

IMM-3014-96

OTTAWA, ONTARIO, THIS 1st DAY OF AUGUST 1997

**PRESENT: THE HONOURABLE MR. JUSTICE JOYAL**

**BETWEEN:**

MARIA OMAIRA DIAZ BERNAEZ,  
VICENTE LEON LOPEZ DIAZ,  
CLAUDIA PATRICIA DIAZ GOMEZ,  
JUAN ARMANDO DIAZ GOMEZ,  
OMAIRA DE JESUS BERNAEZ DE DIAZ,  
JUAN MANUEL DIAZ BERNAEZ,

Applicants,

**AND:**

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

**ORDER**

This application for judicial review is dismissed.

L-Marcel Joyal  
JUDGE

Certified true translation

C. Delon, LL.L.

**BETWEEN:**

MARIA OMAIRA DIAZ BERNAEZ,  
VICENTE LEON LOPEZ DIAZ,  
CLAUDIA PATRICIA DIAZ GOMEZ,  
JUAN ARMANDO DIAZ GOMEZ,  
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Applicants,

**AND:**

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

**REASONS FOR ORDER**

**JOYAL J.:**

This is an application for judicial review of a decision of the Refugee Division of the Immigration and Refugee Board (the "Board") determining that the applicants are not Convention refugees on the ground that they were not credible. The applicants are seeking to have that decision set aside.

**I. FACTS**

There are seven applicants involved in this matter in total: the principal applicant, Juan Armando Diaz, his wife Omaira de Jesus Bernaez de Diaz, their minor son Juan Manuel Diaz Bernaez, their two adult daughters Claudia Patricia Diaz Bernaez and Maria Omaira Diaz Bernaez, and the latter daughter's minor son Vicente Leon Lopez Diaz.

The applicants, who are citizens of Venezuela, are claiming refugee status. They claim to have a reasonable fear of persecution by reason of the political opinion of the principal applicant, who is a member of the *Causa radicale* party ("*Causa*"). The facts on which the applicants base their claim are set out in the decision of the Board.

The principal applicant is a farmer from the Zaraza region, where he operates a farm with the assistance of his wife and younger son. His two daughters moved away from the family farm quite some time ago. His older daughter, Maria Omaira, married in 1987 and divorced five years later, in 1992. Before coming to Canada, she was still living with her former husband in a house near her parents' farm. Her sister, Claudia Patricia, is a student at the Central University of Venezuela.

The principal applicant joined *Causa* in 1992. He says that he rose quickly through the ranks of the local section of the party and ultimately held a leadership position as agricultural secretary for claims in the Zaraza district.

According to the applicant's testimony, he was not subject to acts of persecution until 1993. In March, following a political demonstration in which he had made a speech denouncing the government's tax collection system, he received threatening telephone calls.

A few months later, he took part in a farmers' meeting as the representative of the Zaraza agricultural region. Once again, he spoke to the meeting. Two days later, on October 19, 1993, four men wearing the uniform of the intelligence and prevention services branch (the "DISIP") came to his home. They beat the principal applicant and tied up his wife and son. The incident was reported to the judicial technical police, which allegedly took a statement from the applicant.

The principal applicant and his wife and son were very frightened and took refuge at the farm of a friend who lived 150 kilometres from Santa Maria de Ipire in Guarico state. There they remained for four months. They left in February 1994. It seems that the national guard had located the applicant and questioned some workers on the farm about him. They apparently had a summons to serve on him, ordering him to appear at the DISIP.

The following day, the applicants fled and went to stay with the principal applicant's brother in Maturin, in Managosa state. There they remained for four months. It was at this point that the applicant says he again became involved in *Causa*. He says that on June 25, 1994, he participated in a demonstration and was threatened by one of the participants.

The family fled for the last time to the home of the principal applicant's brother in Caracas. There they remained until they left for Canada on August 31, 1994. The principal applicant says that in the meantime he learned that his two daughters and his grandson had left for Canada on the preceding June 12, after the grandson was abducted by members of the DISIP. Members of the DISIP allegedly went to the school claiming to have permission to take the child out. Although his mother accompanied him to school every day, the principal gave permission for him to be taken out. The child was allegedly questioned and asked to tell his mother to abandon her participation in *Causa*. That applicant describes herself as a party sympathizer. Claudia Patricia was allegedly struck and tied up on February 19, 1994, while she was putting up posters supporting the party.

## II. DECISION OF THE BOARD

The Board refused to grant the applicants refugee status since it concluded that their testimony was not trustworthy. The tribunal made the following finding as to the applicants' credibility:

[TRANSLATION]

After carefully examining all of the evidence, including both the testimony and the documentary evidence, we have concluded that the claimants are not credible and that there are implausibilities in the facts recounted.

The tribunal based its decision on the following points:

(a) the applicants' PIF contained numerous errors and inaccuracies. For example, the principal applicant allegedly failed to mention a number of jobs he had held; his daughter Maria

Omaira did not state that she had been separated from her husband since 1992; she also stated that she had finished school in January 1994, although she was still a student when she left school in February;

- (b) the tribunal found it implausible that the principal applicant would not have tried to find out whether other speakers had been persecuted after participating in the demonstrations;
- (c) the tribunal considered it implausible that the national guard would have gone to the applicants' friend's farm, where they were hiding, when no one knew where they were, and that the applicant's daughter testified that she had never been questioned about her father's comings and goings;
- (d) the tribunal found the conduct of the principal applicant, who again got involved in *Causa* one month after moving to his brother's home in Maturin, and despite his precarious situation, to be implausible;
- (e) the tribunal found it implausible that the principle applicant would not have learned of the incident involving his grandson until he was in Caracas;
- (f) the tribunal considered it implausible that the applicant Maria Omaira's son would be abducted and that the principal of the school would have allowed the child to leave.

Because of its conclusion concerning the credibility of the applicants, the tribunal found that it had not been established that they had a well-founded fear by reason of the political opinion of the principal applicant if they were to return to Venezuela today.

### III. ISSUES

According to the applicants, there is only one question to be disposed of by the Court: did the Board err in concluding that the applicants' testimony was neither plausible nor trustworthy?

### IV. ARGUMENTS OF THE PARTIES

In response to the decision of the tribunal, the applicants submitted the following arguments:

- (a) the errors and inaccuracies on which the Board relied are minor and unimportant;
- (b) the Board misinterpreted the testimony of the principal applicant, who said he had been the only member of his association who was threatened after the demonstration. He was not aware of whether members of other parties who took part in the demonstration were threatened;
- (c) the applicant is not in a position to know how the national guard located him on his friend's farm;
- (d) it is not implausible that the applicant would continue his battle against the government as a member of *Causa* since he is a very politically committed man;
- (e) the applicant was not informed of the abduction of his grandson because, out of caution, he was not in contact with his daughters. He did not want to put their lives in danger;
- (f) the principal of the school would not have refused to comply with the orders of the agents of the DISIP, which is an imposing and powerful security agency.

In reply, the respondent submitted the following:

- (a) the errors and omissions found in the PIFs are significant defects which call into question the applicants' credibility;
- (b) the implausibilities identified by the Board are supported by the evidence and are not patently unreasonable;
- (c) the conduct of the applicant is inconsistent with the conduct of someone who is in fear for his life;
- (d) the decision of the Board is fair and reasonable.

## V. ANALYSIS

Credibility is a question of fact which is within the jurisdiction of the Board. As the trier of fact, the Board is in a better position to assess the evidence than is the reviewing Court. The Board may thus draw unfavourable conclusions in respect of the credibility of an individual, provided that it does so in "clear and unmistakable terms".<sup>1</sup> The reviewing Court should be hesitant to interfere with the tribunal's findings of fact unless it made its findings in an erroneous, perverse or capricious manner or without regard to the material presented to it.

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<sup>1</sup> *Hilo v. Canada (Department of Employment and Immigration)* (1992), 15 Imm. L.R. (2d) 201 (F.C.A.).

The same standard of judicial review applies to findings of implausibility.<sup>2</sup> According to the case law, a tribunal may conclude that an applicant is not trustworthy on the basis of implausibilities identified in his or her testimony, as long as the conclusions are not unreasonable. As Décary J.A. of the Court of Appeal pointed out in *Aguebor*:

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<sup>2</sup> As Décary J.A. wrote in *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. (F.C.A.) (hereinafter "*Aguebor*"): "It is correct ... that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, preclude the area of the plausibility of an account within the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is 'plausibility' or 'credibility'."

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who better than the Refugee Division is in a position to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the Refugee Division are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

Accordingly, the duty that rests on the respondents to rebut the Board's findings of non-credibility is very heavy. They must show that the Board's findings were made in a perverse or capricious manner or are patently unreasonable; otherwise, the Court may not set aside the decision of the Board.

In the instant case, the applicants have not discharged their burden. The inferences drawn by the Board are not so unreasonable as to warrant the intervention of this Court. It is acceptable for the Board to have concluded, as it did, that the applicants' testimony was implausible.

## **VI. CONCLUSION**

The tribunal having made no reviewable error, this application must be dismissed.

L-Marcel Joyal  
JUDGE

O T T A W A, Ontario  
August 1, 1997

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-3014-96

STYLE OF CAUSE: MARIA OMAIRA DIAZ BERNAEZ et al. v. MCI

PLACE OF HEARING: Montréal

DATE OF HEARING: July 15, 1997

REASONS FOR ORDER OF JOYAL J.

DATED: August 1, 1997

APPEARANCES:

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