

# **Pena v. Canada (Minister of Citizenship and Immigration)**

Between  
Jose Ramon Alvarado Pena, applicant, and  
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 1550  
Docket IMM-5806-99

**Federal Court of Canada - Trial Division**  
**Vancouver, British Columbia**  
**Evans J.**

Heard: August 23, 2000.  
Judgment: August 25, 2000.  
(20 paras.)

*Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Member of a particular social group — Appeals or judicial review, scope of review.*

Application by Pena for judicial review of a decision of the Immigration and Refugee Board which denied Pena's application for refugee status based on a well-founded fear of persecution as a member of a particular social group. Pena alleged that, while still living in Honduras, he and his now wife, Ordonez had been the subject of death threats and other acts of violence by Arnulfo, Ordonez former boyfriend. Ordonez was granted refugee status as a member of a particular social group, being a woman who was a victim of gender-based violence whom the state was unable or unwilling to protect. Pena's claim was dismissed by the Board on the ground that there was no nexus between Pena's fear and a ground of persecution contained in the definition of a Convention refugee. Although the Board recognized that he was a member of a particular social group, a family member of a person subjected to domestic violence, the Board concluded that the reason for his persecution was the vengeful desire of Arnulfo to harm the man for whom Ordonez had left him.

**HELD:** Application dismissed. Pena had to establish a causal connection between the violence to him and the persecution suffered by Ordonez on a Convention refugee ground. He was required to prove that the violence against him was related to the gender-related persecution Ordonez had suffered. The Board's finding that there was no connection was not made in a perverse or capricious manner or without regard for the material before it. There was a rational basis for finding that the violence against Pena was the result of a vendetta against him motivated by Arnulfo's jealousy, and not by the

fact that he was the family member of a person who had been subjected to gender-based violence.

**Counsel:**

Peter P. Dimitrov, for the applicant.  
Mandana Namazi, for the respondent.

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1 **EVANS J.** (Reasons for Order):— Jose Ramon Alvarado Pena, a citizen of Honduras, applied for recognition in Canada as a Convention refugee on the ground that he had a well-founded fear of persecution as a member of a particular social group.

2 In particular he alleged that, while still in Honduras, he and his now wife, Ms. Ordonez, had been the subject of death threats and other acts of criminal violence by a Mr. Arnulfo, the former boyfriend of Ms. Ordonez and a violent member of a notorious criminal gang.

3 Ms. Ordonez had been granted refugee status in Canada in 1998 as a member of a particular social group: women who are victims of gender-based violence whom the state is unable or unwilling to protect. Ms. Ordonez' claim was based on the domestic violence that she had suffered at the hands of Mr. Arnulfo.

4 Mr. Alvarado's claim was dismissed by the Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") in a short decision rendered on November 2, 1999. Without disputing the veracity of the evidence of the applicant about the incidents of violence that he had described, the Board concluded that there was no nexus between his fear that they would be repeated if he returned to Honduras, and a ground of persecution contained in the definition of a Convention refugee. Thus, the Board stated (at p. 4 of its reasons):

The claim of Mr. Alvarado is based on a vendetta against him by Mr. Arnulfo. It has no other component to it. There is no link, on the facts as presented, to the definition of Convention refugee. (emphasis added)

5 Counsel for the applicant submitted that, in reaching this conclusion, the Board erred in law because it had failed to appreciate the basis of the claim, namely, that Mr. Alvarado feared persecution because he was a family member of a person who had herself been persecuted on a Convention ground.

6 Alternatively, he submitted, if the Board had based its decision on a finding of fact that the violence directed against Mr. Alvarado was motivated merely by a vendetta against him, and was not part of the campaign of violence against Ms. Ordonez which was the basis of her recognition as a refugee, the decision was liable to be set aside under paragraph 18.1 (4)(d) of the Federal Court Act, RSC, 1995 c. F-7 as based on an

erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before the Board.

7 Although the Board's analysis is very short, I am not prepared to infer that the presiding member had failed to grasp the argument advanced on behalf of Mr. Alvarado. Indeed, it is quite clear from the transcript of the hearing, to which counsel referred me, that the presiding member had understood the essential point being made. Thus, he said (at p. 3 of the reasons for decision):

In our discussions at the pre-hearing conference this morning I indicated to counsel that what we are dealing with here appears to be particular social group, that is a family member of a person subjected to domestic violence. In essence, a social group on top of a social group.

8 It is also clear from the exchange between counsel and the presiding member towards the end of the hearing that the issue troubling the member was "an issue of remoteness" (p. 10 of the transcript). In other words, while the applicant may well have been a member of a particular social group within the definition of a Convention refugee, the question was whether that was the reason for his persecution, rather than the vengeful desire of Mr. Arnulfo to harm the man for whom Ms. Ordonez had left him.

9 The necessity to establish a causal connection between the violence to Mr. Alvarado and the persecution suffered by Ms. Ordonez on a Convention ground was acknowledged in paragraph 20 of the memorandum of law and fact submitted on behalf of the applicant:

It is further submitted that but for the act of gender based violence directed against the Applicant's wife, the Applicant would not likewise have been a victim of violence. That is, the acts of violence directed against the Applicant cannot justifiably be reduced to pure criminality or vendetta, since they derive in essence from the gender-based violence directed against the Applicant's wife. (emphasis added)

10 In other words, for the applicant to succeed he must establish, not only that he was attacked because he was the spouse, or spousal equivalent, of a woman who is a refugee by virtue of gender-related persecution, but also that the attack on him was causally related to or, to use the statutory language, "for reasons of", the violence that she had suffered. Thus, if the applicant had proved that Mr. Arnulfo had threatened him with violence in order to further his vendetta against Ms. Ordonez, he would have established the necessary causal link between the threats to Mr. Alvarado and the gender-based persecution of Ms. Ordonez.

11 I assume for the purpose of this case, but without deciding the point, that a man who is the spouse, or spousal equivalent, of a woman who has been subject to gender-based violence is a member of a particular social group within the definition of a Convention refugee. However, it is largely a question of fact whether the applicant has

established on the evidence a causal nexus between the violence directed at him by Mr. Arnulfo and Mr. Alvarado's membership in the particular social group of boyfriends or husbands of women who are the victims of gender-based domestic violence.

12 This Court is very reluctant to overturn findings of fact made by the Board, especially, as here, on a matter within the Board's expertise. It is trite to emphasise that the existence of evidence before the Board that would have supported a different finding is not the test. Rather, for the purpose of paragraph 18.1(4)(d) of the Federal Court Act, the question is whether, considering the evidence as a whole, the Court is satisfied that the Board's factual finding was made in a perverse or capricious manner or without regard for the material before it.

13 In my opinion, there was sufficient evidence before the Board to provide a rational basis for its finding that the violence against Mr. Alvarado was the result of a vendetta against him motivated by Mr. Arnulfo's jealousy. Thus, when asked by his counsel why he thought that Mr. Arnulfo was creating such problems for Mr. Alvarado and Ms. Ordonez, Mr. Alvarado replied (at p. 6 of the Transcript):

Just out of vengeance, a desire for revenge because [Ms. Ordonez] was my girlfriend and she didn't want to go around with him.

Later, the applicant said (at p. 12 of the Transcript) that the reason why Mr. Arnulfo would have hurt him if he had told him that Ms. Ordonez had left Honduras was

Because he loved her and -----but he also used drugs and she didn't want to have anything to do with him and he assumed that I took her away from him.

14 The transcript does not ineluctably lead to the conclusion that, to use the words of counsel for the applicant, "but for the act of gender based violence directed against the applicant's wife, the applicant would not likewise have been the victim of violence." It is likely that Mr. Arnulfo would have reacted in the same way towards Mr. Alvarado if he had not also been violent towards Ms. Ordonez.

15 That Mr. Arnulfo had in fact also sought revenge against Ms. Ordonez by violent means is not inconsistent with his pursuing a separate vendetta against Mr. Alvarado, albeit that his hostility to both sprang from related facts, namely, Ms. Ordonez' spurning of Mr. Arnulfo and the subsequent relationship between Ms. Ordonez and Mr. Alvarado. The relevant law was succinctly summarised by Nadon J. in *Casetellanos v. Canada (Solicitor General)*, [1995] 2 F.C.190 (F.C.T.D.), where he said (at p. 204):

One will not, for example, be deemed a Convention refugee just because one has a relative who is being persecuted. There has to be a clear nexus between the persecution that is being levelled against one of the family

members and that which is taking place against the others: ..... The family can only be considered to be a social group in cases where there is evidence that the persecution is taking place against the family members as a social group. For example, it is possible that a claimant may be persecuted for his own political views, and not because of those of his parents, who may also be dissidents. (emphasis added)

16 Counsel for the applicant noted that, in addition to Mr. Alvarado's oral testimony, the Board had before it the narrative attached to the applicant's Personal Information Form, in which Mr. Alvarado stated that, on more than one occasion, Mr. Arnulfo had threatened to kill Mr. Alvarado, Ms. Ordonez and their daughter. He argued that the Board should have considered that Mr. Alvarado was encompassed by the threats of violence offered to Ms. Ordonez, on which her status as a refugee was based. In these circumstances, counsel submitted, it was unrealistic to treat Ms. Ordonez as the victim of gender-based violence, without also recognising that the threats to Mr. Alvarado were inextricably linked to those made against Ms. Ordonez.

17 In my opinion, however, it was reasonably open for the Board to conclude on the basis of the evidence before it that the cause of the violence to Mr. Alvarado was the jealousy of a rival for the affections of Ms. Ordonez, not the fact that Mr. Alvarado was a family member of a person whom he, Mr Arnulfo, had subjected to gender-based violence, contrary to the Convention. This is a reasonable inference from the testimony of Mr. Alvarado.

18 In addition, as counsel for the respondent pointed out, the daughter of Mr. Alvarado and Ms. Ordonez who is still in Honduras has remained unharmed since their departure. This supports the Board's finding that the violence to Mr. Alvarado was not causally linked to the fact that, as the victim of domestic violence, his wife is a member of a particular social group.

19 The evidence that, when they were still in Honduras, Mr. Arnulfo at one time threatened to kill the whole family, including the daughter, lends some support to the applicant's contention. However, it does not so undermine the cogency of the other evidence as to justify the conclusion that the Board's decision was based on an erroneous finding of fact about the reason for the violence to Mr. Alvarado that it made in a perverse or capricious manner or without regard for the material before it.

20 For these reasons the application for judicial review is dismissed.

EVANS J.