Federal Court Cour fédérale

2014 FC 428 (CanLII)

Date: 20140506

Docket: IMM-4079-13

Citation: 2014 FC 428

Ottawa, Ontario, May 6, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GLORIA ARACELI AYALA SOSA,
PEDRO LUIS MONGE AYALA SOSA and
NELSON EDUARDO LINARES CRUZ

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The applicants seek judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”) dated April 8, 2013, which

determined that they were not Convention refugees pursuant to section 96, nor persons in need of protection pursuant to section 97 of the *Act*.

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

Background

[3] The applicants are citizens of El Salvador. The principal applicant, Gloria Araceli Ayala Sosa, is a 42 year-old woman. Pedro Luis Monge Ayala Sosa is her 23 year-old son. Nelson Eduardo Linares Cruz is her 23 year-old common law husband. The applicants allege a fear of persecution at the hands of the Maras, but their claims are distinct and the Board considered each separately.

[4] The principal applicant recounted that her troubles with the Maras began while she worked in a restaurant where the Maras congregated. In November 2005, a clash occurred at the restaurant between rival factions of the Maras. During that incident, the principal applicant hid her cousin, Hugo, who she initially described as a gang affiliate, and as a result, she was sought out by the rival faction.

[5] In December 2005, she fled to the US, leaving her children in El Salvador. In August 2006, her children asked her to return home because they had been threatened by the Maras and had stopped going to school. She returned to her small village in El Salvador in January 2007.

[6] On November 19, 2009, the principal applicant stumbled upon a rape and murder perpetrated by the Maras and was warned by the Maras to stay quiet. She reported what she had

2014 FC 428 (CanLII)

discovered to the police but refused to testify. On November 25, 2009, she received threats on her cell phone that she believed were from the Maras. The next day, she reported to the police and the chief, Carlos, took her report and said that extra patrols would be sent to her neighbourhood.

2014 FC 428 (CanLII)

[7] On November 30, 2009, the principal applicant fled El Salvador. She arrived in the US on December 3, 2009, again without her children. While in the US, she purportedly sought legal advice but was told that she did not qualify for protection. She then came to Canada on August 3, 2010.

[8] The co-applicant son, Pedro, recounts that his problems began in 2006. Walking home from school, he was approached by four Maras gang members, who asked him where his Mother was and encouraged him to join the gang. He refused. In September 2009, he again refused to join the Maras. In February 2010, the same gang members who previously attempted to recruit him threatened that if he did not tell them where his mother was and join the gang, he would pay. He then left for the US on March 21, 2010 and found work. He later joined his mother in Canada on September 1, 2010.

[9] The co-applicant common law husband, Nelson, lived in a different part of El Salvador and had encounters with another group of the Maras who attempted to recruit him when he was 18 years old. On September 14, 2008, he was beaten and robbed by members of the Maras. He complained to the police, who promised to investigate. On or around September 25, 2008, he moved to his uncle's farm but was advised that three young men had gone to his home to look for him. He fled El Salvador and entered the US illegally on January 15, 2009. He did not seek

asylum based on the advice of his landscaping co-workers who told him that he would be deported if he applied. Since his departure from El Salvador, the Maras have continued to ask his mother about his whereabouts. He arrived in Canada on August 10, 2012.

2014 FC 428 (CanLII)

The decision

[10] The Board found the applicants to be neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97(1) of the *Act*.

[11] With respect to the co-applicant common law husband, the Board rejected his claim of being in a particular social group of "young, impoverished and uneducated teenagers living in small, gang-riddled rural communities who refuse to be recruited because of a strongly held political opinion that disagrees with Mara activities". The Board noted that young men are not the only sub-group of the general population targeted by street gangs, that he is no longer a teenager, that education and wealth are not immutable characteristics, and that he never indicated an anti-gang political opinion. In the alternative, the Board concluded that even if such a particular social group did exist, it was not systematically persecuted by the Maras.

[12] For largely the same reasons, the principal applicant and her son were not found to be a part of a particular social group.

[13] The Board found the determinative issue to be credibility. The Board concluded that its credibility findings alone were dispositive of the applicants' claims.

[14] The Board noted that the principal applicant had many opportunities to claim protection in the US during the two periods of time she spent there and failed to do so. The Board rejected her explanation that she sought the advice of a lawyer but was told that she would be deported if she claimed refugee protection.

2014 FC 428 (CanLII)

[15] The Board considered her explanation why she would face a higher risk than others if returned to El Salvador and found it to be incoherent. The Board noted that, when asked why she did not relocate from her small village, she answered "I did not think the threats were so serious" which contradicted her other statements regarding the serious nature of threats from Maras. The Board also noted that it was implausible that she would not have at least been threatened after coming across the rape and murder committed by the Maras and her subsequent report to the police.

[16] The Board also noted contradictions in her testimony regarding why she was unable to obtain a police report if the police chief had taken a report.

[17] The Board also found the co-applicant son to be not credible. The Board noted that he did not claim refugee protection despite many opportunities to do so prior to coming to Canada. The Board noted that he was sought for recruitment by the Maras at 16 years of age, which contradicted the documentary evidence that the average recruitment age is 12 years old. Moreover, the Board made negative credibility findings against him on the basis that, despite having refused the Maras three times over several years, he was not harmed nor did he make attempts to relocate. The Board also drew a negative inference regarding his assertion that, at 22 years old, he is still a "defenceless child".

[18] The Board also found the co-applicant common law husband, who arrived in Canada in 2012, to be not credible. The Board remarked that he did not claim refugee protection despite many opportunities to do so prior to coming to Canada. The Board considered a police report submitted by him but found it to be riddled with inconsistencies, noting that it was filed in January 2013 by his mother and did not mention that he had sought help from the police in 2008. The Board also found his alleged fear to be not credible since, at age 22, he is now beyond the age of a typical recruit.

2014 FC 428 (CanLII)

Generalized Risk

[19] Despite noting that its credibility findings were dispositive, the Board engaged in a lengthy review of the jurisprudence regarding generalized risk and personalized risk and concluded that the applicants faced only a generalized risk upon their return.

[20] The Board cited long passages from *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, 387 NR 149 [*Prophète*], *Guifarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182, [2011] FCJ No 222 [*Guifarro*] and *De Parada v Canada (Minister of Citizenship and Immigration)*, 2009 FC 845, [2009] FCJ No 1021 [*De Parada*], for the proposition that both a personalized risk and heightened risk can constitute generalized risk. The Board also considered *Malvaez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1476, 423 FTR 210 [*Malvaez*], and *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678, 409 FTR 290 [*Portillo*], but noted that these cases did not follow the Court of Appeal in *Prophète* and commented that these cases were “patently

wrong" in stating that a heightened risk for a particular sub-group would be sufficient to take it out of the generalized category of risk.

[21] In this case, the Board found that the applicants faced only a generalized risk in El Salvador and that, while they may be personally at risk from the Maras because they may have been personally targeted in the past, their risk is the same as a large sub-group of people in their country. In the case of the principal applicant, the Board found that she faces no more risk than others in El Salvador who have rebuffed the Maras. In the case of the male co-applicants, the Board found that they face a generalized and random risk no different than other young men who have resisted recruitment by the Maras (*Arias v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1029, [2010] FCJ No 1344 [*Arias*]).

[22] Despite the Board's comments regarding *Portillo*, the Board noted that its conclusion would be the same even if it had applied what it characterized as the competing case law in *Malvaez* and *Portillo*.

Issues

[23] The applicants submit that the Board erred in: finding that they did not have a nexus to a Convention ground under section 96; finding that they lacked credibility and subjective fear; and concluding that they did not face a personalized risk in El Salvador.

Standard of Review

[24] The standard of reasonableness applies to the review of decisions of fact, mixed fact and law and credibility. The role of the Court on judicial review is, therefore, to determine whether

2014 FC 428 (CanLII)

the Board's decision "falls within 'a range of possible, acceptable outcomes which are defensible in respect of the facts and law' (*Dunsmuir*, at para. 47)". There may be several reasonable outcomes and "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59).

2014 FC 428 (CanLII)

[25] Credibility findings are factual and case specific and rely on the assessment by the decision-maker of several factors including the observation of the witnesses and their responses to questions posed. The Board is entitled to draw inferences based on implausibility, common sense and rationality (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 at para 4 (FCA)). Given its role as trier of fact, the Board's credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

The Board's finding that the applicants lacked nexus to a section 96 ground was reasonable

[26] The male co-applicants submit that they provided sufficient evidence to establish membership in a particular social group. They submit that they are bound to these groups by innate characteristics and voluntary association for reasons fundamental to their human dignity. They submit that, being part of a particular social group, the Board erred by not considering whether there is a serious possibility of persecution in the event they are returned to El Salvador (*Bonilla v Canada (Minister of Citizenship and Immigration)*, 2013 FC 656 at para 43, [2013]

FCJ No 724 [*Bonilla*]). As noted above, they claim to be part of the group of "young, impoverished and uneducated teenagers living in small, gang-riddled rural communities who refuse to be recruited because of a strongly held political opinion that disagrees with Mara activities".

2014 FC 428 (CanLII)

[27] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 70, 103 DLR (4th) 1 [*Ward*], the Supreme Court articulated the test for membership in a particular social group as follows:

> 70 The meaning assigned to "particular social group" in the Act should take into account the general underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative. The tests proposed in Mayers, supra, Cheung, supra, and Matter of Acosta, supra, provide a good working rule to achieve this result. They identify three possible categories:
>
> (1) groups defined by an innate or unchangeable characteristic;
>
> (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and
>
> (3) groups associated by a former voluntary status, unalterable due to its historical permanence.
>
> The first category would embrace individuals fearing persecution on such bases as gender, linguistic background and sexual orientation, while the second would encompass, for example, human rights activists. The third branch is included more because of historical intentions, although it is also relevant to the anti-discrimination influences, in that one's past is an immutable part of the person.

[28] The Board reasonably found that the applicants' lack of money, lack of education, and place of residence were not immutable characteristics as defined in *Ward*. The same conclusion has been reached by the Court in several previous occasions. In *Bonilla*, above at para 55, Justice Russell found that "[t]here is ample jurisprudence stating that victims of criminal activity do not constitute a particular social group". In *Ventura v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1107 at para 16, [2011] FCJ No 1361, Justice Near (as he then was) held that "[i]t was reasonable for the Board to find that individuals targeted by the MS-13 are not members of a marginalized social group who face systematic discrimination".

2014 FC 428 (CanLII)

[29] Despite the specific description of the particular social group alleged by the co-applicants, once all the qualifiers that are not unchangeable (such as youth, poverty and education) are taken away, they are in essence alleging that being targeted by the Maras makes them part of a particular social group. This proposition has been rejected by the Court. Otherwise, the applicants have not provided evidence that they are a marginalized social group who face systematic persecution at the hands of the Maras.

The Board's credibility determinations were reasonable

[30] The applicants submit that the Board unreasonably concluded that they were not credible and did not have a subjective fear of persecution simply because they did not claim refugee status in the United States. The applicants note that they gave plausible explanations to the Board, i.e. they either did not know they could claim refugee status in Mexico and Guatemala or were told to refrain from doing so in the US because they would be detained and then deported.

[31] The applicants submit that the Board improperly conducted a microscopic examination of issues that were irrelevant or peripheral to their claim, and applied North American logic and reasoning to their behaviour. The applicants submit that they are uneducated and unsophisticated refugees and faced language and other barriers when giving their evidence and that their credibility should be considered in this light.

2014 FC 428 (CanLII)

[32] The respondent notes that the Board's credibility findings are to be given significant deference. The respondent submits that the failure to seek protection in another country is not determinative of a lack of subjective fear but is a relevant factor which can affect an applicant's credibility. Moreover, the respondent submits that the inconsistencies and deficiencies in the applicants' testimony went to the heart of their claims for protection and cumulatively undermined their credibility to such an extent that their story was not believed. As such, the respondent submits that the Board's negative credibility findings were sufficient to dispose of the applicants' claims in their entirety.

[33] I agree that the Board's credibility findings were reasonable. It is trite law that the Board is best placed to evaluate the credibility of refugee claimants. The Board is well aware and has taken into account that refugee claimants are often intimidated, unfamiliar with the customs of Canada and have language and cultural barriers.

[34] Considering the principal applicant's failure to claim protection in a safe third country, the US, during two significant periods of time spent there and the numerous inconsistencies, deficiencies and implausibilities in her testimony and evidence, as well as between her testimony and that of the co-applicants, the Board made a reasonable general adverse credibility finding

against all the applicants that eroded their alleged subjective fear. Similarly, the co-applicants' failure to seek asylum in the US while living there, and the inconsistencies and implausibility of their alleged fears, provide more than sufficient justification for the Board's negative credibility findings.

2014 FC 428 (CanLII)

[35] As I recently noted in *Lopez v Canada (Citizenship and Immigration)*, 2014 FC 102 at paras 35-36, [2014] FCJ No 123:

> 36 Although the failure to claim refugee status in another country is not determinative of a lack of subjective fear, it is a relevant factor which also affects credibility (*Gavryushenko v Canada (Minister of Citizenship and Immigration)* (2000), 194 FTR 161, [2000] FCJ No 1209 at para 11.
>
> In *Mejia*, supra at paras 14-15, Justice Mosley addressed this issue noting;
>
>> [14] This Court has held that delay in seeking refugee protection is an important factor to consider when weighing a claim for refugee status: *Heer v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No. 330 (F.C.A.) (QL); *Gamassi v. Canada (Minister of Citizenship and Immigration)* (2000), 194 F.T.R. 178. Delay points to a lack of subjective fear of persecution or negates a well-founded fear of persecution. This is based on the rationale that someone who is truly fearful would claim refugee status at their first available opportunity: *Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para. 16;
>>
>> [15] Recently, in *Jeune v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 835 at para. 15, this Court found that the applicant's failure to claim asylum at his first opportunity further undermined his credibility. The same is true in the case at bar. The principal applicant remained in the United States for seven years. For five of those years she had a tourist visa. After the visa expired she still took no steps to seek protection in the

> United States. It was reasonable for the Board to expect that "if she were truly in fear" of being deported, she would have looked into the matter of filing an asylum claim as soon as possible. There is no reasonable explanation on file as to why she did not do this, other than her attempt to resort to a marriage of convenience.

2014 FC 428 (CanLII)

[36] Although the applicants argue that their explanations for not claiming protection in the US were unreasonably rejected by the Board and argue that they remain fearful of the Maras in El Salvador, the Board's finding is reasonable given the applicants' immigration history. The principal applicant returned to El Salvador after spending two years in the US and remained in El Salvador for a period of almost three years, then fled again to the US in 2009 and remained for another year before seeking refugee protection in Canada. Her common law husband spent three and a half years in the US before joining her in Canada. The record indicates that he came to Canada to join the principal applicant and their child who had been born in Canada 18 months earlier. The co-applicant son spent almost 10 months in the US without seeking protection. The applicants' reliance on information from friends that they would not be successful in seeking protection in the US and would risk deportation may have seemed reasonable to them, but it was not a reasonable explanation to the Board and the Board was justified in so concluding. It is expected that refugees should make every effort to seek protection at the earliest opportunity if they have a genuine fear of persecution in their home country.

[37] I am of the opinion that the Board's credibility findings are sufficient to dispose of their claims. The Board itself concluded at paras 64 and 81 of its decision that its negative credibility findings alone are dispositive. Moreover, the applicants did not provide independent objective evidence to support that they would face a personalized risk, especially since the co-applicants

are currently past the age of recruitment for the Maras and the principal applicant has not provided credible evidence with respect to her heightened risk due to gang affiliations through her cousin Hugo (who is now deceased). While the co-applicant common law husband did provide a police report, it was found by the Board to be devoid of credibility, as it was dated 2013 and did not address whether he had reported to the police in 2008.

2014 FC 428 (CanLII)

[38] However, since the Board considered, in the alternative, the section 97 analysis and commented on the jurisprudence, and because the applicants focussed their arguments at the hearing of this application for judicial review almost exclusively on the issue of the personalised risk they would face upon return to El Salvador, the issue has been addressed.

Was the Board's finding that the applicants faced only a generalized risk under section 97 reasonable?

[39] The applicants submit that the Board's section 97 analysis leads to an absurd result, because the greater the danger and the number of people affected, the harder it will be to claim protection under section 97 of the *Act*.

[40] The applicants submit that the personalized risk they faced does not simply become generalized because others may be subjected to the same risk; once an allegation of violence has been received as credible, it will not suffice to declare that other individuals might face the same risk to foreclose a section 97 claim. The applicants submit that they are like the claimants in *Bonilla*, who faced a heightened and different risk not faced by others in El Salvador.

[41] The applicants further note that *Portillo*, *de Jesus Aleman Aguilar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 809, [2013] FCJ No 855 [*de Jesus Aleman Aguilar*], *Roberts v Canada (Minister of Citizenship and Immigration)*, 2013 FC 298, [2013] FCJ No 325 [*Roberts*], *Gomez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1093, 397 FTR 170 [*Gomez*], and *Martinez De La Cruz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1068, [2013] FCJ No 1150 [*Martinez De La Cruz*], are recent examples of this Court accepting the proposition that while a claimant may initially face risk arising from generalized crime, the risk becomes particularized the moment that the claimant is targeted specifically by gang members.

[42] In this case, the applicants submit that they have all been specifically targeted by the Maras for retaliation; in the case of the principal applicant, because she reported to the police and in the case of the co-applicants, because they refused to be recruited by the Maras. The applicants submit that the risk they face rises above that which is faced generally by Salvadoran business people, male youth and the population at large, because specific threats were made to them.

[43] The respondent reiterates that the Board's credibility findings were dispositive, but offered helpful submissions on the jurisprudence regarding section 97 and how the Board reached a reasonable conclusion that the applicants, if believed, would face only a generalized risk.

[44] The respondent submits that the Board's disagreement with the test as proposed by Justice Gleason in *Portillo* does not negate its conclusion, since the Board ultimately conducted a

2014 FC 428 (CanLII)

personalized assessment of the applicants' risk, as required by the case law. The Board still concluded that no evidence was produced to demonstrate that the risk faced by the applicants upon return to El Salvador would be intrinsically different from others who refused to accede to gang demands (*Arias*, above at para 47).

2014 FC 428 (CanLII)

The Board reasonably found that the applicants face only a generalised risk

[45] The Board suggested that it preferred to rely on earlier case law and expressed the view that there was inconsistency in the case law or that it was "mixed". I acknowledge that there is a great deal of case law on the application of section 97 and how particularized risk and generalised risk is to be distinguished, but I do not share the Board's view that the current case law is irreconcilable.

[46] Even if the Board took a different approach to the section 97 analysis, and failed to embrace the evolving case law, the Board did not err because it ultimately conducted the proper analysis under section 97. In addition, its credibility findings remain dispositive of the applicants' claims.

[47] It appears that the Board rejected the approach in *Portillo* and *Malvaez*, referring to these cases as "patently wrong by saying that the risk would be found to be not a generalized risk if it is of a different degree". The Board thus concluded in its decision, at para 89:

> […] I believe the same principles [in *Prophète*, *Guifarro* and *De Parada*] apply. These are people who may be personally at increased risk from the gangs as they have been personally targeted, but their risk is the same as large sub-groups of people in their country. […] There is nothing in their testimony to establish that the risks they would face on return would be intrinsically different from those, who like them, have refused to accede to

> gang demands, whether the demand is tell us where [your cousin] is, or don't talk to the police, or join us or die. A heightened degree of risk is insufficient by itself to take it out of the generalized category.

[48] Justice Gleason stated in *Portillo*, above at para 36:

> 36 As noted, in my view, the interpretation given by the RPD to section 97 of IRPA in the decision is both incorrect and unreasonable. It is simply untenable for the two statements of the Board to coexist: if an individual is subject to a personal risk to his life or risks cruel and unusual treatment or punishment, then that risk is no longer general. If the Board's reasoning is correct, it is unlikely that there would ever be a situation in which this section would provide protection for crime-related risks. Indeed, counsel for the respondent was not able to provide an example of any such situation that would be different in any meaningful way from the facts of the present case. The RPD's interpretation would thus largely strip section 97 of the Act of any content or meaning.

[49] However, the Board did not go on to set out the test that Justice Gleason proposed, which has been endorsed in subsequent case law. In my view, the test in *Portillo* is not a significant departure from the previous case law, but rather an approach to the analysis of whether the risk faced by an applicant is generalized or particularized.

[50] In *Portillo*, above at paras 40-41, Justice Gleason set out the approach as follows:

> [40] In my view, the essential starting point for the required analysis under section 97 of IRPA is to first appropriately determine the nature of the risk faced by the claimant. This requires an assessment of whether the claimant faces an ongoing or future risk (i.e. whether he or she continues to face a "personalized risk"), what the risk is, whether such risk is one of cruel and unusual treatment or punishment and the basis for the risk. Frequently, in many of the recent decisions interpreting section 97 of IRPA, as noted by Justice Zinn in *Guerrero* at paras 27-28, the "… decision-makers fail to actually state the risk altogether" or "use imprecise language" to describe the risk. Many of the cases where the Board's decisions have been overturned involve

2014 FC 428 (CanLII)

> determinations by this Court that the Board's characterization of the nature of the risk faced by the claimant was unreasonable and that the Board erred in conflating a highly individual reason for heightened risk faced by a claimant with a general risk of criminality faced by all or many others in the country.
>
> [41] The next required step in the analysis under section 97 of IRPA, after the risk has been appropriately characterized, is the comparison of the correctly-described risk faced by the claimant to that faced by a significant group in the country to determine whether the risks are of the same nature and degree. If the risk is not the same, then the claimant will be entitled to protection under section 97 of IRPA. Several of the recent decisions of this Court (in the first of the above-described line of cases) adopt this approach.

2014 FC 428 (CanLII)

[51] The Board is certainly entitled to critically evaluate the case law and it may be that the Board's comments were made at a time when it did not have the benefit of the developing case law which has adopted the approach in *Portillo* and which has not found *Portillo* inconsistent or irreconcilable with earlier jurisprudence (for example, in *de Jesus Aleman Aguilar*, *Roberts*, *Gomez*, and *Martinez De La Cruz*).

[52] Under the *Portillo* approach, if the Board had found the applicants to be credible and accepted that they have been personally targeted, then the Board would have first identified the specific risk faced by the applicants and then compared the risks faced by the applicants to those faced by a significant group in El Salvador to determine whether the risks are of the same nature and degree.

[53] This type of comparative analysis appears to be exactly what the Board undertook, although it relied on other case law. In addition, the Board explicitly stated at para 93 of its decision that the male co-applicants would have failed the section 97 test, even under the *Portillo*

analysis. The Board found that the risk faced by the applicants was of the same nature and degree faced by a significant group in El Salvador.

[54] The applicants strenuously argue that they do face a personalised risk if returned to El Salvador because they have had specific threats made to them. As noted above, the role of the Court is not to re-weigh the evidence or re-make the decision of the Board, but to determine whether the decision made by the Board was reasonable. In this case, the Board's credibility findings are justified and the decision, as a whole, is beyond reproach. The Board assessed all of the evidence presented and provided clear reasons for each finding. The decision meets the *Dunsmuir* standard as it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[55] The application for judicial review is dismissed. No question was proposed for certification.

2014 FC 428 (CanLII)

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question was proposed for certification.

"Catherine M. Kane"

Judge

2014 FC 428 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

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2014 FC 428 (CanLII)