

Federal Court



Cour fédérale

**Date: 20110517**

**Docket: IMM-6414-10**

**Citation: 2011 FC 567**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, May 17, 2011**

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

**BETWEEN:**

**JERONIMO RAMIREZ PEREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The issue here is the lack of credibility of the applicant, who is a citizen of Mexico: it is settled law that it is up to the Immigration and Refugee Board (Board), as a specialized tribunal, to be the trier of the facts and, more specifically, of the credibility of an applicant. The Court must show deference when reviewing such decisions.

## II. Judicial procedure

[2] This is an application for judicial review, in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Board's Refugee Protection Division (RPD), dated October 13, 2010, that the applicant is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA on the basis of his lack of credibility.

## III. Facts

[3] The applicant, Jeronimo Ramirez Perez, was born on February 29, 1968, and is a Mexican citizen. At the time of the events that are the subject of his refugee claim, he was living in the city of Tijuana.

[4] Mr. Perez alleges that he worked as a salaried employee for approximately two years delivering milk for a company called Jersey. In July 2008, he was delivering milk when three armed individuals purportedly robbed him of the money in his possession. He then apparently filed a complaint with the Office of the Public Prosecutor. The same individuals allegedly went after him on two other occasions in the two weeks that followed. The applicant purportedly returned to the Office of the Public Prosecutor after each assault and asked that his employer transfer him to a route in the south end of the city, without explaining the situation. A few weeks later, Mr. Perez was allegedly again the victim of extortion and decided to pay the sum of money demanded by his persecutors, without mentioning these facts to his employer or to the Office of the Public Prosecutor.

[5] On November 20, 2008, Mr. Perez allegedly decided to talk directly to his employer about the situation. The employer then had Mr. Perez followed by security guards on his delivery route. A few days later, one of the persecutors was killed in a gunfight between the security guards and the armed individuals. It was allegedly later discovered that the deceased was a police officer. The applicant purportedly wrote his letter of resignation on December 1, 2008, and went to hide at his mother's home. A relative allegedly informed him that police officers were asking questions about him in the surrounding areas.

[6] Mr. Perez arrived in Canada on December 29, 2008, and claimed protection that same day.

#### IV. Impugned decision

[7] The RPD found that the applicant is not a Convention refugee or a person in need of protection under the IRPA. The RPD first noted that the story alleged by the applicant had no nexus to any of the grounds listed in section 96 of the IRPA and that the issue in this case was instead a fear related to criminality. The analysis was therefore made under section 97 of the IRPA with the purpose of determining whether the applicant was a person in need of protection on the ground that corrupt police officers apparently want to kill him.

[8] The RPD found that the applicant had not established in a credible manner the essential elements of his refugee protection claim and that he had not established that he had to resign from his job as a milkman for the reasons alleged. The RPD found that the applicant was not credible

based on contradictions and implausibilities contained in the evidence. More specifically, in the reasons for the decision, the RPD noted the following:

- There are discrepancies in the applicant's statements regarding the length of his employment with the company Jersey. In fact, the port of entry statement indicates September 2006 as the month he started his employment, whereas the Personal Information Form (PIF) indicates April 2006 (Tribunal Record (TR) at pages 14 and 76);
- The applicant's explanation for failing to talk to his supervisor about the robberies that he was allegedly the victim of before November 2008 is implausible given that the robberies would have inevitably resulted in losses of revenue for his employer;
- The letter from his former employer (Exhibit P-4, TR at page 51), submitted by the applicant before the RPD, reveals contradictions in relation to a number of the applicant's statements, especially regarding the fact that the said letter was dated November 14, 2008, whereas the applicant allegedly resigned on December 1, 2008. The letter also makes no mention of the fact that the applicant had apparently resigned;
- The fact that the applicant had not thought about quitting his job after experiencing three armed robberies and having 800 pesos per week for several weeks extorted from him demonstrates a conduct inconsistent with his alleged fear.

(Decision at paragraphs 7 to 15)

#### V. Issue

[9] Does the decision by the RPD contain an error in fact or in law that warrants the intervention of this Court?

## VI. Relevant statutory provisions

[10] The following provisions of the IRPA apply to this application:

### **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 substantial grounds to exist, of torture within the meaning of Article 1 of the

### **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 motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier

Convention Against  
Torture; or

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  
tous lieux 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.

(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 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.

## VII. Parties' claims

[11] The applicant explains that the discrepancies between the start date of employment in the PIF and in the statement at the port of entry as well as the erroneous date on the letter of resignation are simple errors that should not impact his credibility. He adds that he did all he needed to do to inform his employer about the robberies by filing a complaint with the Office of the Public Prosecutor. The applicant also claims that the fact that he did not think about quitting his job or moving demonstrates only that reactions to danger vary from person to person. The applicant cites *Giron v. Canada (Minister of Employment and Immigration)*, (1993), 143 NR 238, 33 ACWS (3d) 1270, which states that triers of fact are in no better position than others to draw inferences based on the implausibility of the extrinsic criteria, such as rationality, common sense and judicial knowledge.

[12] The respondent claims that this argument by the applicant has no basis in law and that this principle was reviewed in *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 NR 315, 42 ACWS (3d) 886, at paragraphs 3 and 4, by Justice Robert Décary, who confirmed that the test for the Court's intervention is not different depending on whether the finding is "plausibility" or "credibility". The respondent contends that the applicant did not demonstrate that the RPD had made an unreasonable decision that does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, or an arbitrary decision without regard for the material before it by gauging the testimonial and documentary evidence submitted or by drawing illogical inferences.

VIII. Standard of review

[13] It is settled law that the credibility of an applicant, the assessment of the facts and the weighing of the evidence are within the purview of the RPD and must be considered according to the standard of reasonableness:

[19] The panel is in the best position to assess the explanations submitted by applicants for any perceived inconsistencies and implausibilities, and the role of this Court is not to substitute its judgment for the panel's on findings of fact relating to the applicant's credibility (*Singh v. Canada (M.C.I.)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at para. 36; *Mavi v. Canada (M.C.I.)*, [2001] F.C.J. No. 1 (QL)). Here, the applicant's explanations for the lack of evidence corroborating his narrative are not reasonable.

(*Castaneda v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 393)

[14] The issue is therefore whether the RPD's decision is reasonable in light of the facts of this case and not whether this Court would be of an opinion contrary to that of the RPD.

IX. Analysis

[15] Analyzing the evidence and assessing the credibility of a refugee claimant is the responsibility of the RPD, a tribunal specializing in such matters. The RPD pointed out numerous implausibilities and contradictions that undermined the applicant's credibility. In particular, it was open to the RPD to consider the applicant's conduct in response to the alleged dangerous events and to determine that, if he seriously feared persecution, he would have moved or changed jobs at the earliest opportunity (*Huerta v. Canada (Minister of Employment and Immigration)*, (1993), 157 NR 225, 40 ACWS (3d) 487 (FCA)).



[16] Regarding the probative value of the evidence, it is not up to the Court to reweigh the evidence submitted before the RPD. The applicant cannot ask the Court to substitute its opinion for that of the RPD with respect to the probative value attached to this evidence or to his explanations (*Zrig v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] 3 FC 761 at paragraph 42). It was also reasonable for the RPD to attach no probative value to the letter from the applicant's employer that was submitted into evidence after analyzing its content against the testimony given at the hearing.

#### X. Conclusion

[17] In light of the foregoing, the Court's intervention is unwarranted. The applicant has not raised any serious grounds that would permit the Court to allow the application for judicial review. The applicant's application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. No question for certification arises.

“Michel M.J. Shore”

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Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-6414-10

**STYLE OF CAUSE:** JERONIMO RAMIREZ PEREZ v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 10, 2011

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

**DATED:** May 17, 2011

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