

Federal Court



Cour fédérale

**Date: 20140620**

**Docket: IMM-701-13**

**Citation: 2014 FC 593**

**Ottawa, Ontario, June 20, 2014**

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

**BETWEEN:**

**NELSON VASQUEZ GUTIERREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Nature of the Matter**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), of a decision dated December 17, 2012 of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The Board Member determined that the applicant, Nelson Vasquez Gutierrez, was not a convention refugee or person in need of protection under sections 96 and 97 of *IRPA*.

[2] For the reasons that follow the application is dismissed.

## **II. Facts**

[3] The applicant is a citizen of Honduras. He entered the United States illegally on September 12, 2007, and remained there until April 1, 2011, at which time he entered Canada. His common law partner and their American born daughter had already entered Canada in March 2011, and claimed refugee protection.

[4] The applicant alleged that beginning in 2005, he feared physical harm or death at the hands of his ex-girlfriend's family while living in Honduras. In 2005, he had fathered a child with his ex-girlfriend, Rosa Deras. The essence of the applicant's claim is that Ms Deras' cousins, Victor Landaverde and Hugo Orellana, who were members of the gang known as Mara-Salvatrucha 18 (MS 18), threatened to kill him if he did not give them money to support his son.

[5] The applicant testified that he had met Ms Deras in August 2004, and in February 2005 she informed him that she was pregnant with their child and that she wanted to end the relationship. On October 26, 2005, the applicant went to Ms Deras' house to see the baby and introduce himself as the father of the child to Ms Deras' family. Her family insulted him because he came from a poor family. They told him to leave.

[6] The applicant alleges that in November 2005, Ms Deras' cousins beat him up and demanded 3000 Lempiras (the Honduran currency) as child support. When the applicant was

unable to give them this money, they pulled out a gun and threatened him. One of the cousins hit him on the foot with a machete and he spent 10 days in hospital as a result. He never reported this incident to the police, alleging that he does not trust that the police will do anything about crime in Honduras.

[7] Some four months later, in March 2006, the applicant left Honduras for the first time and illegally entered the United States in May 2006. US immigration authorities subsequently deported him back to Honduras. The applicant alleges that Ms Deras' cousins found out he was back in the country and went looking for him.

[8] In July 2007, he left Honduras again and arrived in the United States in September 2007. He did not seek asylum in the US on either occasion, alleging that he was fearful of being deported.

[9] In July 2008 he met his current common law partner, and their daughter was born on December 8, 2010.

[10] The applicant alleges that if he is returned to Honduras, he will be extorted or killed by Ms Deras' cousins.

### **III. Decision under Review**

[11] The RPD determined that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of *IRPA*.

[12] First, under section 96, the RPD determined that the applicant had not demonstrated a nexus with a Convention ground. The Member observed that this Court has repeatedly held that victims of crime, corruption or vendettas generally fail to establish a link between their fear of persecution and one of the Convention grounds. In this particular case, the Member determined that the applicant's fear is not linked to race, religion, nationality, political opinion or membership in a particular social group. She concluded that the claimant's fear of being victimized by gangs and specifically extortion under the threat of harm is a risk faced by other citizens of Honduras and therefore his claim fails under section 96 of *IRPA*. This aspect of the Member's decision is not in contention.

[13] As for the question of personalized versus generalized risk under section 97, the Member found that the risks alleged by the applicant are risks generally faced by other citizens of Honduras, who are subject to the same intimidation tactics at the hands of criminal gangs. The Member referred to documentary evidence which indicates that crime, especially gang-related violence, is prevalent in Honduras, and that the MS gangs are responsible for many homicides in Honduras, making Honduras one of the most violent countries in the world. Furthermore, the police have been associated with criminal activity.

[14] As for the issue of personalized risk, the Member conducted an analysis of the applicant's narrative of his relationship with Ms Deras. She found that the applicant had not produced any objective evidence corroborating his allegations; specifically, evidence to support his allegation that he had been viciously attacked with a machete causing serious injury to his foot resulting in his hospitalization for 10 days.

[15] The Member noted that the claimant's father had not indicated in his notarized statement that the applicant had been threatened or assaulted with a machete and hospitalized.

[16] The Member questioned the applicant as to how he came to have a 2011 birth certificate for his child in his name that was procured by Ms Deras, considering that the birth of their child was at the root of his protection claim. The Member concluded that these circumstances did not corroborate his allegations regarding extortion and physical injury.

[17] The Member also stated that the applicant's failure to seek protection elsewhere and/or sooner than four years after he fled Honduras undermined the credibility of his allegations that he subjectively feared for his life in Honduras. She concluded on a balance of probabilities that he moved to the United States for economic reasons to provide financial support to his extended family, and not because he feared for his life at the hands of Ms Deras' cousins.

#### **IV. Issues**

[18] The applicant advances the following specific allegations, which the court adopts for the purposes of review, and which are restated as follows:

1. In her account of the applicant's allegations, the Board Member noted the very personal circumstances that gave rise to the applicant's persecution. However, she ignored this personal context when she decided that the risk feared by the applicant was generally faced by other citizens in Honduras subjected to the same criminal gangs.
2. The Board Member closed her mind to the explanations offered by the applicant as to his reasons for not claiming protection in the United States, and instead allowed an abstract, textbook approach, which was not reasonable in the circumstances of this case.

#### **V. Standard of Review**

[19] The Member's assessment of whether the applicant's risk is personalized or generalized is reviewable on a standard of reasonableness (*Balcorta Olvera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1048 at para 28; *Samuel v Canada (Minister of Citizenship and Immigration)*, 2012 FC 973).

[20] In reviewing the Officer's consideration and treatment of evidence, the appropriate standard of review is reasonableness (see, for example, *Y.Z. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 749, [2009] FCJ No 904 at para 22).

## **VI. Analysis**

[21] While I do not agree that the Member did not apply the proper test to determine whether the claimant would face a personal risk to his life, this issue was ultimately subsumed by the Member's credibility conclusion that the applicant left Honduras not out of fear of personal harm, but for economic reasons to materially support his extended family.

[22] Reading the decision as a whole, it is clear that the Member did not find the applicant credible in respect of his allegations that threats and violence induced him to leave Honduras. This conclusion is supported by the evidence.

[23] To begin with, the applicant's failure to seek protection elsewhere and/or sooner than four years after he fled Honduras supports an unfavourable credibility conclusion that he feared for his life in Honduras.

[24] The Member further noted that the claimant's first response when asked why he illegally went to the United States was that he wanted to be able to help his family by working there. He testified that he was always trying to enter the United States in order to be able to send food to his parents and siblings. He also provided child support to Ms Deras during this time. The Member pointed out that he had been working in the United States from the day he arrived until the day he left.

[25] As a further credibility concern the Member noted the inconsistency between the applicant's Personal Information Form and other immigration forms that stated that he lived at

the same address in Honduras before and after his deportation from the United States, and his testimony at his hearing, where he stated that when he returned to Honduras after he was first deported from the US he lived in a different town, namely Tierra Blanca.

[26] Finally, the member noted the implications of the fact that the applicant was in possession of his daughter's birth certificate, which was issued in 2011 in his name, and according to the applicant, had been provided by Ms Deras. The applicant's explanation that the birth certificate had been provided by Ms Deras because he had explained to her that refugee status would be used to help their son was further evidence that the claimant had left Honduras for economic reasons to provide financial support to his extended family.

[27] I am satisfied that there is a sufficient evidentiary basis to support the Member's credibility conclusion that the applicant did not leave Honduras out of fear for his personal safety, but rather for unrelated reasons of economic betterment.

[28] Accordingly, I judge the decision to be reasonable and sufficiently articulated as required by the precepts outlined in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The application is dismissed. Neither counsel requested a certified question.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed; and
2. No question is certified.

"Peter Annis"  
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Judge

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

**DOCKET:** IMM-701-13

**STYLE OF CAUSE:** NELSON VASQUEZ GUTIERREZ v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 21, 2014

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** JUNE 20, 2014

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