

# Salazar v. Canada (Minister of Citizenship and Immigration)

Between  
Gerardo Florentino Sifuentes Salazar and Santos Luis Sifuentes  
Salazar, applicants, and  
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 518  
Court File No. IMM-977-98

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

Heard: April 14, 1999  
Judgment: April 16, 1999  
(5 pp.)

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

This was an application by Li for judicial review of a dismissal of an application for Convention refugee status. The Salazars were citizens of Peru. Gerardo was a police officer. The panel found that the Salazars participated in the oppressive Peruvian police system without coercion or obligation and were excluded from refugee entitlement. The Salazars argued that the panel erred in concluding that they had specific knowledge of oppressive police activities.

**HELD:** The application was allowed. The matter was referred back to a different panel for rehearing. The panel's findings were not supported by the evidence. There was no evidence that the Salazars had knowledge of the oppressive acts carried out by the police. The panel made erroneous determinations from the evidence.

## **Counsel:**

George Labrecque, for the applicants.  
Christine Bernard, for the respondent.

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1 **TREMBLAY-LAMER J.** (Reasons for Order):— This is an application for judicial review of a Convention Refugee Determination Division decision that the brothers Gerardo Florentino Sifuentes Salazar and Santos Luis Sifuentes Salazar (the

applicants) are excluded from the benefit of the Convention under Article 1F(a) of the Convention.

2 The applicants are citizens of Peru. Gerardo, 43, was a career police officer. When he left Peru, he was a radio operator at the communications headquarters of the thirtieth command of the national police highway patrol. His brother Luis, 33, was an independent taxi driver and occasional police informer; he provided information on people he found suspicious to his brother Gerardo.

3 The Refugee Division found that the applicants had actively participated in the oppressive system of the Peruvian police without coercion or obligation. Specifically, it held that:

[TRANSLATION] Both brothers acted deliberately, without coercion or official obligation, but willingly and knowingly; they knew that the people they accused were automatically investigated, with potentially fatal consequences.<sup>1</sup>

4 The Refugee Division was therefore of the opinion that there were serious reasons for considering that the applicants had committed a crime against humanity and thus were excluded under Article 1F(a).

5 The applicants argue that the panel erred in its decision because they never testified, as the panel suggested, that they knew what happened to people under investigation.

6 In *Mohamed*,<sup>2</sup> based on recent decisions,<sup>3</sup> I summarized the legal principles governing exclusion under Article 1F(a) of the Convention:

- a) The burden of proof which must be met by the Minister to demonstrate that the Convention does not apply to a given person is less than the balance of probabilities. The wording of the exclusion clause requires only that there be "serious reasons for considering" that the person has committed a crime against humanity. Therefore, there is no need for the person to have been convicted of, or charged with, this crime.
- b) The exclusion clause applies not only to those who physically commit the crimes but to accomplices too, provided that they exhibit the requisite degree of participation.
- c) In order to be complicit in the commission of an offence, the individual's participation in the perpetration or commission of the

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<sup>1</sup> Refugee Division decision, at pp. 3-4.

<sup>2</sup> *Kiared Mohamed v. Minister of Citizenship and Immigration of Canada* (August 24, 1998), IMM-3172-97 (F.C.T.D.).

<sup>3</sup> *Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306 (C.A.); *Moreno v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 298 (C.A.); *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.).

crime must be personal and knowing. Complicity rests on a shared common purpose, that is, knowledge of the activities that are being committed and failure to intervene.

- d) Mere membership in an organization which from time to time commits international offences is not sufficient for exclusion.
- e) At the same time, if the organization is principally directed to a "limited, brutal purpose", such as a secret police, mere membership may indeed meet the requirements of personal and knowing participation.
- f) Mere presence at the scene of an offence, for example, as a bystander with no intrinsic connection with the persecuting group will not amount to personal involvement.
- g) Personal and knowing participation can be inferred from the person's rank.

7 In that case, I held that the panel had found that the applicant was a personal and knowing participant not only because he was a member of the police but also because of his knowledge of the acts that were being committed and his failure to intervene.

8 However, in this case, the evidence does not reflect such knowledge of the acts committed. The applicants' oral testimony is to the contrary. The panel did not infer that considering the documentary evidence, the applicants should have known; it stated that they had testified that they did know.

9 Given that such a finding is not supported by the evidence, I must quash the decision and refer the matter back to a different panel for rehearing.

10 Neither counsel suggested that a question be certified.

Certified true translation: Peter Douglas

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ORDER

The decision is quashed, and the matter is referred back to a different panel for rehearing.

Certified true translation: Peter Douglas