

Lara v. Canada (Minister of Citizenship and Immigration)

Between
Benjamin Zuniga Lara, applicant, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 264
Court File No. IMM-438-98

Federal Court of Canada - Trial Division
Toronto, Ontario
Evans J.

Heard: February 23, 1999
Judgment: February 26, 1999
(7 pp.)

Aliens — Admission, refugees — Grounds, well-founded fear of persecution — Appeals or judicial review, grounds.

Application by Lara for judicial review of a determination by the Convention Refugee Determination Division of the Immigration and Refugee Board dismissing his claim for convention refugee status. Lara claimed that he had a well founded fear of persecution on two grounds; his membership in the homosexual community and his political opinions. Lara was a 34 year old gynaecologist from Mexico who claimed refugee status in June 1996. He alleged that he had been sexually assaulted and beaten by police officers on several occasions because of his sexual orientation. Another basis of his application was harassment by police in connection with an investigation into corruption at the hospital where he practiced. The Refugee Division did not find his evidence of persecution to be credible. Lara appealed on the ground that it was an error of law for the Refugee Division to have made a global finding of lack of credibility without referring to any other basis for its conclusion. The Refugee Division noted that there had been several years during which time Lara had not been harassed by the police, and that the Mexican tolerance of homosexuals had greatly improved over the past several years.

HELD: Application for judicial review dismissed. Lara did not have a well founded fear of persecution by reason of his sexual orientation. The Refugee Division noted that the climate for homosexuals in Mexico had improved, and that Lara had been free of persecution for several years. In addition, the Refugee Division did not find his evidence of attacks and abuse by police to be credible. The harassment he suffered because of the corruption investigation was motivated by a personal vendetta and constituted criminal activity, not persecution. The Refugee Division's reasons were sufficiently clear to provide the basis of its material findings of fact.

Statutes, Regulations and Rules Cited:

Federal Court Act, R.S.C. 1985, c. F-7, s. 18.1.

Counsel:

Richard Addinall, for the applicant.
Marcel Larouche, for the respondent.

1 **EVANS J.** (Reasons for Order):— This is an application for judicial review pursuant to section 18.1 of the Federal Court Act, RSC 1985, c. F-7 [as amended] in which Benjamin Zuniga Lara (hereinafter "the applicant") requests the Court to review and set aside a decision dated January 19, 1998 by the Convention Refugee Determination Division of the Immigration and Refugee Board (hereinafter "the Refugee Division") dismissing the applicant's claim to be recognized as a Convention refugee.

2 The applicant stated that he had a well founded fear of persecution on two grounds: his membership of a social group, namely homosexuals, and political opinion. However, in one respect these grounds reinforced each other.

3 The applicant is a 34 year old citizen of Mexico and a gynaecologist by profession; prior to coming to Canada he was employed in a hospital in Mexico City. He arrived in Canada in June 1996 and claimed refugee status in October of that year.

4 As evidence supporting his claim for refugee status by reason of his sexual orientation the applicant testified that, as an adolescent, he had been sexually assaulted and beaten by a police officer, "Francisco", who subsequently followed him to Mexico City. The applicant also claimed that on one occasion he had to pay extortion money to secure his release after the police had arrested him in a round-up of patrons in a gay bar, and on other similar occasions he had been detained for questioning, and released.

5 The Refugee Division did not believe his evidence about the abuse that he alleged that he had received from "Francisco", and counsel did not challenge this finding. However, the Refugee Division also made a more general finding that the applicant's evidence was not credible, without referring to any other basis for its conclusion.

6 In his written submissions, counsel for the applicant argued that it was an error of law for the Refugee Division to have made a global finding of lack of credibility on the basis of two evidential items that were not germane to the main basis of the refugee claim. However, in my view, while the Refugee Division's statement is open to this interpretation, in fact it did not reject other aspects of the applicant's evidence on the basis of non-credibility.

7 The Refugee Division noted that, with the exception of a few incidents of harassment by police officers that fell well short of persecution, the applicant stated that

during the years 1990-1995 he was not bothered by the police. It also relied on documentary evidence to the effect that the climate in Mexico for homosexuals has dramatically improved in recent years, as indicated, for example, by Gay Pride marches that have been held in major cities without incident, and by the more open attitude to homosexuals on the part of leading politicians.

8 Nonetheless, as counsel for the applicant pointed out, and as the Refugee Division acknowledged, there was also evidence that the attitude of many police officers had not changed and that individual police officers continued to persecute people by reason of their sexual orientation. However, although not explicitly noted by the Refugee Division, the documentary evidence also suggested that those most at risk on this ground are male prostitutes and poor people. Gay gynaecologists in Mexico City do not appear to fit the profile of those at high risk of persecution.

9 In my view, it was open to the Refugee Division to conclude, as it did, that on the basis of the above evidence the applicant did not have a well founded fear of persecution by reason of his sexual orientation. And while the Refugee Division did not refer as comprehensively to the documentary evidence as it might have done, perfection is not the standard to be applied on a judicial review of the adequacy of the Refugee Division's reasons or its findings of fact. It is sufficiently clear from the Refugee Division's reasons, given the material that was before it, what were the bases of its material findings of fact.

10 The other aspect of the applicant's claim for refugee status stemmed from an investigation that he had been asked to conduct by the director of the hospital, within two weeks of the applicant's starting his employment there. The investigation started in mid-November 1995 and concerned possible corruption involving hospital staff and insurance companies. The investigation continued into the new year and, according to the applicant, resulted in one of the hospital employees, who may have been implicated in corruption, making trouble for him.

11 In particular, the applicant alleged that the employee in question told others of his sexual orientation, which undermined his authority at the hospital and exposed him to ridicule by members of the staff. In addition, and more seriously, he testified that she had arranged for police officers to intimidate him. He stated that on two occasions he was seized by men, whom he believed to be police officers, who beat him and threatened to kill him if he exposed corruption at the hospital. He also testified that during these incidents the officers referred in a derogatory manner to his sexual orientation.

12 The Refugee Division regarded this evidence as the basis on which the applicant alleged that he had a well founded fear of persecution by reason of his political opinion. However, it concluded that the employee whom the applicant testified had engaged the assistance of police officers in order to intimidate him, so that he would not bring to light evidence of corruption, was motivated by a personal vendetta, and thus her conduct "constituted criminal activity, not persecution": *Ivero v. Ministry of Citizenship and Immigration (FCTD; IMM-511-96; November 22, 1996)*. There was, in other words, no adequate nexus between the alleged persecutory conduct by the police officers and

any of the grounds of persecution contained in the definition of a refugee in the Convention.

13 Counsel for the applicant submitted that, since the documentary evidence showed that corruption is prevalent in Mexico, it was plausible to conclude that the applicant was being persecuted for exposing corruption at the hospital, a public institution. He also referred to documentary evidence that spoke of the complicity of officials of the governing party and police officers in corruption, and the persecution of "whistle blowers".

14 The difficulty with the applicant's submission on this point is that the existence of a nexus between persecutory conduct and a Convention ground is a question of fact, with which the Court may not interfere unless it was made in a perverse or capricious manner or without regard to the material before the Refugee Division: *Orellana v. Minister of Citizenship and Immigration* (FCTD; IMM-3520-94; September 19, 1995). In my view, on the basis of the evidence before it, it was open to the Refugee Division to find that no nexus had been established between the police abuse and any political opinion attributed to the applicant.

15 Finally, counsel argued that the fact that the applicant had attracted the attention of police officers as a result of the hospital investigation exposed him to a risk of persecution by police officers on the ground of sexual orientation that exceeded the risk faced by other gay men in Mexico City. In other words, the applicant's unpopular "political activity" in exposing corruption increased the likelihood that he would be persecuted by reason of his sexual orientation.

16 I can see how in principle this could happen; however, on the evidence before the Refugee Division I am unable to conclude that its finding that the applicant had not established a well founded fear of persecution by reason of his sexual orientation was perverse or capricious or made without regard to the material before it.

17 For these reasons, this application for judicial review is dismissed.

EVANS J.