Federal Court  Cour fédérale

Date: 20101108

Docket: IMM-726-10

Citation: 2010 FC 1105

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JOSE NOE RENDON OCHOA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Rendon Ochoa asks the Court to review and set aside the decision of the Refugee Protection Division of the Immigration and Refugee Board which found that he was neither a Convention refugee nor a person in need of protection. He says that the decision was unreasonable. I agree.

[2] The Board issued a negative oral decision on the day of the hearing and later issued seven pages of edited written reasons. The applicant conceded there was no claim under s. 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and accordingly, only s. 97 was addressed.

[3] The Board denied the applicant's claim for protection on the basis that he had failed to rebut the presumption of state protection with clear and convincing evidence. The Board made a number of adverse credibility findings in relation to the applicant's version of events that were the basis for its finding on state protection.

[4] The Board repeatedly made negative credibility findings against the applicant which were both unreasonable and made without regard to the evidence before it.

[5] One of the Board's reasons for finding that the applicant had not rebutted the presumption of state protection and was not credible related to whether his assailants wore hoods. From any reasonable assessment of the record and the applicant's testimony it is clear that on the first day he was accosted by the FARC, June 11, 2002, the assailants wore hoods and that on the second day, June 12, 2002, they did not. The evidence is as follows:

- In his statement to police the applicant says that on the first day his assailants put on hoods. In his description of his second encounter he is silent as to hoods. He was told by the officer taking the statement "Tell this office whether or not you recognize these persons," and the answer

transcribed was "I don't know who they are because they were not wearing hoods."

- In his PIF narrative, the applicant said the assailants wore hoods on the first day. He is silent as to whether they wore hoods the second day.
- At his refugee hearing the applicant said the assailants wore hoods on the first day and wore no hoods on the second day. He told the Board Member that this is what he told police and that this is what the police report said. When the Board Member directed him to the passage that read "I don't know who they are because they were not wearing hoods," the applicant agreed with the Member that this must have been a typo.

[6] The Board's finding that this evidence was "contradictory at worse and equivocal at best" was unreasonable. The statement in the police report that "I don't know who they are because they were not wearing hoods" is nonsensical and is clearly a typo made by the police. The Board's finding that the applicant should have corrected this error and provided information to the police about the assailants' identities is also unreasonable given that it is clear from the transcript of the hearing that the applicant did not notice the typo prior to the hearing. Further, the applicant also clearly stated at the hearing that although the assailants were not hooded the second day, he could not provide specific descriptions of their identities:

Q. Did you try and look at them in case you had to indentify them later on for the police?
A. Yes, but it is difficult because like I just said before, I used to transfer many different people on a given day, so it's just difficult to identify any person.

> Q. No, I'm just saying that during that half an hour, knowing that these people are not regular people and you wanted to go to the police afterwards, did you try to pay attention to them?
> A. No, I felt intimidated. I was very nervous. I guess they didn't let me capture the imagine [*sic*] of these persons. I was very afraid. I could say whether they were tall, short, white, but not an exact identification of them.

[7] Based on the applicant's testimony it was unreasonable for the Board to find that he omitted key information in giving evidence to the police. Any ambiguity is the result of an obvious typographical error in the police report made by the police.

[8] The Board's findings regarding the applicant's evidence of an ongoing threat were also unreasonable. The Board Member dismissed the written death threat as not being credible evidence because it did not contain an address, signature, seal or security features. The Member cited no evidence that a death threat note would have these features, and frankly, it defies common sense that a death threat from a terrorist organization would contain a signature or security features. Furthermore, I do not accept the Board's rejection of the letter because it did not contain evidence of how it was delivered because the sworn statement of the applicant's sister says that she found the letter in the mailbox next to the front door of her home.

[9] The Board's dismissal of the sworn statements from the applicant's cousin, sister, and former co-worker was also unreasonable. The Board does not offer any other reason for not according them much weight other than the fact that they come from the applicant's "family and friends" and thus are not "independent in any way." In *Ray v. Canada (Minister of Citizenship and*

Immigration), 2006 FC 731, at para. 39, Justice Teitelbaum, in the context of a PRRA application, made it clear that association to the applicant, by itself, is not a valid ground for giving evidence little weight:

> I agree with the Applicant that the PRRA Officer erred by granting little probative value to the letters on the basis that the letters support the applicant's personal interest. The mere fact that the letters were written by the Applicants' relatives is insufficient grounds, without other evidence of dishonesty or other improper conduct on the relatives' part, to accord their letters little weight.

[10] The applicant's sister, cousin and co-worker are the people who know him and know the situation he is facing in Colombia. They are uniquely placed to provide evidence and are indeed the only people who could properly provide the evidence that is sworn to in their statements. If the Board gives that evidence little weight it must set out some basis for so doing in its reasons other than the mere fact that the evidence comes from family and friends.

[11] The respondent's statement that the police were willing and able to investigate but were unable to due to lack of identification may well be true; however, it is clear that the basis of the Board's decision was that the applicant had not provided sufficient assistance to the police and had not properly sought state protection. The Board's multiple unreasonable findings with respect to the applicant's attempt to seek state protection make the Board's decision unreasonable as a whole.

[12] The Board's cursory survey of the improving security situation in Columbia does not save the decision. The country condition evidence would have been more relevant if the applicant had not sought state protection and was alleging that there was a complete breakdown of the state

apparatus. This was not the applicant's situation. He sought state protection, pursued it by hiring a lawyer to take his case to the national police, and then went into hiding for five months before fleeing the country. The issue here is whether the applicant provided evidence of past personal incidents in which state protection did not materialize. The Board's findings in this regard, and in respect of the ongoing threat to the applicant, were unreasonable.

[13] Neither party proposed a question for certification. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. This application is allowed and the applicant's application is referred back to a differently constituted panel for re-determination; and

2. No question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-726-10
STYLE OF CAUSE:	JOSE NOE RENDON OCHOA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	October 21, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	ZINN J.
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APPEARANCES:

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