

Federal Court



Cour fédérale

**Date: 20120111**

**Docket: IMM-3629-11**

**Citation: 2012 FC 35**

**Ottawa, Ontario, January 11, 2012**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**ANA ROSA MOLINA SANCHEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Ana Rosa Molina Sanchez challenging a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board) which denied her claim to refugee protection. Initially Ms. Molina Sanchez's claim was joined with claims by her daughter and grandson but for the purposes of this proceeding, she remains the only Applicant.

## Background

[2] Ms. Molina Sanchez is a citizen of Venezuela who came to Canada from Colombia in 2009 ostensibly to escape from threats to her safety made by groups which support the Chavez government. She provided evidence of her work as a political activist involved in public demonstrations opposing President Chavez. This profile formed the background to her allegation of prolonged and intense harassment by way of telephone calls carried out by persons who identified themselves as members of three different terrorist groups: the Revolutionary Armed Forces of Colombia (FARC), the Bolivian Circles and the Tupamaro. Ms. Molina Sanchez also attempted to link her situation to the earlier kidnapping of a former brother-in-law and to threats directed at her by her daughter's former boyfriend.

[3] The Board found that Ms. Molina Sanchez was not a credible or trustworthy witness. That finding was based, in part, on her failure to include any reference to threats by her daughter's former boyfriend in her Personal Information Form (PIF). This aspect of her claim to protection only came up in her testimony at the hearing. The Board also expressed a concern about Ms. Molina Sanchez's inability to recall details of these alleged threats.

[4] The Board also disbelieved the daughter's evidence that she was at risk from her former boyfriend and it found that both Ms. Molina Sanchez and her daughter had embellished that part of the story to bolster the daughter's refugee claim.

[5] The Board also rejected Ms. Molina Sanchez's risk allegations concerning a history of telephone threats. It found no persuasive evidence linking those allegations to the earlier

kidnapping of her former brother-in-law. It also found that her political profile was not of a kind that would attract persistent threats of the sort she had described. Her attempt to link those allegations to three different terrorist groups was also rejected as implausible in circumstances where the threats had never been acted upon over a period of several months.

### Issues

[6] Were the Board's factual findings reasonably supported by the evidence?

### Analysis

[7] The issues raised on behalf of Ms. Molina Sanchez are all evidence-based and must be reviewed on the standard of reasonableness.

[8] The Board's principal credibility concern had to do with Ms. Molina Sanchez's failure to include in her PIF what the Board described as "a central element" of her risk narrative. This part of the decision was expressed as follows:

The principal claimant's mother testified during the hearing that indeed, the principal claimant's former boyfriend had accosted her in a mall on one occasion and had gone to her home on a number of occasions. The mother could not remember the dates when this happened and could only indicate a year in which these happened and was not even sure about that. The mother indicated in her oral testimony that the one of the people she feared, was the principal claimant's former boyfriend. The mother was asked why she had not included this in her narrative. The mother testified that she was overwhelmed with her own situation and that she was thinking of groups and not a person in particular. Counsel's written submissions indicate that the mother did not include information about the principal claimant's former boyfriend in her own narrative, because the mother was not directly threatened by the former boyfriend. Nevertheless find the mother's explanation is unreasonable, since this is a significant omission from the narrative, and goes to a central

element as to why she fled Venezuela, since she lists the former boyfriend as a feared agent of harm and is a central element of her daughter's claim that her former boyfriend remains interested in causing her harm today. Therefore, relating to the testimony that the principal claimant's former boyfriend accosted her, I find that the mother's testimony is not credible in this regard. It is a significant omission that goes to a central element of the claim. On a balance of probabilities, the principal claimant and her mother embellished this story in order to bolster the principal claimant's refugee claim.

[sic]

Mr. Luyt argues that the above finding was unjustified because Ms. Molina Sanchez did not rely upon this history of family conflict as a reason for leaving Venezuela. Instead, her fear was based solely on an alleged history of politically motivated threats to her safety made mainly over the telephone. Mr. Luyt contends that the Board elicited evidence of threats directed against Ms. Molina Sanchez by her daughter's former boyfriend under questioning and that this evidence was not material or central to the claim. In the result, it was unreasonable for the Board to draw an adverse credibility inference from Ms. Molina Sanchez's failure to refer to these events in her PIF. Support for this is said to be found in the following passage from the decision of Justice Anne Mactavish in *KIN v Canada (MCI)*, 2005 FC 282, 270 FTR 282:

[22] The only real negative finding that the Board made with respect to K.I.N.'s credibility arose out of the fact that her PIF did not mention the religious harassment that she says her children experienced in school.

[23] Not every omission from an applicant's PIF will, however, be determinative of the individual's credibility: *Akhigbe v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, [2002] F.C.J. No. 332 (FCTD) online: QL. The nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission.

[24] In this case, a review of the transcript discloses that K.I.N. did not volunteer this information in what could reasonably be perceived

as an effort to embellish her claim. Instead, it was only in response to a direct question from the presiding member as to whether her children had encountered any problems, apart from physical attacks, that K.I.N. mentioned the harassment that her children had encountered at school.

[9] Although I readily accept the point made in the above passage, I do not agree that it applies to Ms. Molina Sanchez's evidence. When the Board initially asked Ms. Molina Sanchez about the sources of her fear, she volunteered that the list of persecutors included her daughter's boyfriend and vaguely linked him to the political groups who had also ostensibly targeted her. The Board found that Ms. Molina Sanchez added this risk element to her story to embellish her daughter's claim to protection. That was a reasonable evidence-based finding that is not open to challenge on judicial review.

[10] Mr. Luyt also challenges the reasonableness of the Board's finding that it was not plausible that the dangerous groups that had repeatedly threatened Ms. Molina Sanchez had never acted on the threats. However, this finding was not made in isolation; it was part of a range of evidentiary observations made by the Board about the overall quality of Ms. Molina Sanchez's evidence. The Board described Ms. Molina Sanchez's evidence as unpersuasive, lacking in detail, vague, embellished and insufficient. Those descriptors fairly characterized her testimony which was, on the whole, highly improbable. Though the Board and her own counsel repeatedly pressed her to offer details about the threatening calls, she was unable to provide meaningful and consistent answers, particularly about the purpose of the calls.

[11] At several points in her testimony she indicated that she was repeatedly called (often several times a day) over several months by persons identifying themselves variously as members of the FARC, the Tupamaro and the Bolivian Circles who threatened her with death, kidnapping and extortion because she was ostensibly “in their way”. Despite this unusual level of telephone contact, nothing actually happened to Ms. Molina Sanchez. It was in this improbable context that the Board expressed its doubts about her credibility.

[12] The Board reasonably found that her profile as a political organizer ought not to have made her the target of persistent harassment and that she did not present a realistic target for a kidnapping at the hands of any of the several groups she claimed to fear.

[13] In the end, the Board found that her story was unpersuasive and that she had failed to establish that she faced a risk upon a return to Venezuela. This was a reasonable conclusion and it cannot be impeached on judicial review.

[14] Mr. Luyt also objects to the Board’s treatment of a brief letter from Ms. Molina Sanchez’s cousin who claimed to have witnessed some of the threatening calls and to have seen a note left on Ms. Molina Sanchez’s car which stated “Take care of your money because we will soon need it”. The Board gave this evidence little weight because it was insufficiently detailed and because the accuracy of its contents could not be verified.

[15] I agree with Mr. Luyt that if the Board was saying that the cogency of third-party evidence of this type would be diminished by the absence of sworn verification, it would constitute a legal

error. There is no such duty upon a claimant and, if there was, the Board could not receive third-party evidence of this sort unless by affidavit or in person. However, I take the Board to be saying only that the cousin's letter was unsupported by objective corroborative evidence. Ms. Molina Sanchez failed to produce any telephone records to corroborate these calls and, given their importance to her claim, it seems more likely that this failure was the source of the Board's concern about verification. In any event, I do not view this issue as sufficiently material that it would undermine the Board's other concerns about the letter and Ms. Molina Sanchez's evidence in general.

[16] While the Board's reasons for dismissing this claim could have been better written, the Court can, on judicial review, examine the evidence to assess on its own the reasonableness of the outcome: see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15, [2011] SCJ no 62 (QL). Having done that, it is quite apparent that the Board's credibility concerns are entirely justified and its decision to reject this claim is within the range of acceptable outcomes. In the result, this application is dismissed.

[17] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed.

"R.L. Barnes"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3629-11

**STYLE OF CAUSE:** SANCHEZ v MCI

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** December 7, 2011

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** January 11, 2012

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