

Federal Court



Cour fédérale

Date: 20110307

Docket: IMM-3744-10

Citation: 2011 FC 236

Ottawa, Ontario, March 7, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**HECTOR ULISES CANALES RODRIGUEZ
ROSA ELVIRA BONILLA CRUZ
NELSON ALEJANDRO BONILLA
(A.K.A. NELSON BONILLA)
ALEX ALBERTO CANALES BONILLA
(A.K.A. ALEX CANALES BONILLA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Hector Ulises Canales Rodriguez, along with his wife and family, left El Salvador in 2006, spent nearly two years in the United States, and then sought refugee protection in Canada. A

panel of the Immigration and Refugee Board denied Mr. Canales Rodriguez's claim, finding that state resources were available to protect him against the gang violence he feared in El Salvador.

[2] Mr. Canales Rodriguez argues that the Board erred by failing to consider documentary evidence showing that the state of El Salvador has little ability to protect its citizens against gang violence. He also submits that the state of El Salvador was unable to protect other persons in circumstances similar to his and that this should have caused the Board to conclude that he was equally at risk.

[3] I cannot conclude that the Board erred in either of these areas. The Board considered evidence on both sides of the state protection issue, and took account of the experiences of persons similarly situated to Mr. Canales Rodriguez. In the end, it found that his refugee claim, because of the evidence of state protection, was not objectively well-founded. The Board's decision was reasonable in light of the evidence before it. I must, therefore, dismiss this application for judicial review.

[4] The issues are:

1. Did the Board overlook relevant evidence?
2. Did the Board fail to consider the situation of similarly situated persons?

II. Factual Background

[5] In 2002, Mr. Canales Rodriguez was a bus driver in Concepcion de Oriental. Members of the Mara Salvatrucha 13 (MS-13) gang used to board his bus and demand money. They threatened and beat him until he began paying them \$20 per week. When he could not afford to pay any more, gang members threatened him again. At one point, they blocked the road and robbed Mr. Canales Rodriguez and his passengers.

[6] After receiving numerous complaints, the government agreed to set up police check points along bus routes. Mr. Canales Rodriguez felt this made the situation worse because it angered the MS-13 gang. In retaliation, the gang killed some bus drivers. Mr. Canales Rodriguez filed in evidence a death certificate for one of his co-workers.

[7] In 2004, Mr. Canales Rodriguez quit his job and bought his own mini-bus, which he operated independently. Still, he encountered more problems with the MS-13 gang – robberies, damage to his bus, and threats to him and his family. On the advice of his father, the mayor, he complained to police. They refused to accept his complaint. But his father persuaded the police to set up more check points.

[8] In 2006, Mr. Canales Rodriguez left El Salvador with his wife and son. They lived in the United States for almost two years before seeking refugee protection in Canada.

III. The Board's Decision

[9] The Board's decision concentrated on the legal framework governing the issue of state protection, and the particular evidence before it on that issue. There is no suggestion that the Board erred in its definition of state protection, so I need not describe that part of the decision. The following is a summary of its factual findings.

[10] The Board described programs instituted by the government of El Salvador to combat gang violence. These included creation of specialized anti-gang squads, with over a thousand members, within police forces, the military, and other government agencies. The result was an increase in arrests and convictions, and a decrease in crime rates. The Board described these measures as "serious efforts" to address the problem.

[11] The Board noted that the police did take some action to protect Mr. Canales Rodriguez – setting up check points and boarding buses occasionally to look for suspicious passengers. While there was a problem with corruption within the police, the state was taking action on that front, too.

[12] With respect to the death certificate of Mr. Canales Rodriguez, the Board noted that it did not describe the circumstances surrounding the death or identify the perpetrators.

[13] Overall, the Board found that Mr. Canales Rodriguez had not made diligent or reasonable steps to secure state protection. He had only approached the police once. Yet, when asked, the

government and the police did take positive steps to deal with the problem of gang violence against bus drivers.

[14] The Board acknowledged that gang violence is a serious problem in El Salvador, but concluded that the government is giving the issue a high priority and is devoting substantial resources to it. It also acknowledged that the documentary evidence about El Salvador contains some inconsistencies in its discussion of state protection. However, the Board found that the preponderance of the evidence showed the state's willingness and ability to protect its citizens. Therefore, Mr. Canales Rodriguez had failed to present clear and convincing evidence of an absence of state protection and, on that ground, his fear of persecution was not well-founded.

(1) Did the Board overlook relevant evidence?

[15] Mr. Canales Rodriguez points to documentary evidence in the record to which the Board did not refer in its reasons. That evidence contains references to the fact that state efforts to combat gang violence in El Salvador are viewed by some as ineffective. Mr. Canales Rodriguez argues that this is important evidence contradicting the Board's conclusion on state protection and, therefore, that the Board had a duty to refer to it.

[16] Having reviewed the record, it is clear that there is evidence to which the Board did not expressly refer. Some of that evidence describes the difficulties the state of El Salvador has encountered in dealing with gang violence given the magnitude of the problem.

[17] However, I do not agree with Mr. Canales Rodriguez's assertion that the Board overlooked important evidence or that the evidence not cited by the Board contradicts its conclusion about state protection. The Board acknowledged the serious problems with gang violence in El Salvador and conceded that the record was somewhat contradictory regarding the effectiveness of the measures the state had introduced to deal with it. In effect, Mr. Canales Rodriguez is asking me to re-weigh the evidence to arrive at a conclusion contrary to that reached by the Board. That, however, is not my role and it is not a valid ground for overturning the Board's conclusion.

(2) Did the Board fail to consider the situation of similarly situated persons?

[18] Mr. Canales Rodriguez also argues that the Board overlooked the experiences of two other persons, his father and his murdered co-worker. In respect of the latter, as mentioned above, the Board clearly dealt with the evidence relating to the co-worker's death. It found that it had evidence of the death but not about the cause or circumstances surrounding it. I can see nothing unreasonable about that conclusion.

[19] As for the father, it is not correct to say that the Board failed to consider his experiences. The Board describes the father's problems with gang violence in 2000 and the failure of the police to respond. Elsewhere in the decision, the Board notes that the father asked for assistance from the police in 2005 and the police responded positively by setting up more check points. Again, I see no basis for the assertion that the Board failed to take account of the evidence.

IV. Conclusion and Disposition

[20] In my view, the Board did not fail to consider relevant evidence relating to state protection in El Salvador or to the experiences of persons similarly situated to Mr. Canales Rodriguez.

Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3744-10

STYLE OF CAUSE: HECTOR ULISES CANALES RODRIGUEZ, ET AL v
MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: January 17, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 7, 2011

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