Paz v. Canada (Minister of Citizenship and Immigration)

Between
Lazaro Cartagena Paz, applicant, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 14
Court File No. IMM-226-98

Federal Court of Canada - Trial Division
Montreal, Quebec
Pinard J.

Heard: December 3, 1998
Judgment: January 6, 1999
(6 pp.)

Aliens and immigration — Admission, refugees — Disqualifications, crimes against humanity — Evidence — Appeals or judicial review, scope of review.

Application by Paz for judicial review of the Refugee Board's decision not to grant him refugee status. The refugee claim was denied on the grounds that Paz had committed a crime against humanity. Paz had been in charge of a group of men stationed at the Honduran border in 1992. The Board asked him if any of the men under his command shot or beat Salvadorans. He replied in the affirmative. He later argued that his reply to the question addressed only beatings and not shootings. He admitted to the Board that his men were armed with rifles and used 60 bullets every week. He argued that the Board did not have the basis for a belief that his men had fired their weapons at the Salvadoran civilians.

HELD: Application dismissed. It was not unreasonable for the Board to assume that Paz would have clarified his answer had he only been replying to one part of the question. Further, given the amount of ammunition used, it was reasonable to infer that Salvadorans had been shot by the men under his command. The Board had serious reasons for the belief that Paz had committed a crime against humanity and had shared a common purpose with the soldiers under his command.

Statutes, Regulations and Rules Cited:

Immigration Act, R.S.C. 1985, c. I-2, s. 2(1).

United Nations Convention Relating to the Status of Refugees, s. 1F.

Counsel:

William Sloan, for the applicant.
Christine Bernard, for the respondent.

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1 **PINARD J.** (Reasons for Order):— This is an application for judicial review of a decision of the Immigration and Refugee Board, Convention Refugee Determination Division (the Board), dated November 27, 1997, whereby the applicant's claim for refugee status was denied by virtue of article 1F of the exclusion clause.

2 The members of the Board denied the applicant's refugee claim because there were serious reasons for considering that: 1) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in Article 1F(a) or 2) he has been guilty of acts contrary to the purposes and principles of the United Nations (Article 1F(c) of the United Nations Convention Relating to the Status of Refugees).

3 The definition of "refugee" set out in subsection 2(1) of the Immigration Act, R.S.C. 1985, c. I-2 (the Act), reads as follows:

2. (1) In this Act,

"Convention refugee" means any person who

[. . .]

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act;

* * *

2. (1) Les dispositions qui suivent s'appliquent à la présente loi.

"réfugié au sens de la Convention" Toute personne :

[. . .]

Sont exclues de la présente définition les personnes soustraites à l'application de la Convention par les sections E ou F de l'article premier de celle-ci dont le texte est reproduit à l'annexe de la présente loi.

4 Paragraphs (a), (b) and (c) of Article 1F of the Convention state:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

* * *

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

5 The definition of crime against humanity is as follows:[1]

> . . . murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connexion with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated.

6 Counsel for the applicant first argues that the Board erred in stating that the events in question occurred between February and June when in fact they occurred between June and September. At page 1 of its decision, the Board indicates that the applicant was stationed in Virginia Lempira from June 1992 to September 1992 and proceeds to outline the events that took place in this period. It is at page 2 of the decision that it states "the panel considered the claimant's testimony with reference to the events which occurred at Virginia Lempira from February to June 1992". However, it is clear from the recitation of the events on page 1 that the Board refers to events from the time the applicant was stationed in Virginia Lempira in June of 1992. I therefore agree with the respondent's position that the simple fact that the Board inadvertently misstated the dates does not change the fact that the reasons for the decision clearly show the Board considered events from June to September 1992. Also, the authorities have required a real possibility that the result of the decision be affected by the error (see for example Schaaf v. M.E.I., [1984] 2 F.C. 334 and Canadian Cable Television Association v. American College Sports Collective (1991), 129 N.R. 296 (F.C.A.)). In the case at bar, this is not so.

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[1] UNHCR Handbook, Geneva, 1978, at page 78, s. 6.

7 Counsel for the applicant then argues that when the applicant answered "yes" to the question "Did any of the men under your command shoot or beat Salvadorans?", he was only replying to the beating part and not the shooting part. The question is therefore whether it was patently unreasonable for the Board to conclude that the applicant's spontaneous answer of "yes" included both the beating and shooting of civilians. Given that this is not an appellate review, and the lack of any other evidence to the contrary, aside from the applicant's argument at this stage that retracts his earlier statement, I am of the view that it was not unreasonable for the Board to assume that the applicant would have clarified his answer had it only been one or other. In my opinion, it was not unreasonable for the Board to conclude that his answer encompassed both questions.

8 Counsel for the applicant also submits that the Board erred when it stated that the number of munitions constituted "overwhelming evidence" that civilians had been shot. The decision of the Board on this point reads as follows:

> . . . In this respect, he admitted that his men, who were armed with M-16 automatic rifles and other weapons, used cartridges containing 30 bullets. Each week, on average, each man used two cartridges or 60 bullets. In other words, 1,920 bullets were fired every week. . . . The claimant estimated that 60 people came to the border per day. Therefore, roughly 6,000 people tried to cross the border during the three month period of the claimant's command. In light of the aforementioned testimony, it is not reasonable nor logical to believe that the claimant's men did not fire their weapons at any of the Salvadorans who crossed the border.
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> Based on the claimant's spontaneous affirmation that civilians were shot at the border when he was in command, coupled with the overwhelming evidence found in the number of bullets that were fired, the panel can only conclude that the unit led by the claimant shot civilians while he was in their command. . . . (My emphasis.)

9 At first glance, the Board's characterization of the number of bullets fired as "overwhelming evidence" appears somewhat exaggerated. However, put in context of the whole decision, I consider that this "mischaracterization" is not fatal to the decision as a whole.

10 As for the applicant's argument that the Board erred in finding that the applicant had a shared common purpose with the perpetrators of atrocities committed by soldiers under his command at the Honduran border, I would first like to reiterate that the burden of proof which must be met by the Minister to demonstrate that the Convention does not apply to a given individual is less than the balance of probabilities (see Ramirez v. M.E.I. (1992), 135 N.R. 390; 89 D.L.R. (4th) 173 (F.C.A.); Moreno and Sanchez v. M.E.I. (1993), 159 N.R. 210 (F.C.A.) and Sivakumar v. M.E.I. (1993), 163 N.R. 197 (F.C.A.)). Also, with respect to complicity, it is well established that it rests essentially on the existence of a shared common purpose and the knowledge of all the parties thereof (see Ramirez, supra). As stated later by the Federal Court of Appeal in Bazargan v. M.E.I.

(1996), 205 N.R. 282, at page 287, "[T]hat being said, everything becomes a question of fact."

11 Applying the above jurisprudence to the factual situation in the case at bar, I am of the opinion that the respondent has succeeded in meeting the burden of showing there are serious reasons for considering that the applicant has committed a crime as defined at paragraph 1F(a) of the Convention. Furthermore, the applicant has failed to satisfy me that the inferences drawn by the Board, which is a specialized tribunal, with respect to his complicity, could not reasonably be drawn (see Aguebor v. Canada (M.E.I.) (1993), 160 N.R. 315 (F.C.A.)). Exclusion under paragraph 1F(a) of the Convention being, by itself, a sufficient reason to deny the applicant his refugee claim, it will therefore not be necessary to deal with the applicant's additional arguments concerning paragraph 1F(c) of the Convention.

12 Consequently, the application for judicial review is dismissed.

13 This matter does not raise any question of general importance for the purpose of certification.

PINARD J.