Federal Court  Cour fédérale

Date: 20110524

Docket: IMM-5133-10

Citation: 2011 FC 579

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 24, 2011

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

PIERO KLEBERTH MATOS QUINTANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (panel) submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), by Piero Kleberth Matos Quintana (applicant). The panel found that the applicant was not a refugee or a person in need of protection and therefore rejected his refugee claim.

[2] The applicant is a citizen of Peru. He was born on January 30, 1991, and was living in Lima. His parents still live in Lima, but his sister and his two brothers live in Canada and arrived here before he did, as refugees.

[3] The panel found that the applicant was not credible because of important omissions and contradictions between his testimony and an exhibit submitted into evidence, namely, a Peruvian newspaper article dated January 18, 2008. Because only an excerpt of the article had originally been translated, the rest was translated orally during the hearing. Omissions and contradictions led the panel to believe that the applicant had not been present for the event at the heart of his claim.

[4] The panel also found that the fact that the applicant never sought asylum in the United States during his stay there, which was close to three months, undermined his credibility. It found that the applicant had invented his story in order to come to Canada and join his family after his two visa applications had been refused.

[5] The only issue is whether the panel's decision is reasonable. In fact, the standard of review applicable to credibility findings is reasonableness. At paragraph 47 of *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada noted that " . . . reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[6] After reviewing the evidence and hearing counsel for the parties, the panel's findings with respect to the contradictions and omissions attributed to the applicant seem generally reasonable. It is clear that the panel was entitled to compare the applicant's testimony to the information in the newspaper article in question. The fact that the panel did not interpret this article in the same way as the applicant is not an error in itself.

[7] I therefore agree with the respondent that, given the obvious lack of credibility with respect to the claim's central event, it was not unreasonable for the panel to attach no probative value to the exhibits submitted by the applicant. To this end, it is important to reproduce the following excerpt from the decision I rendered in docket IMM-3590-95, *Satinder Pal Singh v. The Minister of Citizenship and Immigration of Canada*, on October 18, 1996:

> . . . As the Federal Court of Appeal held in *Sheikh v. Canada*, [1990] 3 F.C. 238, 244, the perception that an applicant is not credible on a fundamental element of his claim in fact amounts to a finding that there is no credible evidence sufficient to justify the refugee claim in question.

[8] In particular, there is nothing unreasonable with the way the abduction report and the psychological report were dealt with. The panel was entitled to interpret them as it did. The same can be said for the two reports without letterhead or coat of arms, as the panel noted that it had specialized knowledge of Peruvian documents and that the documents did not possess these elements. With respect to the applicant's two police notices to appear, even though the panel did not find that they were not authentic, I do not find its decision to attach no probative value to them unreasonable. The notices to appear are short and merely state that the applicant must present

himself at the police station to answer questions about the murder. I do not find, as alleged by the applicant, that these documents necessarily prove that he was present at the murder.

[9] I further find that it was not unreasonable for the panel to find that the applicant's failure to claim asylum in the United States, where he stayed from April 15 to June 20, 2008, and for which he had a 5-year visa, could be used to undermine his credibility.

[10] For all of these reasons, the application for judicial review is dismissed.

[11] I agree with counsel for the parties that this is not a case for certification.

JUDGMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board that the applicant was not a refugee or a person in need of protection according to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 21, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5133-10
STYLE OF CAUSE:	PIERO KLEBERTH MATOS QUINTANA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 14, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	May 24, 2011

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Margarita Tzavelakos	FOR THE RESPONDENT

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