

Federal Court



Cour fédérale

Date: 20110616

Docket: IMM-6873-10

Citation: 2011 FC 724

Toronto, Ontario, June 16, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

EDWIN JEOVANY ALVAREZ CASTANEDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Honduras. He claimed refugee protection in Canada which claim was denied by a decision of the Refugee Protection Division dated November, 2010. That decision was based on the finding that while it was agreed that the Applicant would be personally at risk if he were to be returned to Honduras, it was a generalized risk and therefore his claim must be rejected. That decision was wrong. It overlooked critical evidence as to personal risk. I will set aside that decision and return the matter for redetermination by a different person.

[2] The Applicant's story, in brief, is that he ran a small shop in Honduras and was targeted by a notorious gang of thugs known as the Mara Salvatrucha who sought to extort money from him. The evidence shows that this is a general risk faced by many persons in Honduras who are perceived to have even a little money.

[3] If that were the end of the matter, the Board's decision could not be faulted.

[4] However the Applicant is in a situation that makes his risk personal. He was unable to make the payments demanded by the gang. Members of the gang beat him with a variety of implements, shot him at least four times and left him for dead. Miraculously he was transported to hospital, was in a coma for about a year and, eventually recovered. He fled first to the United States where he did not make claim for asylum, then came to Canada.

[5] The evidence is clear as to how widespread and vicious the gang is not only in Honduras but elsewhere. The evidence, which came from the Applicant and really only could come from him, is that if he were to return to Honduras the gang would not just pursue him for money but would seek to kill him since he represented the gang's failure to kill people which they targeted. He was, in effect, living proof of their ineptitude.

[6] The evidence is also that the Applicant could readily be identified by the gang because of a prominent facial scar acquired in his younger years.

[7] The Board failed to give appropriate consideration to the evidence of personal risk to the Applicant. The matter must be redetermined. There is no question for certification.

JUDGMENT

FOR THE REASONS GIVEN;

THE COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is to be sent back for redetermination by a different person;
3. There is no question for certification; and
4. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6873-10

STYLE OF CAUSE: EDWIN JEOVANY ALVAREZ CASTANEDA v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 16, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: JUNE 16, 2011

APPEARANCES:

JACK MARTIN FOR THE APPLICANT

TESSA KROEKER FOR THE RESPONDENT

SOLICITORS OF RECORD:

JACK C. MARTIN FOR THE APPLICANT
BARRISTER AND SOLICITOR
TORONTO, ONTARIO

MYLES J. KIRVAN FOR THE RESPONDENT
DEPUTY ATTORNEY GENERAL OF CANADA
TORONTO, ONTARIO