Federal Court  Cour fédérale

Date: 20111128

Docket: IMM-2248-11

Citation: 2011 FC 1374

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Vancouver, British Columbia, November 28, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ANA LUZ ANAYA ALONSO
CARLOS ANDRES VILLANUEVA VILLALPANDO

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The principal applicant based her refugee claim on the allegation that she had received death threats from Senator Suarez Tomborrel when she was a student in Mexico. Since he has interests in the brick industry and uses toxic fuels, he wanted to kill her because of her university thesis on the pollution caused by this industry in Mexico.

[2] Given the lack of credibility and subjective fear, the panel dismissed the applicants' refugee claim. This is an application for judicial review of that decision. The issue is to determine whether the decision of the member of the Refugee Protection Division is reasonable.

[3] The member was of the view that it was implausible that the Senator wanted to kill the principal applicant since the pollution associated with this industry is a well known fact and has been the subject of a number of publications.

[4] It was not unreasonable for the member to doubt the applicant's testimony. Although it is submitted that the member misapprehended the applicant's arguments that there had never been a real analysis of the toxicity and the origin of the fuels the peasants use, I do not find this argument convincing.

[5] One wonders to what extent the pollution caused by the brick industry in Mexico remains an unexplored subject. Contrary to the applicant's submissions, the evidence shows that the effects of those fuels have been documented in a number of publications by various organizations. There is a reference to this in a news article that was entered into evidence:

> [TRANSLATION]
> They stated that the manufacture of bricks produces high levels of contamination because of the use of poor quality fuel and that the emissions from the fuel constitute a high risk to health in that they cause cancer on a long term basis.

[6] Another factor to keep in mind is the allegation that the applicant was kidnapped and held for two days. During this period, she was drugged and woke up nude. Despite that, she did not go to

the doctor because he would have called the police who, she says, are corrupt and under the Senator's influence.

[7] It was also not unreasonable for the member to believe that a person would likely consult a doctor after being drugged and waking up nude.

[8] The member had the advantage of meeting the witness, an advantage that must not be taken lightly. As Mr. Justice Richie stated in *Stein v Kathy K (The Ship)*, [1976] 2 RCS 802, 6 NR 359, at paragraph 7:

> In this regard reference may be had to the case of *S.S. Honestroom (Owners) v. S.S. Sagaporack (Owners)*, where Lord Sumner said, at pp. 47-8:
>
> . . . not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses *and of their own view of the probabilities of the case*. . . .

See also *N.V. Bocimar S.A. v Century Insurance Co*, [1987] 1 SCR 1247, [1987] SCJ No 39 (QL).

[9] The decision the member made was among those reasonably open to him, as explained in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a

> review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, 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.

[10] Moreover, it is my view that the allegations that the member was biased are not founded.

ORDER

FOR THE FOREGOING REASONS;

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2248-11
STYLE OF CAUSE:	ANAYA ALONSO ET AL v MCI
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 24, 2011
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	NOVEMBER 28, 2011

APPEARANCES:

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