

Federal Court



Cour fédérale

Date: 20110323

Docket: IMM-3056-10

Citation: 2011 FC 359

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 23, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**MIGUEL ALVARO LEYVA FLORES
MARIA CONCEPCION CORONA GARCIA
MIGUEL DIVINE LEYVA CORONA
JORDY ALAN LEYVA CORONA**

Applicants

and

**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 Immigration and Refugee Board's Refugee Protection Division (hereinafter the panel), dated May 6, 2010, which found that

Miguel Alvaro Leyva Flores, Maria Concepcion Corona Garcia, Miguel Divine Leyva Corona and Jordy Alan Leyva Corono were neither Convention refugees nor persons in need of protection.

Factual background

[2] The principal applicant, Miguel Alvaro Leyva Flores, his spouse, Maria Concepcion Corona Garcia and their two minor children, Miguel Divine Leyva Corona and Jordy Alan Leyva Corona are all citizens of Mexico.

[3] Since 1990, Mr. Flores worked for the Aves Libres de Patogenos Especificos S.A. (ALPES) company. This company raised specific pathogen-free birds used for manufacturing vaccines.

[4] In October 2007, Mr. Flores was purportedly transferred from the barn/farm. At his new place of work, Mr. Flores allegedly noticed that there was poor financial and health management and theft of materials and food.

[5] In November 2007, Mr. Flores took some photographs of the stolen material and food. He then allegedly showed them to his supervisor, and then to the barn production load manager, Monica Vergara.

[6] At the end of November 2007, Mr. Flores was transferred back to his old place of work. He was allegedly demoted to a cleaning position. His working conditions deteriorated and, in December 2007, he claims that he was falsely accused of feeding bad food to some newborn chickens. Following this, there were attempts to fire him, but without success.

[7] After this incident, Alphonso Valenzuela Perez, the agricultural director of the barn where he worked, purportedly forced him to sign a letter stating that the next time he made a mistake he would be dismissed. The letter also stated that his salary would be decreased.

[8] A few days later, Mr. Flores claimed that he was assaulted and threatened with death in front of his home by three individuals. One week later, the same individuals allegedly confronted him at a bus stop and demanded that he hand over the negatives of the photographs he claimed to have taken at the barn. Mr. Flores told them that he did not have them. He was purportedly beaten and threatened that it would “finish badly” if he did not give them the photographs.

[9] Mr. Flores subsequently left his job and took refuge at his brothers’ homes from January to April 2008. In the first week of April 2008, his house was allegedly the target of gunfire. His spouse, Ms. Garcia, then purportedly moved to Mexico City, in the Federal District.

[10] Mr. Flores left Mexico for Canada on April 13, 2008, and claimed refugee protection upon arrival. His spouse and children joined him two months later, on June 17, 2008.

[11] In his refugee claim, Mr. Flores stated that he feared reprisals from Alphonso Valenzuela Perez, the agricultural director of the barn where he worked.

Impugned Decision

[12] The panel dismissed the applicants' claim for refugee protection on the ground that the allegations made by Mr. Flores were not credible. The panel stated that it did not believe that Mr. Flores had been assaulted and threatened with death because of the photographs he had allegedly taken at his job. The panel also stated that it did not believe that Mr. Flores had had trouble with anyone.

[13] To illustrate its findings with respect to lack of credibility, the panel cited several examples. First, the panel questioned Mr. Flores about the content of the photographs he had allegedly taken and how they could have jeopardized the company's management. Mr. Flores reported that he had taken photographs of the material, the eggs, tables, tools and doors because he had to file a report. He alleged that some material was not being delivered and wanted to show that he was not participating in this. The panel took note of these statements but found that there was little connection between the photographs and Mr. Flores' allegations.

[14] The panel noted that Mr. Flores was unable to explain why he had not indicated in his Personal Information Form (PIF) that the negatives of the photographs he claimed to have taken no longer existed because they had been thrown out by his spouse.

[15] Next, the panel noted that Mr. Flores had changed part of his testimony later during the hearing when he added that some of the photographs showed people stealing, loading up some trucks with materials and food.

[16] The panel noted that there were discrepancies between Mr. Flores' testimony and his PIF. The panel took note of the fact that, in his PIF, Mr. Flores never mentioned that he had taken photographs of people committing theft. Instead, he had written that he had taken photographs "of the food that was sold in the stables, forgery material, doors, tables, water reservoirs, purchases, raffia bags, eggs, birds, poor management of the birds and graphics, filters that were not changed, fuel, diesel".

[17] Dissatisfied with Mr. Flores' answers, the panel concluded that he was not a credible witness. The panel found it implausible that Mr. Flores would not take care of the photographs, given that he claimed that they were very compromising for the business where he worked. Since these photographs are the basis of his allegations, the panel found that it was also implausible that his spouse would throw them away while she was doing the cleaning and that he would wait until the hearing to reveal why he was no longer in possession of these photographs or the negatives of these photographs.

[18] The panel noted that Mr. Flores had numerous opportunities to explain how the photographs he had allegedly taken compromised the managers of the barn where he worked, and that he was unable to provide an explanation on this point.

[19] The panel also noted certain discrepancies between the dates on which Mr. Flores is alleged to have left the family home. He told the immigration officer that after gunshots were fired at the family home, the landlord allegedly asked them (including the applicant) to leave the premises. However, at the hearing and in his PIF, Mr. Flores reported that he had left his home to seek refuge

with some family members from January 1, 2008, until his departure in April 2008. The panel questioned him about this, and he replied that he did not know why the immigration officer had not written that he was not there when the gunshots were fired.

[20] Furthermore, the panel noted that the female applicant, Ms. Garcia, was unable to explain why she had stated at the hearing that she left the family home on April 14 when she told the immigration officer that she left on April 20 and went to Mexico City in March 2008.

[21] The panel found that all of this contradictory information demonstrated that the applicants' house was never the target of gunshots and that Mr. Flores never had problems with anyone, in his work or because of the photographs that he supposedly took at his work. The panel submitted that this conclusion was confirmed by the fact that the applicant never tried to obtain state protection.

[22] The panel noted that the documentary evidence showed that there were various ways of seeking state protection available to them. Moreover, the panel noted that the applicant could have gone to the police when he was attacked and assaulted on two occasions. To challenge his working conditions, the panel revealed that the applicant would have had recourse in the labour courts. The panel did not accept the applicant's excuses that he did not think of taking these steps, that lawyers have a bad reputation and that it requires money to pay bribes.

[23] Lastly, the panel found that the applicants had failed to rebut the presumption that state protection was available to them, and that they had failed to credibly explain why they did not seek the protection of the Mexican authorities.

Relevant statutory provisions

[24] The following provisions of the *Immigration and Refugee Protection Act* are relevant to 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.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on

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.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait 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) soit au risque, s'il y a des

substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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

Personne à protéger

(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.

(2) A également qualifié 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

[25] The only issue in this application for judicial review is whether the panel erred in its assessment of the applicant's credibility.

Standard of review

[26] The parties did not make any submissions with regard to the applicable standard of review. In the case at bar, the panel based its finding on the applicants' lack of credibility. In *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, [2008] F.C.J. No. 527, at para. 19, Justice Russell reiterated that "[t]he issue of whether or not the Board ignored relevant evidence is also a factual inquiry ...".

[27] In *Dunsmuir v. New Brunswick* 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 53, the Supreme Court of Canada held that when a tribunal examines questions of fact, the reviewing court will accord deference to the tribunal. Accordingly, since credibility (or lack thereof) is a question of fact, the applicable standard of review in this case is reasonableness.

Analysis

[28] The applicant argues that the panel erred in its assessment of his credibility by not accepting certain parts of his testimony. For example, the applicant submits that at the hearing, he had clearly explained that everything that was taken out of the barn had to be recorded in the barn's log book, in which the use of equipment and materials was accounted for, but that the employees who were

taking this material were not recording it in the log book. Furthermore, he adds that the company's driver had admitted to him that the material was being delivered to the home of the barn manager and not to another barn or elsewhere within the company. Finally, the applicant argues that the photographs he had allegedly taken proved that the barn manager was negligent, which put him in a compromising position because, as manager, he was responsible for maintaining the quality of the services provided by the company. The applicant submits that the panel's failure to understand these parts of his testimony, which he claims are essential, taints the decision because they were what had given rise to his fear. In addition, counsel for the applicant argued at the hearing before this Court that, on the one hand, the questions were not clear, and on the other hand, they had not been asked in a reasonable manner.

[29] The respondent, for his part, submits that the applicant's allegations are clearly insufficient to show that the panel had erred. The respondent maintains that the applicants' memorandum only provides *ex post facto* explanations to justify the deficiencies raised by the panel. He correctly notes that in order to obtain leave and succeed on the merits, it is not sufficient to simply assert that the RPD erred in fact and in law, or to claim that there were no contradictions. Relying on *Chowdhury v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1591, 32 Imm. L.R. (2d) 250, at para. 8, the respondent argues that it is necessary for the applicant to demonstrate in what way the RPD erred in fact and in law.

[30] On reviewing the record and the panel's reasoned decision, there is nothing that would allow this Court to conclude that the panel committed an error in its assessment of the applicants' credibility. In fact, the applicants do not agree with the determination made by the panel based on

the evidence and would have preferred an interpretation in their favour. The Court is not convinced that the panel made an unreasonable, perverse or capricious decision without regard to the material before it by gauging the testimonial and documentary evidence and by drawing the necessary inferences.

[31] In the case at bar, given the discrepancies between Mr. Flores' testimony and his PIF, the contradictions and the omissions, it is clear that the panel articulated its reasons concisely and that it considered all of the evidence and the applicants' explanations in its analysis.

[32] In conclusion, the Court is of the view that the panel was quite right to point out the many inconsistencies and omissions in the applicants' evidence and to doubt the veracity of their story. Based on the foregoing, the panel's decision was reasonable and the Court's intervention is not warranted. The application for judicial review will therefore be dismissed.

[33] No questions were submitted for certification and this matter does not contain any.

JUDGMENT

THE COURT ADJUDGES that this application for judicial review be dismissed.

No question is certified.

“Richard Boivin”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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DATED: March 23, 2011

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