

Federal Court



Cour fédérale

Date: 20111124

Docket: IMM-2265-11

Citation: 2011 FC 1356

Ottawa, Ontario, November 24, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CESAR HERNANDEZ TERRIQUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] There are several reasons why this application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada, dismissing Mr. Hernandez Terriquez' refugee claim, should be dismissed.

[2] The first reason is that the application for leave and judicial review was filed late. The fact that leave was granted does not relieve the applicant from justifying the delay. The granting of leave did not touch upon the fact that the application was filed late. No extension of time was ever

requested, and the record gives no indication, whatsoever, of facts which would justify an extension.

I rely upon the decision of Madam Justice Bédard in *Chen v Canada (Minister of Citizenship and Immigration)*, 2010 FC 899, [2010] FCJ No 1096 (QL).

[3] The second reason is that the lack of credibility finding was reasonable. Mr. Hernandez Terriguez' story is that he is a Mexican long-distance truck driver. He was carrying a load of sacs of sugar. He was stopped by corrupt police and ordered to carry a sac of cocaine.

[4] En route, before the next checkpoint, he threw the cocaine in a field and fled to Canada. The decision maker was of the view that this defied common sense. That was not an unreasonable finding. If true, he would have been killed on the spot.

[5] The third reason is a finding of lack of subjective fear. Mr. Hernandez Terriguez was in Canada for a year before he filed his refugee claim. The member noted that this was not, in itself, determinative, but was certainly a factor to consider. There was no valid excuse offered. On the contrary, when first interviewed he said he delayed because he did not know how to go about it. However, he later testified that he was living with his brother who had filed a successful refugee claim four years earlier. It was unlikely that he would not know how to file a claim when he was following in his brother's footsteps. He wanted to stay in Canada because it was a good place to be.

[6] The fourth reason is that if he were credible, he was a victim of criminality. Such victims are not refugees within the meaning of the United Nations Convention and section 96 of the *Immigration and Refugee Protection Act*. Rather, his claim would come under section 97 of the Act.

Among other things, the risk faced must be a risk not faced generally by other individuals in or from Mexico. The risk need not be faced by everyone in the country. It is sufficient that the risk be faced by a subgroup to exclude a claimant from the protection accorded under section 97 (*Paz Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182, [2011] FCJ No 222 (QL)). In this case, the subgroup was identified as long-distance truck drivers. This was a general risk and not a risk personal to Mr. Hernandez Terriquez. This was a reasonable conclusion. For the difference between generalized risk and personal risk, one might contrast *Jimenez Palomo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1163, [2011] FCJ No 1430 (QL), with *Ponce Uribe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1164, [2011] FCJ No 1431 (QL).

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2265-11

STYLE OF CAUSE: HERNANDEZ TERRIQUEZ v MCI

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: NOVEMBER 23, 2011

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: NOVEMBER 24, 2011

APPEARANCES:

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Me Charles Junior Jean FOR THE RESPONDENT

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