

Federal Court



Cour fédérale

Date: 20110526

Docket: IMM-5676-10

Citation: 2011 FC 622

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, May 26, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

ANGEL RICARDO RUANO SANCHEZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 29, 2010, in which

the Board found that the applicant was neither a Convention refugee nor a person in need of protection.

[2] The applicant is a citizen of Honduras. He submits that, on a few occasions, he was approached by members of a street gang (the MS-13), who asked him to join the gang. He always refused their invitation. On August 30, 2005, he was again approached by members of the street gang, who, in response to his refusal to join them, beat him, robbed him and threatened to kill him.

[3] The applicant left Honduras on September 8, 2005, to go to Mexico. He then entered the United States, where he lived from February 2006 to October 2008. He arrived in Canada on November 6, 2008, and claimed refugee protection that same day.

[4] The Board's decision to deny his refugee protection claim was made on the basis of various factors.

[5] First, the Board found that the applicant had not established that he could be forcibly recruited and that he would be of any interest to these gangs should he return to Honduras. The Board based its finding on two factors. It found that the applicant had admitted that he was not specifically targeted by the gangs and that the gangs preyed on everyone. It also quoted an excerpt from the National Documentation Package for Honduras, which described "the number of [young] gang members" as being high and the factors that contribute to attracting young

people to these gangs. From that, the Board concluded that a number of young people were available to join gangs in Honduras.

[6] The Board then found that the applicant had not demonstrated, on a balance of probabilities, “that he could be subjected to a risk to his life that would not be faced indiscriminately by other people in his country”. The Board was of the opinion that this was a generalized risk in Honduras.

[7] The Board also concluded that the behaviour of the applicant, who had stayed in the United States for two years and nine months without seeking refugee protection, was not consistent with the applicant’s alleged fear of returning.

[8] The Board also found that the applicant had not submitted any evidence that might suggest that he would risk being persecuted on one of the Convention grounds.

[9] This application for judicial review raises the following issues:

- 1) Did the Board err in finding that the applicant was not subject to a personalized risk and that the risk he faced was generalized?
- 2) Did the Board err in determining that the applicant’s stay in the United States without seeking refugee protection there was inconsistent with his alleged fear of returning?

[10] It is my view that the Board drew a conclusion that had a determinative influence on its decision, but that was not supported by the evidence.

[11] The Board found that the risk to which the applicant was subjected was faced indiscriminately by other people in his country. Without it being said outright, it appears from the decision that the other “people” to which the Board refers are likely young men, since it cited an excerpt from *Perez v Canada (Citizenship and Immigration)*, 2010 FC 345 (available on CanLII) (*Perez*), in which the Court recognized that a risk may be generalized if it concerns a subgroup of the population.

[12] In this case, the risk claimed by the applicant is clearly related to his fear of retaliation for his refusal to join a street gang. Yet, the evidence on file does not deal with the forced recruitment of young people practised by street gangs. Given that the risk alleged by the applicant was clearly related to his fear of retaliation for his refusal to join a street gang, the Board could not, in the absence of evidence, conclude that the risk faced by the applicant was generalized. The documentary evidence dealing with the number of young people who are street gang members and the factors that push them to join a gang was not relevant in supporting a finding of generalized risk related to forced recruitment or the fear of retaliation for refusing to join.

[13] The applicant’s testimony was also not conclusive. When asked the following question by the Board member, [TRANSLATION] “Do you know whether they prey to some extent on everyone?”, the applicant replied, [TRANSLATION] “Yes, of course they do; they prey on

everyone”. This affirmation seems far from sufficient to support a conclusion that the risk faced by the applicant was generalized.

[14] The facts in this matter are different from those in *Perez; Garcia Arias v Canada (Citizenship and Immigration)*, 2010 FC 1029 (available on CanLII); and *Morales Gonzalez v. Canada (Citizenship and Immigration)*, 2010 FC 991 (available on CanLII), where the Board’s findings that there was a generalized risk were supported by the evidence.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is allowed and that the file is referred back to the Immigration and Refugee Board so that the applicant's claim for refugee protection can be reconsidered by a differently constituted panel.

“Marie-Josée Bédard”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5676-10

STYLE OF CAUSE: ANGEL RICARDO RUANO SANCHEZ v MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 25, 2011

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

DATED: May 26, 2011

APPEARANCES:

Luciano Mascaro	FOR THE APPLICANT
Zoé Richard	FOR THE RESPONDENT
Amélia Fink, Articling Student	

SOLICITORS OF RECORD:

Luciano Mascaro	FOR THE APPLICANT
Arpin, Mascaro et Associés	
Montréal, Quebec	
Myles J. Kirvan	FOR THE RESPONDENT
Deputy Attorney General of Canada	
Montréal, Quebec	