Quinonez v.
Canada (Minister of Citizenship and Immigration)

Between
Hugo Arnoldo Trejo Quinonez, applicant, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 42
Court File No. IMM-2590-97

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

Heard: December 3, 1998
Judgment: January 12, 1999
(19 pp.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Credible basis for claim - Disqualifications, crimes against humanity.

This was an application by Quinonez for judicial review of a decision of the Immigration and Refugee Board denying his claim for Convention refugee status. Quinonez was a citizen of El Salvador, who claimed that he would likely be killed by the rebel liberation movement due to his prior work with the National Police. Quinonez admitted that he witnessed incidents of torture in his work, which involved the investigation of political crimes. He claimed that he was dismissed for a deliberate breach of discipline, and that he left the country after receiving threats from rebels. The Board found that there were serious reasons to consider that Quinonez had committed crimes against humanity. The Board also found that his evidence was not credible.

HELD: Application dismissed. The evidence indicated that Quinonez was a member of an organization that committed crimes against humanity; that he was a continuous and regular part of its operation; that he personally and knowingly participated in the organization's activities; and that he failed to dissociate himself from the organization at the earliest safe opportunity. The Board's decision was not unreasonable.

Statutes, Regulations and Rules Cited:

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

Counsel:

Fiona M. Begg, for the applicant.
Emilia Péch, for the respondent.

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1 **NADON J.** (Reasons for Order):— The applicant seeks to set aside a decision of the Immigration and Refugee Board, Convention Refugee Determination Division (the "Board") dated May 22, 1997 which denied his claim to Convention refugee status.

2 The applicant was born on October 7, 1967. He is a citizen of El Salvador. The applicant left El Salvador on March 27, 1995 and arrived in Canada on March 28, 1995. He applied for refugee status in Vancouver on April 7, 1995. The applicant bases his claim on a well-founded fear of persecution in El Salvador on the ground that he will likely be killed by the Frenta Farabundo Marti para la Liberacion Nacional (the "FMLN") by reason of his work with the National Police of El Salvador.

3 The applicant related the following story both in his PIF and his viva voce evidence before the Board. He joined the National Police at the age of fifteen in 1983. Initially he worked as a uniformed police officer for two years. In that capacity, his duties included patrolling the streets and regulating traffic. He was then transferred to the Department of Investigations which investigated non-political crimes such as robbery, murder, drug trafficking, rape, etc.. Subsequently he was transferred to the Department of General Service which investigated political crimes. In that Department, his duties included, inter alia, escorting prisoners from the police detachment to the military court.

4 The applicant testified that his job was "dangerous" because the prisoners were not blindfolded and, as a result, would be able to identify him by sight. Because of this, the applicant decided that he had to leave the police force. The applicant stated that he deliberately committed a disciplinary action so as to get expelled from the police force. On May 16, 1988, because of a breach of discipline, the applicant was "finally" dismissed from the National Police.[1]

5 The applicant was then hired by the Department of the Auditor General where he served as bodyguard to the then President of the Department. In early 1991, he was sent by his employer to investigate an organization called Commission Nacional De Assistencia a la Poblacion Desplasada ("CONADES"). This organization had the responsibility of distributing food to the displaced population of El Salvador.

6 In December 1991, the applicant received complaints from three displacement camps. These complaints were to the effect that the camps had not received the aid to which they were entitled pursuant to guidelines established by CONADES. The applicant's investigation discovered evidence that two CONADES employees were directing food supplies to "safe houses" under the control of the FMLN. According to the applicant, the food supplies were then transported to Guerilla encampments.

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[1] Applicant's record page 162.

7 Following the applicant's investigation, the two CONADES employees were arrested. The applicant states that one of the two CONADES employees threatened that he or his friends would kill the applicant at the first opportunity.

8 At the beginning of 1992, when the Government of El Salvador began releasing many political and non-political prisoners, the applicant "felt very panicky". In August 1994, while travelling in a bus to work, the applicant testified that he was seen by one of the two CONADES employees that he had investigated and who had been subsequently arrested at the end of 1991. Two months later, while coming home from school, the applicant was attacked by several men who made it clear that it was their intention to kill him. When a pick-up truck stopped near where the appellant was being aggressed, the applicant started screaming for help and, as a result, his attackers fled. The applicant testified that he was certain that his attackers were from the FMLN.

9 In February 1995, the applicant's brother informed him that FMLN members had been to the family house the night before asking for the applicant. It was at this point that the applicant decided to leave El Salvador. He contacted his brother Oscar who was in Canada and informed him that he had decided to leave El Salvador and go to Canada, if at all possible.

10 On March 5, 1995, the applicant received a telephone call from a man who indicated that he had received orders to kill him. The man added that, as he wanted to give the applicant a chance, he would leave him thirty (30) days to disappear. The applicant left El Salvador on March 27, 1995.

11 As I indicated earlier, the Board dismissed the applicant's claim to refugee status. The Board's conclusion, which appears at page 19 of its reasons, reads as follows:

> The panel finds that there are serious reasons for considering that the claimant is complicit in crimes committed against humanity. Accordingly the claimant is excluded from the definition of Convention refugee. For these reasons Hugo Arnoldo TREJO QUIONEZ [sic] not a Convention refugee as defined is [sic] subsection 2(1) of the Immigration Act.

12 The Board, in its decision, states the issues to be determined as follows. Firstly, is the claimant's evidence credible and trustworthy? And secondly, is the claimant excluded from the Convention refugee definition?

13 In its discussion of the first question, the Board makes it abundantly clear that it has great difficulty with many aspects of the applicant's story. At page 7 of its reasons, the Board states:

> The panel has valid reason to doubt and reject the truthfulness of allegations made in support of the claim, due to inconsistencies and implausibilities that arose in the claimant's evidence. The opportunity was given to the claimant to clarify the discrepancies. However, the

explanations that were given were not reasonable.

14 The Board did not accept the applicant's evidence that in 1987 he had found a way to leave the National Police. On the evidence before the Board, I am completely satisfied that it made no unreasonable findings in reaching this conclusion. The Board clearly explained why it did not believe the applicant and I can only say that the explanation given is not unreasonable. For example, at page 8 of its reasons, the Board indicates that it found it very odd that the applicant had not produced papers indicating that he had been discharged from the National Police. The Board puts it as follows:

> [...] The claimant was asked why he did not present papers to indicate that he had been discharged from the National Police. The claimant stated that when he left home in 1992 he destroyed any documentation which might be found and cause FMLN members to connect him with the National Police. The problem with the claimant's explanation is that he testified that FMLN members already knew he was a member of the National Police, because of his visibility in serving in that capacity. The discharge papers at least would provide some tangible proof that he was no longer a member of the National Police and had in fact been discharged, supposedly for misconduct, four years previously. Furthermore, the claimant presented a number of documents, including pictures of himself being advanced by the National Police, which would link him to that organization. The colour photographs show the claimant receiving his police training diploma, receiving his detective diploma, and receiving his corporal stripes. The photographs also included a group graduation picture and additional photos of the claimant in National Police uniform. At Question 29.11 of his PIF, the claimant indicated that he has in possession his "National Police Certificate". In summary, it would appear that the claimant kept in his possession many items which would link him to the National Police and allegedly destroyed the one document which would prove he was no longer a member of that organization. The panel finds that is inconsistent with the stated reason of why the claimant does not have his discharge papers. The claimant was asked to give an explanation as to why he did not have his discharge papers, but did have documents, including the photographs, which would link him to the National Police. The claimant said that he had found those documents quite by accident when they had been placed between the pages of newspapers that the claimant happened to take with him when he left home in 1992. The panel does not accept that explanation as being reasonable considering the evidence as a whole in this case.

15 The Board gave other reasons to explain its belief that the applicant had not been discharged from the National Police in 1988. The explanations given by the Board in this regard are, in my view, entirely satisfactory.

16 The Board also commented unfavourably upon the fact that the applicant had gone to Guatemala to obtain a visitor's visa to Canada and then returned to El Salvador to catch a flight to Canada. In the Board's opinion, the applicant's return to El Salvador was not consistent with his fear of persecution. Again, I can only agree that the Board's finding is not unreasonable.

17 Although the Board concluded that the applicant had not presented a credible story, it omitted to address the consequences of this finding: the Board did not decide whether the applicant had a well-founded fear of persecution should he return to El Salvador. Instead, the Board went from its negative credibility findings on to the issue of whether the applicant was excluded from the Convention refugee definition on the basis of section 1F(a) of the United Nations Convention Relating to the Status of Refugees, 28 July1951, Can. T.S. 1969 No. 6 (the "Convention").

18 Section 1F(a) is incorporated into the definition of Convention refugee through subsection 2(1) of the Immigration Act, R.S.C. 1985, C. I-2 (the "Act"). The definition of Convention refugee in s. 2(1) of the Act states the following:

> "Convention refugee" ... does not include any person to whom the Convention does not apply pursuant to section E or F of Article I thereof, which sections are set out in the schedule to this Act.

19 The relevant portion of section F of Article 1 of the Convention, as set out in the Schedule to the Act, provides as follows:

> 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;
>
> * * *
>
> 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;

20 I have already reproduced the Board's conclusion on this issue. The Board concluded that the applicant was "complicit in crimes committed against humanity". The applicant argues that, on the evidence before it, the Board was wrong in reaching this conclusion. I will now address this issue. Before doing so however, I must state that if I find in favour of the applicant on this issue, the matter will be returned to the Board since

it made no determination regarding the applicant's claim that he had a well-founded fear of persecution.

21 After setting out the relevant principles and jurisprudence, the Board, at pages 17 and 18 of its decision, explains its conclusion as follows:

> The claimant voluntarily joined the National Police of El Salvador, an organization which was notorious for its violation of human rights during the bitter twelve year civil war and during the period the claimant was a member of that organization. The claimant stated that although he himself did not actively participate, he both knew of and had observed on several occasions the brutality that organization inflicted upon civilians. The claimant was promoted for his experience and training with the organization during that time frame. The claimant, although he was aware of the ways the organization mistreated civilians, did not attempt to resign from the force.
>
> The claimant would have the panel believe that rather than resign, he devised a plan, after being with the force for four years, whereby he would be dismissed, by not delivering a vehicle on time. While that incident was being investigated, the claimant was assigned to be the bodyguard to the "Auditor-General", Mr. Pea. Several months later, after his case was finalized the claimant stated that he was "dismissed" from the force on May 16, 1988. In his viva voce evidence, the claimant stated that he was actually given a leave of absence for one year and that he could have returned to the force. The witness stated that the claimant in fact worked for the police as a detective until 1992. In any event, the claimant continued, on May 17, 1988, to work as the bodyguard for Mr. Pea. Whenever or if the "dismissal" occurred, the panel finds that the claimant did not leave the organization at the "earliest possible date" and that his becoming a bodyguard for Mr. Pea was not a punishment but might be viewed, as it was by his colleagues at work, as an endorsement for his work with the National Police and for his being a good officer. The claimant stated that he had to explain to his colleagues that he was able to procure the position with Mr. Pea because the claimant's mother knew him.
>
> The panel finds, in considering the evidence as a whole, that the claimant by his voluntarily joining the National Police, his personal knowledge of the acts committed by the force against civilians and because he did not disengage himself from that group at the earliest reasonable opportunity, he was complicit in the actions of that group. Consequently, the panel finds that the claimant is excluded from the definition of a "Convention refugee" pursuant to Article 1F(a).

22 Although the Board had no evidence that the applicant had committed crimes against humanity, it concluded against him because the Board determined that he was a member of an organization notorious for its violation of human rights and had failed to "disengage himself" from that organization at the earliest reasonable

opportunity. Consequently, in the Board's opinion, he was "complicit in the actions of that group".

23 A brief review of the principles that govern the exclusion from Convention refugee status is necessary. The leading judgment on the exclusion of a claimant under paragraph 1F(a) of the Convention is Ramirez v. Canada (M.E.I.)[2] in which MacGuigan J.A. of the Federal Court of Appeal clearly held that the expression "serious reasons for considering" in paragraph 1F(a) establishes a lower standard of proof than the balance of probabilities.

24 More recently, the same Court, in Moreno v. Canada (M.E.I.)[3], reiterated this principle. Moreover, the jurisprudence is unequivocal in holding that the respondent, in this case the Minister, has the burden of demonstrating the existence of serious reasons.

25 Exclusion from Convention refugee status can be extended to a claimant who has not personally committed the crimes referred to in paragraph 1F(a) of the Convention. In Sivakumar v. Canada (M.E.I.)[4], Linden J.A. of the Federal Court of Appeal stated the following:

> It is clear that if someone personally commits physical acts that amount to a war crime or crime against humanity, that person is responsible. However, it is also possible to be liable for such crimes-to "commit" them-as an accomplice, even though one has not personally done the acts amounting to the crime.

26 An initial definition of the term "accomplice" is found in Ramirez, supra in which MacGuigan J.A. describes at 396:

> What degree of complicity, then, is required to be an accomplice or abettor? A first conclusion I come to is that mere membership in an organization which from time to time commits international offenses is not normally sufficient for exclusion from refugee status ...
> It seems apparent, however, that where an organization is principally directed to a limited, brutal purpose, such as a secret police activity, mere membership may by necessity involve personal and knowing participation in persecutorial acts.
> Similarly, mere presence at the scene of an offence is not enough to qualify as personal and knowing participation (nor would it amount to liability under s. 21 of the Canadian Criminal Code), though, again, presence coupled with additional facts may well lead to a conclusion of such involvement. In my view, mere on-looking, such as occurs at public executions, where the onlookers are simply by-standers with no intrinsic connection with the persecuting group, can never amount to personal involvement, however humanly repugnant it might be. However, someone

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[2] Ramirez v. Canada (M.E.I.) (1992), 135 N.R. 390.
[3] Moreno v. Canada (M.E.I.), [1994] 1 F.C. 298.
[4] Sivakumar v. Canada (M.E.I.), [1994] 1 F.C. 433 at 437.

> who is an associate of the principal offenders can never, in my view, be said to be a mere on-looker. Members of a participating group may be rightly considered to be personal and knowing participants, depending on the facts.
> At bottom, complicity rests in such cases, I believe, on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it. Such a principle reflects domestic law (e.g., s. 21(2) of the Criminal Code), and I believe is the best interpretation of international law.

27 In Penate et al. v. Canada (M.E.I.)[5], Madam Justice Reed summarized the applicable principles as follows:

> An individual who has been complicit in (an accomplice to) an act which is physically committed by another is as responsible for the offence as the person who physically committed the act. Thus, if there are serious reasons for considering that an individual has been complicit in the commission of an international offence that individual will be excluded from obtaining refugee status by operation of section F of Article I.
> In order to be complicit in the commission of an international offence the individual's participation must be personal and knowing. Complicity in an offence rests on a shared common purpose.
> The Ramirez, Moreno, and Sivakumar cases all deal with the degree or type of participation which will constitute complicity. Those cases have established that mere membership in an organization which from time to time commits international offences is not normally sufficient to bring one into the category of an accomplice. At the same time, if the organization is principally directed to a limited, brutal purpose, such as a secret police activity, mere membership may indeed meet the requirements of personal and knowing participation. ...
> As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and who neither takes steps to prevent them occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist.

28 In Gutierrez v. Canada (M.E.I.)[6], MacKay J. enumerated the three criteria that the respondent must establish for the exclusion in paragraph 1F(a) of the Convention to apply in matters of complicity:

> Essentially then, three prerequisites must be established in order to provide complicity in the commission of an international offence: (1) membership

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[5] Penate et al. v. Canada (M.E.I.), [1994] 2 F.C. 79 at 84.
[6] Gutierrez v. Canada (M.E.I.) (1994), 84 F.T.R. 227 at 234.

in an organization which committed international offences as a continuous and regular part of its operation, (2) personal and knowing participation, and (3) failure to dissociate from the organization at the earliest safe opportunity.

29 The applicant submits that the Board erred in finding that the National Police of El Salvador was an organization notorious for its violation of human rights during the civil war in El Salvador. On page 10 of the Board's decision, in dealing with the credibility issue, the Board states that the National Police was a paramilitary organization notorious for committing serious human rights violations. In support of that assertion, the Board refers to documentary evidence and the applicant's testimony.

30 At pages 156 and 157 of the applicant's record, the following questions and answers appear:

> Q. I just wanted to read you something, here. It's from Exhibit 5. And I'm looking at a report on paramilitary forces in El Salvador. And I'll just read you an excerpt. It's the document that has "Request" at the top. I don't know how many pages in. After the second -- after the second --
>
> COUNSEL:Is it the record of February '94, that one?
>
> REFUGEE CLAIMS OFFICER: No, after that.
>
> COUNSEL:Oh, no, sorry.
>
> REFUGEE CLAIMS OFFICER: It says, "Request, Version 6.0, January '97".
>
> COUNSEL:Right.
>
> REFUGEE CLAIMS OFFICER: "Salvador: The Armed Forces".
>
> Q. There's an excerpt in here in this report on -- that talks about the police in El Salvador, and the National Guard. It says:
>
> > According to the findings of a research team investigating U.S. assistance to the Salvadoran police in 1986, the two police forces and the National Guard have been accused of using psychological and/or physical torture to speed up the interrogation process.
>
> INTERPRETER:"Torture and -"
>
> REFUGEE CLAIMS "Psychological and/or physical torture to

OFFICER: speed up the interrogation process."

Q. They reportedly differ from one another only in the type of torture they prefer.

Does that sound like the police force that you were a part of?

A. Yes. But I would like to clarify that my work in the Department of Technical Support was not involved with questioning prisoners. And at least in my case personally, I feel clean of that type of question or abuse.

31 I now turn to the documentary evidence on which the Board relies. In a document entitled "El Salvador: the Spectre of Death Squads" issued by Amnesty International in December 1996[7], we find the following statement in the introduction to the document:

> Death squads and paramilitary groups were responsible for the systematic secret murder, torture and "disappearance" of suspected government opponents during the 1980s and early 1990s and benefitted [sic] from total impunity. There was the hope that they would be held accountable and cease to exist as a result of the 1992 Peace Accords and corresponding commitments by the Salvadorean authorities and support of the international community to improve the human rights situation. There was, in fact, a gleam of hope after the end of the war when there was a significant decrease in the number of serious human rights violations, particularly "disappearances". But death threats by clandestine groups against political and other activists persisted, and sporadic killings and attempted assassinations bearing the hallmarks of death squads were carried out after the signing of the accords.

32 In the "Human Rights Yearbook 1996" published by Nordic Human Rights Publications, the following information appears:

> The Peace Accords and National Security Institutions The Peace Accords have brought an end to the armed conflict. More significantly, the process of peace negotiations and the implementation of the Peace Accords have made appeasement an accepted means of ending conflict. Solving conflict in a nonviolent manner has become possible especially because the main national security institutions of the State have had to undergo important changes. Changes have occurred within the army, the police and paramilitary organisations which in the past were notorious for committing gross human rights violations. The Peace Accords have brought about changes in the functions and structures of these institutions, thereby altering the way in which internal order and security are to be

[7] Tribunal record page 195.

maintained. On the whole, this has had major implications for the respect of human rights. The army has been reduced in size and is no longer responsible for internal order. A new police force has been established, the Policia Nacional Civil (National Civilian Police; PNC) which is a civilian controlled institution, with a new training academy and which operates according to a new doctrine that emphasises the protection of individual rights and the minimal use of force. As shall be shown below, though, the reduction of the army and the establishment of the new civilian police force have as yet not been fully accomplished. The main reason for this non-accomplishment is that since January 1992 the sections in the Peace Accords dealing with internal order and security, have been renegotiated between the Government and the FMLN.

National Civilian Police

With the establishment of the National Civilian Police, the old police force was abolished, as agreed in the Peace Accords. The old police force was a political and ideological institution which was an integral part of the armed forces. Until the mid-1980s, police officers were trained at the military academy where they obtained training in anti-communist ideology and in counter-insurgency tactics. On the whole, it was not conductive for the preparation of officers responsible for internal peace and order. A new training academy for police officers was therefore established. The new police force integrated both officers from the old police force as well as FMLN ex-combatants. According to the Peace Accords, neither of them should make up more than 20 percent of the new force, the rest of the officers should be civilians. However, this has not been accomplished in practice. Many officers of the old force have been integrated into the new force and only few ex-combatants have entered the new police force because of their level of education which has not met minimal entrance requirements. The new police force was not allowed to include any person who had been in the army. However, as a means of increasing quickly the number of the new police force, the Government transferred members of the Treasury Police and the National Guard. This was in violation of the Peace Accords, as the Treasury Police and the National Guard were to be integrated into the armed forces. The FMLN has accepted these violations to the Peace Accords, on the condition that FMLN ex-combatants who did not meet the minimum education requirements could enter the police academy.

33 Next, the Board referred to a document which appears as the Central American Report of November 3, 1995, where one can read the following:

> El Salvador
>
> National Civil Police taken to task
>
> The United Nations observer mission in El Salvador presents a report to the Salvadoran government in which it heavily criticizes the National Civil Police (PNC) -- a force set up as part of the United Nations brokered peace talks at the end of the war in 1992. According to the report there has been a surge in complaints regarding police involvement in human rights abuses. It also says the government's human rights office has received more complaints about the police than about any other institution. Familiar Criticisms. This is the latest UN report casting serious doubts over the performance of the PNC. The accords called for the creation of an independent institution to replace the old police force, which was controlled by the army and was responsible for massive human rights abuses. Former members of the army and ex-guerillas were recruited into the new force - - along with a substantial number of civilians. The PNC was billed as the symbol of post-war reconciliation and one of the greatest successes of the peace process. But public confidence in the PNC quickly dwindled.
>
> Over the past few months, members of the PNC have been implicated in death squads and have allegedly participated in murders and repression against trade union members and popular organizations.
>
> In its report, the UN mission argues that the police force has deteriorated, and criticizes methods used in the recruitment of officers into the force. The report says a poor selection process has led to the recruitment of a number of unsuitable candidates including criminals.
>
> The UN says tax control has led to the hiring of a number of senior police officers from the old police force who, it alleges, were once involved in El Salvador's notoriously brutal intelligence services. Police chiefs are also criticized for having interfered in investigations of crimes involving members of the PNC.

34 Lastly, the Board referred to a document entitled "El Salvador 'Death Squads' - A Government Strategy" published by Amnesty International in October 1988. Under the title "The Legal Framework: A Smokescreen for Official 'Death Squads' Activities", the following text appears:

> Emergency legislation has facilitated "death squad" "disappearances" and killings. Decree 507 of December 1980 and Decree 50 of February 1984 provided for long periods of incommunicado detention and the admissibility as evidence of extrajudicial declarations made during these periods. Decree 507 allowed for up to 180 days incommunicado detention,

> during which a suspect's imprisonment need not be acknowledged - a provision which analysts described as "legalization of disappearance". In 1984, Decree 50 reduced the period of legalised "disappearance" substantially, to 15 days, but Amnesty International feared that in maintaining provisions for prolonged unacknowledged incommunicado detention it continued to provide a judicial framework conducive to human rights violations, including torture, "disappearance" and extrajudicial execution. Its successor, Decree 618 of March 1987 remains on the books to be applied in the event of a new state of siege, and reproduces almost in their entirety the clauses of Decree 50 which assisted successive governments to obscure their own accountability for abuses by attributing unacknowledged arrests to "death squads".

35 It is on the basis of the above information that the Board concluded that the applicant was a member of "an organization which was notorious for its violation of human rights during the bitter twelve year civil war and during the period the claimant was a member of that organization". In addition, the Board found that the applicant had voluntarily joined the National Police in 1983, that he had personal knowledge "of the acts committed by the Force against civilians" and, lastly, that he had not attempted to "disengage himself from that group at the earliest reasonable opportunity". Consequently, the Board concluded that the applicant was "complicit in the actions of that group". By reason thereof, the Board concluded that the applicant was excluded from the definition of Convention refugee pursuant to Article 1F(a) of the Convention.

36 Applying the above findings of fact to the three requirements Mr. Justice MacKay enumerated in Gutierrez, supra, and bearing in mind the evidence before the Board, it is clear that the Board did not make an unreasonable determination in excluding the applicant from the definition of Convention refugee.

37 First, in reference to the first requirement, membership in an organization which committed international offences as a continuous and regular part of its operation, the Board relied on documentary evidence to support its finding that the National Police was "an organization which committed international offences as a continuous and regular part of its operation".[8] It goes without saying that the Board also relied on the applicant's evidence which supported that point of view.

38 Second, in reference to the third requirement, failure to dissociate from the organization at the earliest safe opportunity, the Board's finding that the applicant did not dissociate himself from the organization at the earliest safe opportunity is not unreasonable.[9]

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[8] See paragraphs 29-34 of this decision.
[9] See paragraphs 14-15 of this decision.

39 Third, in reference to the second requirement, personal and knowing participation, the applicant's testimony during his hearing before the Board clearly implicates him. During the hearing before the Board, the applicant states the following:

> Q Were you aware of mistreatment happening in the police department while you were associated with the department?
> A Pressures.
> Q What kind of pressures?
> A There was shoving them and sometimes blows to the head.
> Q There was also torture; wasn't there?
> A I never saw that.
> Q I'm going --
> A I can -- or I consider the things that I've mentioned already as also part of torture.
> Q When did you become aware that these things were taking place and being done by police officers who you were working with?
> A When I saw it.
> Q You saw it sir; did n't you?
> A Yes, that's right.
> Q When?
> A Three or four times and I was against that[10]

40 What follows are a series of questions and answers pertaining to the three incidents of torture the applicant witnessed. During the first incident which occurred in 1985, the applicant was witness to two detectives interrogating a man who had allegedly raped a 10 year old girl. In their interrogation, the detectives were physically abusing the rape suspect with a series of blows with their hands.[11]

41 The next occasion that the applicant was witness to his fellow police officers abusing someone was in the same year: three detectives inflicted a blow to the head of a person who was smoking marijuana on the curb and who then suffered a bleeding nose.[12]

42 The final incident when the applicant witnessed police brutality was in 1986 when two uniformed policemen beat up a young person who would not walk with them as directed with the butt of their rifles.[13]

43 And later, the applicant testified as follows:

> Q [...] Did you not hear anybody talking about prisoners being abused at Mariona?
> A All the -- all the time.
> Q Did you believe it?

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[10] Applicant's Record pages 98-99.
[11] Applicant's Record pages 100-101.
[12] Applicant's Record pages 101-102.
[13] Applicant's Record pages 102-103.

A Yes, I believed it.[14]

44 Therefore, I find that Mr. Justice MacKay's requirements set out in Gutierrez, supra, are met. As a result, this judicial review application will be dismissed.

NADON J.

[14] Applicant's Record page 155.