that applies to findings of fact made by the RPD, including credibility issues, is reasonableness (*Wa Kabongo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 348, 166 A.C.W.S. (3d) 327).

[17] Judicial review does not permit the Court to reassess the evidence (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). The Court must not review the facts or weigh the evidence. It can only act where the RPD's decision is found to be unreasonable. Administrative fact finding commands a high degree of deference (*Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, 2009 SCC 12 at para. 46).

IX. Analysis

[18] The RPD's decision was based on Hidalgo Carranza's lack of credibility. In making this finding, the RPD relied on the contradictions and improbabilities in the documentary and testimonial evidence that it analyzed. As a specialized tribunal responsible for assessing the facts, the RPD may properly weigh whatever evidence it considers appropriate. The RPD listed a series of contradictions and improbabilities in Hidalgo Carranza's evidence that supported its negative credibility finding.

Applicant's subjective lack of credibility

[19] There is no evidence to support the existence of the Centre that Hidalgo Carranza worked for. She also failed to mention the destruction of the Centre in her Personal Information Form (PIF) and only disclosed this information at the hearing. Hidalgo Carranza did not denounce the destruction of the Centre to any human rights organizations. No newspaper or human rights organization can attest that the Centre existed or was destroyed. At the hearing, the RPD noted that Hidalgo Carranza did not know the names of human rights organizations.

[20] This Court reiterated the principles of assessing the credibility of testimony in *Quintero Cienfuegos v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262:

[1] This Court has repeatedly confirmed that the accumulation of contradictions between a claimant's testimony, port of entry statements and Personal Information Form (PIF) or that of another claimant, as well as the omission of elements in the PIF that are crucial to his or her claim may legitimately serve as a basis for a negative credibility finding . . .

[21] On this issue, Hidalgo Carranza asks that the principle of the benefit of the doubt be applied, as stated in the *Handbook on Procedures and Criteria for Determining Refugee Status*:

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

[22] Where an applicant's allegations run counter to the available evidence and generally known facts, it is not appropriate to apply the benefit of the doubt (*Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, [1995] S.C.J. No. 78 (QL)). Thus, the principle does not apply where the RPD determines that a story is improbable. It was reasonable for the RPD to consider the omissions and contradictions in Hidalgo Carranza's testimony and in the documentary evidence.

Objective situation in El Salvador

[23] The documentary evidence does not corroborate Hidalgo Carranza's testimony about the current situation in El Salvador. The country is emerging from a difficult period marked by conflict. The traces of the scars of the past have not disappeared. The population has not yet been able to forget the country's recent past, but the evolution of the society is nonetheless in a state of healing following the democratization of the government apparatus. With the end of the civil war and the arrival of the leftist party FMLN (*Farabundo Martí para la Liberación Nacional*) in power, El Salvador is experiencing an era of significant change.

[24] The RPD's decision paints a portrait of the political and social climate in El Salvador, relying on a more comprehensive description provided by the *Country Report on Human Rights Practices* (National Documentation Package on El Salvador, July 31, 2009, tab 2.1, United States. February 25, 2009. State Department. "El Salvador". *Country Reports on Human Rights Practices for 2009*):

. . . there is no persecution on political grounds. The army and the police are under the control of the civilian authorities. It is now the leftist party, the former guerrilla organization during the civil war from 1980 to 1992, that is in power. This is a first for El Salvador. There is no mention of systematic human rights violations against peasants and women by the army. The problem the authorities face is that of crime and the proliferation of gangs.
(RPD Decision, p. 5)

[25] Moreover, this Court, through Madam Justice Judith A. Snider, already agreed with similar statements by the RPD that El Salvador is

[7] . . . a constitutional democracy that respects human rights, with a government that is willing and able to protect its citizens, has effective control of its territory, and has military and civil authorities . . .

(*Gomez v. Canada (Minister of Citizenship and Immigration)* 2006 FC 406, 148 A.C.W.S. (3d) 122).

[26] There is no documentary evidence in the record that the army is the primary power in El Salvador or that the systematic violation of human rights is a problem in this country. It was within the RPD'S jurisdiction to assess the documentary evidence based on Hidalgo Carranza's lack of credibility. The fact that the RPD did not agree with Hidalgo Carranza's opinion or that it relied on her lack of credibility does not mean that the analysis of the evidence was selective. At this stage, Hidalgo Carranza cannot suggest a reassessment of the evidence:

[17] When the applicant argues that the panel's decision passed over evidence which he considered important or that the decision looked only at part of the evidence rather than some other part which he considered more important, he is quite simply asking this Court to reassess the evidence submitted in support of the refugee status claim and substitute its opinion for that of the panel. Such an approach is prohibited in a judicial review proceeding . . .

(Singh v. Canada (Minister of Citizenship and Immigration), 2008 FC 408, 169 A.C.W.S. (3d) 1115).

[27] Given that the RPD did not lend any credibility to the subjective fear described by Hidalgo Carranza, it also chose to not believe what she said about the objective situation in El Salvador.

X. Conclusion

[28] Consequently, given that Hidalgo Carranza failed to demonstrate that the RPD rendered a decision based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before the RPD (paragraph 18.1(4)(d) of the Act), the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. the application for judicial review is dismissed;
2. no question of general importance is certified.

“Michel M.J. Shore”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-801-10

STYLE OF CAUSE: KARLA YANIRA HIDALGO CARRANZA
v. MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

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

DATED: September 14, 2010

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