

Federal Court



Cour fédérale

**Date: 20120411**

**Docket: IMM-5949-11**

**Citation: 2012 FC 412**

**Ottawa, Ontario, April 11, 2012**

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

**BETWEEN:**

**CID ONASIS CALDERON GARCIA  
JUAN JAVIER CALDERON MOLINA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 15, 2011. The Board found that the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons set out below, the application is dismissed.

I. Facts

[3] Cid Onasis Calderon Garcia, and his father, Juan Javier Calderon Molina, are citizens of Mexico (collectively the Applicants). They made refugee claims in Canada based on the threat posed by members of organized crime, or the Los Zetos. The father alleged robberies, extortion and physical assaults at his business while the son referred to two instances of robbery and mugging leading to injuries requiring medical attention. They also insisted that police did not pursue the incidents.

II. Decision Under Review

[4] As a preliminary matter, the Board addressed its decision to proceed although the Applicants did not have counsel to represent them at the hearing. The Applicants were notified that the hearing would be held on a peremptory basis. Despite the father's reluctance to proceed, the Board found it appropriate to do so since he "had not made a concerted effort to find a representative" with a single telephone call.

[5] Addressing the nineteen month delay in bringing a refugee claim in Canada, the Board found this undermined the Applicants' credibility with respect to any serious harm or risk to life if returned to Mexico. The delay was considered fatal to both refugee claims.

[6] Further adverse credibility findings were drawn from the Applicants' failure to provide independent corroborative documentation related specifically to the business and from Mexican police. The Board noted that the testimony was vague and evasive on these points. In addition, the Applicants' explanation for losing Mexican documents was not considered credible.

[7] At paragraph 25, the Board stated:

For these cumulative reasons, the Panel cannot extend the benefit of the doubt to the principal claimant with regard to the credibility of his narrative because he did not establish that he made genuine efforts to provide any evidence of any type with regard to the existence of his door and closet business in Mexico City or these alleged robberies and extortion attempts by the Los Zetos, which are central elements to his claim.

[8] As victims of crime, the Applicants did not have a link to a Convention ground. Similarly, the Board concluded that, on a balance of probabilities, the risk to the Applicants is one faced generally by the population of Mexico.

### III. Issues

[9] This application raises the following issues:

- (a) Did the Board err in misconstruing evidence as to the Applicants' identities?
- (b) Did the Board err in making negative credibility findings?

#### IV. Standard of Review

[10] Questions of fact and credibility are reviewed according to the reasonableness standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14; *Canada (Citizenship of Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paras 45-46).

[11] Applying this standard, the Court must assess “the existence of justification, transparency and intelligibility within the decision-making process” as well as whether the decision “falls within a range of possible, acceptable outcomes” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2009] 1 SCR 190 at para 47).

#### V. Analysis

##### A. *Error in Applicants’ Identities*

[12] The Applicants take issue with the error in the first paragraph of the Board’s decision referring to Cid Onasis Calderon Garcia as the “principal claimant” and Juan Javier Calderon Molina as his son. In reality, the reverse is true as Juan Javier Calderon Molina is Cid Onasis Calderon Garcia’s father. According to the Applicants, this erroneous finding of fact carries throughout the entire decision. They argue the Board’s confusion with identity necessarily implies the assessment of their refugee claims was unreasonable.

[13] The Respondent maintains that the inversion of the Applicants' names was a typographical error limited to the first paragraph of the decision. It had no impact on the analysis or conclusion. Confusion did not arise as to the substance of their claims or issues associated with credibility. Moreover, many of the findings apply to both Applicants simultaneously. There was no real misunderstanding of the evidence.

[14] Having reviewed the decision, I must agree with the Respondent's position. Although regrettable, the error did not affect the Board's overall assessment of the claims. The father as the principal claimant is consistently referred to as having a business threatened by the Los Zetos. His son's narrative refers to mugging and robbery that led to injuries requiring medical treatment. In this regard, there was no confusion between the two stories. The error is not material to the overall findings made by the Board with respect to both Applicants.

[15] In making this finding, I rely on the reasoning in *Huseynova v Canada (Minister of Citizenship and Immigration)*, 2011 FC 408, [2011] FCJ no 527 at para 7 as highlighted in the Respondent's submissions. Justice Michael Phelan expressed concern about an error as to the name of the country and organization relevant to the applicant but found that it "was not fatal to the reasonableness of the decision" given the Board understood her nationality and assessed her situation accordingly. The error was considered immaterial.

[16] In this case, confusion associated with the names of the Applicants in the first paragraph is similarly not sufficient on its own to make the Board's determination unreasonable.

B. *Credibility Findings*

[17] I also find no error in the Board's assessment of credibility that warrants the intervention of this Court.

[18] The Applicants assert that the Board erred in rejecting their claim based solely on the delay in claiming and a lack of supporting documentation. However, this position is not supported by the Board's decision or related jurisprudence.

[19] Delay in making a refugee claim "is not a decisive factor in itself" but it is a "relevant element which the tribunal may take into account in assessing both the statements and the actions and deeds of a claimant" (*Huerta v Canada (Minister of Employment and Immigration)* (1993), 157 NR 225, [1993] FCJ no 271 (CA)). It is reasonable to expect that the Applicants would make a claim at the first possible opportunity (see *Jeune v Canada (Minister of Citizenship and Immigration)*, 2009 FC 835, [2009] FCJ no 965 at para 15).

[20] Recent jurisprudence also suggests that while the delay itself is not determinative, it "may, in the right circumstances, constitute sufficient grounds upon which to dismiss a claim" (*Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988, [2003] FCJ no 1259 at para 14). Absent a satisfactory explanation for the delay, it "can be fatal to such claim, even where the credibility of an applicant's claims has not otherwise been challenged" (*Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923, [2011] FCJ no 1138 at para 28).

[21] While the Board implied that the nineteen month delay in this instance would be fatal to the claims, it proceeded to raise several other issues associated with the Applicants' credibility, notably evasive testimony and the lack of corroborating documents. It is evident from the remainder of the decision that the delay was a significant factor, but hardly the only basis for the negative credibility findings. The Board stressed that there were "cumulative reasons" for its conclusions regarding the Applicants.

[22] As a consequence, the Applicants' reference to *Juan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 809, [2006] FCJ no 1022 at para 11 is of limited assistance. In that case, Justice Eleanor Dawson faulted the Board because its "finding with respect to delay is, by itself, an insufficient basis for maintaining its denial of the claim." In contrast, the Board's issue with the Applicants' story was the delay in conjunction with other relevant factors. In addition, more recent jurisprudence referred to above, suggests there are certain circumstances when the delay would be fatal to the claim.

[23] Given various credibility concerns raised, it was also reasonable for the Board to seek some independent documentary corroboration. This was one of many factors considered in the assessment of their claims. As the Respondent points out, factors relevant to credibility were the delay in seeking protection, the lack of effort to obtain documents, and evasive responses to questions regarding their story.

[24] The Applicants' reliance on the decisions of *Ahortor v Canada (Minister of Employment and Immigration)* (1993), 65 FTR 137, [1993] FCJ no 705 at para 45 and *Zheng v Canada (Minister*

*of Citizenship and Immigration*), 2007 FC 974, [2007] FCJ no 1267 at para 9 is therefore misplaced. These cases suggest, in the absence of contradictory evidence, the Board errs in requiring an applicant to produce corroborative evidence and make a negative credibility finding based solely on their failure to do so.

[25] However, as discussed, that is not what occurred in the Board's consideration of the Applicants' claims. Credibility was already raised as an important factor based on the delay and evasiveness in answering questions. The Respondent appropriately draws the Court's attention to the determination in *JJW v Canada (Minister of Citizenship and Immigration)*, 2009 FC 793, [2009] FCJ 915 at paras 24-26 concerning delay where it was stated that "the explanations of the applicant, viewed in the context of her uncorroborated evidence in its entirety, warranted the dismissal of her claim by the Board."

[26] When the decision is read as a whole, the negative credibility findings based on the issues identified by the Board were well within the range of possible, acceptable outcomes.

## VI. Conclusion

[27] As the error regarding the Applicants' identities was not material to the assessment of their claim and the Board's credibility findings were reasonable, the application for judicial review is dismissed.



**JUDGMENT**

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

“ D. G. Near ”

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Judge

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

**DOCKET:** IMM-5949-11

**STYLE OF CAUSE:** CID ONASIS CALDERON GARCIA ET AL v MCI

**PLACE OF HEARING:** TORONTO

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AND JUDGMENT BY:** NEAR J.

**DATED:** APRIL 11, 2012

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