

Federal Court



Cour fédérale

Date: 20120208

Docket: IMM-4644-11

Citation: 2012 FC 175

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

LUIS ANGEL LOPEZ BASURTO

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant, young Angel Lopez Basurto, came to Canada with his mother and his half-brother to seek its protection against Louis Lopez Sanchez, his father, who is his mother's second husband and the step-father of his half-brother. Apparently, he beat all of them. Since they had already unsuccessfully applied for refugee protection in Canada in 1995, neither Angel's mother, Diana Basurto Valencia, nor his half-brother, Erick Ramirez Basurto, could claim refugee status in Canada a second time. It is immaterial that the grounds for their first application were different from the grounds alleged this time. However, it is important to bear in mind that they can, nonetheless, apply for a pre-removal risk assessment (PRRA).

[2] Angel was only ten years old when he testified before the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada about events that had occurred some years earlier. The presiding RPD member dismissed his application for refugee protection because neither his mother nor his half-brother, who testified in his name, were credible. On this application for judicial review, the issue is whether that decision was reasonable. In my view, it is not.

[3] It was completely reasonable to find that Angel's mother was not credible. In fact, she blatantly lied and submitted a number of falsified documents. Requests for information from the Mexican authorities conclusively established that those documents were fraudulent.

[4] Angel's half-brother, Erick, was also deemed not credible because of certain inconsistencies between his testimony, his mother's and Angel's as to exactly when and where Angel was beaten. This finding is highly suspect since Angel testified that his father had beaten him on a number of occasions and there was no evidence to support a presumption that his half-brother had been present during each of those episodes.

[5] Even though Angel's mother and his half-brother lied to strengthen their own PRRA applications, saying that they too had been beaten, it does not necessarily follow that Angel also lied. His testimony was simple and direct not only with respect to the main events but also regarding the peripheral elements of his refugee claim, such as the time when his father went to get him at his primary school in Mexico, the courses he was taking at school, his academic performance, etc.

[6] In fact, the presiding member found that Angel lied because the two others had lied. The resulting inference is that Angel's mother prepared him to give false testimony.

[7] In my view, this inference cannot be drawn from the established facts. The presiding member's finding is purely speculative and theoretical. In *Canada (Minister of Employment and Immigration) v Satiacum*, 99 NR 171, [1989] FCJ No 505 (QL), MacGuigan J. explained as follows at paragraphs 34 and 35:

The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39 at 45, 144 L.T. 194 at 202 (H.L.):

The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference.

In *R. v. Fuller* (1971), 1 N.R. at 114, Hall J.A. held for the Manitoba Court of Appeal that "[t]he tribunal of fact cannot resort to speculative and conjectural conclusions." Subsequently a unanimous Supreme Court of Canada expressed itself as in complete agreement with his reasons: [1975] 2 S.C.R. 121 at 123, 1 N.R. 110 at 112.

[8] As the Good Book says, "a son is not to suffer for the sins of his father, nor a father for the sins of his son. To the upright man his integrity will be credited, to the wicked his wickedness." (*The Jerusalem Bible*, New York, Doubleday, 2000, Ezekiel 18:20).

[9] In the circumstances, I am of the view that the presiding member's decision is unreasonable. After finding the applicant and the witnesses not credible, she unfortunately did not consider whether state protection or an internal flight alternative were available. At the redetermination, the presiding member will need to take those factors into account.

[10] As agreed by both parties at the hearing, there is no serious question of general importance to certify.

ORDER

FOR THE FOREGOING REASONS,

THE COURT ORDERS as follows:

1. The application for judicial review of the decision by a presiding member of the RPD of the IRB dated June 21, 2011, in file MA9-02262, in which she determined that the applicant was not a Convention refugee, is allowed.
2. The decision of June 21, 2011, is set aside, and the matter is remitted for redetermination before a different presiding member of the RPD of the IRB. The new decision shall consider whether state protection or an internal flight alternative is available in Mexico.
3. 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-4644-11

STYLE OF CAUSE: LOPEZ BASURTO v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 1, 2012

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

DATED: FEBRUARY 8, 2012

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