

Garcia v. Canada (Minister of Citizenship and Immigration)

Between
Orlando Danilo Murillo Garcia, applicant, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 362
Court File No. IMM-1792-98

Federal Court of Canada - Trial Division
Montréal, Quebec
Tremblay-Lamer J.

Heard: March 3, 1999
Judgment: March 4, 1999
(5 pp.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Grounds, political activity.

This was an application by Garcia for judicial review of the dismissal of his application for Convention refugee status. Garcia was a citizen of Honduras. He claimed that he had a fear of persecution because he witnessed murders committed by government agents. Garcia claimed that he was threatened by government officials and advised to leave Honduras. The panel dismissed Garcia's claim for refugee status on the basis that he did not show a nexus with any of the grounds that gave rise to a refugee claim. Garcia argued that he had a fear of persecution because of his political opinion as the murderers were government agents.

HELD: The application was dismissed. Garcia did not have a fear of persecution because of his political opinion. Although Garcia may have needed protection, he was not a Convention refugee. Furthermore, the evidence indicated that there was prosecution of government agents in Honduras who committed criminal acts.

Statutes, Regulations and Rules Cited:

Immigration Act, s. 2(1).

Counsel:

Stewart Istvanffy, for the applicant.
Louise-Marie Courtemanche, for the respondent.

1 **TREMBLAY-LAMER J.** (Reasons for Order):— This is an application for judicial review of the decision of the Refugee Division that the applicant is not a Convention refugee.

2 The applicant is a citizen of Honduras who alleges that he has a well-founded fear of persecution for reasons of membership in a political group. On April 1, 1997, he and his brothers were allegedly returning from a party when they surprised agents from the *Dirección de Investigación Criminal (DIC)* in the commission of two murders. The two victims were both members of an agricultural co-operative.

3 The DIC agents then chased the applicant and his brothers home, and on April 3, 1997, they were summoned to the DIC office. They did not attend.

4 The next day, they received a threatening anonymous letter. As a result, on April 5, 1997, they went to the office of the Committee for Human Rights, where they related what had happened. The Committee advised them to leave the country as quickly as possible.

5 They left Honduras for Guatemala, where they parted company. His brothers decided to stay in Guatemala, and the applicant continued his journey all the way to Canada, where he arrived on July 2, 1997.

6 The Refugee Division rejected his claim on the ground that he was unable to show any nexus with one of the five Convention grounds. There is nothing in the evidence to suggest that political opinion could be imputed as a result of having witnessed a crime.

ANALYSIS

7 The definition of "Convention refugee" in subsection 2(1) is clear: to be a Convention refugee, there must be a nexus between the persecution the claimant allegedly fears and one of the five Convention grounds (race, religion, nationality, membership in a particular social group or political opinion).

8 In this case, the applicant claims to fear persecution due to political opinion imputed to him because he witnessed murders committed by DIC agents and went to the office of the Committee for Human Rights to report what he had seen.

9 The proper test identified in the case law regarding political opinion is the authorities' perception resulting from the applicant's activities.¹ In the case at bar, the question is whether there was any evidence on which the Refugee Division might have found that political opinion could have been imputed to a witness to a crime. Although I sympathize with the applicant's situation, a careful reading of the documentary evidence does not lead me to such a finding.

¹ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at p. 747.

10 In fact, the documentary evidence refers to several human rights violations and to the danger human rights advocates and activists may face. However, nowhere was I able to read that political opinion could be imputed merely as a result of witnessing and reporting a crime.

11 In *Solhjou*,² which deals with similar circumstances to these, my brother Mr. Justice Rothstein upheld the panel's decision to reject the claim. He held that the panel rightly found that even if the applicant needed protection in the event of return, the embezzlers were not targeting him because of his political opinion, but rather because he had evidence of their criminal activities.

The panel concluded that the applicant may well need protection, but that he did not come within the definition a Convention refugee. The panel said that the embezzlers who the applicant feared do not seek to harm him because of his political opinion, but rather because he has evidence against them of their criminal activities.

...

Applicant's counsel pointed to other evidence which suggested the applicant might be subjected to harm if he return to Iran. While this may be the case, the applicant must still demonstrate that such harm is connected to his political opinion, or one of the other criteria described in the definition of Convention refugee, and has he failed to do that.³

[Emphasis added.]

12 In addition, as counsel for the respondent mentioned, the documentary evidence shows that DIC agents who commit abuses are prosecuted.⁴ This state action shows that the state does not approve of the DIC agents' activities.

13 Thus, reporting an act that the existing authorities do not endorse cannot constitute an expression of political opinion.

14 I am compelled to conclude that the panel made no error of fact or law. As in *Solhjou*, I cannot help but express my frustration because the evidence in the record leaves room for doubt about the danger the applicant might face in the event of return. Unfortunately, that risk must be connected to one of the Convention grounds, which is not the case. Like my brother Rothstein J., I am confident that the respondent will have regard to the particular situation of the applicant should a humanitarian remedy be available to him.

15 For these reasons, the application for judicial review is dismissed.

16 Neither counsel advised that a question be certified.

² *Daryoosh Solhjou Mehrabani v. M.C.I.*, [1998] F.C.J. No. 427, (April 3, 1998) IMM-1798-97 (F.C.T.D.).

³ *Supra* aux paras. 6-9.

⁴ Country Reports on Human Rights Practices for 1996.

Certified true translation: Peter Douglas

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ORDER

The application for judicial review is dismissed.

Certified true translation: Peter Douglas