

Federal Court



Cour fédérale

Date: 20111006

Docket: IMM-555-11

Citation: 2011 FC 1142

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, October 6, 2011

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**ISABEL MARTIN-EYZAGUIRRE
MAURICIO MARTIN MARTIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal by Ms. Martin-Eyzaguirre and her son, Mauricio, from the decision dated January 13, 2011, by the Refugee Protection Division (RPD or panel) of the Immigration and Refugee Board, that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] After examining the file and considering the written and oral submissions of the parties, the Court finds that this application must be dismissed. Not only was it reasonable for the panel to find that the applicants lack credibility, but also, the evidence does not demonstrate that the female applicant was in fact the subject of persecution.

Facts

[3] The applicants, a mother and her son, are citizens of Peru. They are alleging that they fear the female applicant's former spouse and her son's father, Carlos Alberto Lamella.

[4] The female applicant claims that she met Mr. Lamella in 1986. He apparently started to abuse her when she became pregnant. Their relationship then purportedly ended, and it was the female applicant's father who supported her financially.

[5] At the end of 2005, that is, around 18 years later, the female applicant apparently obtained Mr. Lamella's address. She allegedly went to his house and asked him to help pay for their son's university studies. He purportedly refused and beat her, after which the female applicant apparently filed a complaint against him.

[6] On July 26, 2006, the female applicant apparently went to Mr. Lamella's house again for the same reason. She was purportedly again refused, beaten and even threatened with death. She allegedly filed a second complaint.

[7] On March 26, 2008, the female applicant apparently returned to Mr. Lamella's house a third time for the same reason, but this time with her son. Carlos beat her again. Mauricio stated that he tried to protect his mother, but that Carlos struck him too. Ms. Martin-Eyzaguirre filed another complaint with the police. Mauricio allegedly left school and attended group therapy to overcome his fear.

[8] On August 28, 2008, the female applicant apparently met Mr. Lamella by chance and asked for financial support again. He allegedly refused again and beat her so severely that she could not move.

[9] On October 29, 2008, while she was with her son, Ms. Martin-Eyzaguirre met Mr. Lamella again by chance. He purportedly threatened both of them at gun point and told them that, should she continue to demand money, he would kill them. They apparently filed a fourth complaint.

[10] The applicants arrived in Canada on December 19, 2008, and claimed refugee protection that same day.

Impugned decision

[11] The panel found that the applicants are not credible. The panel did not believe that Carlos existed, that he was violent towards the applicants or that they filed four complaints against him.

[12] First, the panel was astonished that the female applicant had waited 18 years to find Carlos when it seemed easy enough to track him down; she had come across his cousin by chance and it

was this cousin who apparently gave her his address. The panel found it surprising that the applicants had never come across Carlos before as he apparently lived in the same neighbourhood.

[13] Second, the panel was surprised that the female applicant had attempted to see Carlos on the ground that her financial situation was worsening, as she was employed by a company at that time and it was her longest work period with the same company.

[14] The panel also stated that it was puzzled that the female applicant could not provide any evidence of Carlos's existence and that she had wanted to destroy any trace of her relationship with a man she knew had made her pregnant.

[15] The lack of medical evidence corroborating the allegations of physical abuse also appeared implausible to the panel. The female applicant contended that she had not gone to the hospital because she was never seriously injured, which also surprised the panel.

[16] The female applicant also had difficulty explaining the process for filing a complaint with the police even though she stated that she had filed four complaints against Carlos. First, she claimed that she had not reread the complaints, and then she stated that she had read them while the officer was taking his depositions. She also initially replied that she had not signed the complaints and that she had signed another document, and then she stated that she believed that she had signed them. All of these contradictions led the panel to state that she was trying to adjust her testimony, and to disbelieve that she actually went to file a complaint, especially since the documentary evidence shows that police officers reread depositions to complainants before asking them to sign

complaints. For these reasons, the panel did not attach any probative value to the four complaints filed into evidence.

[17] The panel also stated that Mauricio would have been prepared to go to a free public university if he had been able to write an entrance exam quickly, and did not believe the allegations of threats he received from Carlos because it would be surprising for him to insist on continuing his studies at a private university to the point of causing significant physical consequences for his mother. Similarly, the panel was puzzled that the female applicant had agreed to voluntarily subject herself on three occasions to physical violence when her son could have simply opted to go to a public university.

Issue

[18] The only issue in this case is whether the panel erred in its assessment of the applicants' credibility.

Analysis

[19] The panel's assessment of the applicants' credibility must be given a high level of deference. The Court will intervene only if the panel's decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47, [2008] 1 S.C.R. 190).

[20] The applicants basically maintain that the panel erred by relying on its own perceptions rather than on the inconsistencies or contradictions in the testimony or in the evidence in the record.

During the hearing, counsel for the applicants tried to demonstrate that there was nothing implausible in the applicants' behaviour, the female applicant's actions in particular.

[21] I readily acknowledge that some of the [TRANSLATION] "implausibilities" raised by the panel can undoubtedly be explained and perhaps do not fatally undermine the applicants' credibility when considered in isolation. For example, it is not impossible that the female applicant never went to the hospital after the attacks she experienced simply because her condition was not serious enough to require medical attention. Similarly, it is not unthinkable that, at the end of their relationship, she might have destroyed all of the documents that could prove Carlos's existence out of spite or because she felt betrayed by the man she loved. Finally, it is undoubtedly true that mothers are willing to endure many attacks in the name of their unconditional love for a child.

[22] The fact remains that the panel was entitled to draw a negative inference from the evidence as a whole and from the applicants' testimony. Even though every action by Ms. Martin-Eyzaguirre and her son could be rationalized, the fact remains that their account, viewed as a whole, could raise doubt in the panel's mind. In that respect, the lack of documentary evidence on the abuse or even on the persecutor's existence certainly adds to the unlikelihood of their account. The same can be said for the difficulties the female applicant had explaining the process undertaken to file her complaints; a close reading of the transcript indicates the painstaking nature of her testimony in that respect. That definitely makes one wonder, especially since the female applicant claims to have filed four complaints.

[23] Under the circumstances, the panel was entitled to make negative findings with respect to the credibility of the applicants. Furthermore, we can question whether this was really a matter of persecution. It is apparent in the evidence and in the female applicant's testimony that she was threatened and abused by Carlos only after she asked him to support his son financially. This is not a case where the persecutor is actively seeking his victim. Instead, it seems that Ms. Martin-Eyzaguirre did not have any altercations with Carlos as long as she was not trying to speak with him or ask him for money. Under these circumstances, it seems doubtful that this is a question of persecution because the applicants could easily have escaped the violence by Carlos by foregoing the financial support he could have provided them with.

[24] In light of the foregoing, I am therefore of the opinion that this application for judicial review must be dismissed. Neither party proposed a question for me to certify, and none will be certified.

JUDGMENT

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

“Yves de Montigny”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-555-11

STYLE OF CAUSE: ISABEL MARTIN-EYZAGUIRRE ET AL.
and MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 4, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** de MONTIGNY J.

DATED: October 6, 2011

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