

Date: 20020319

Docket: IMM-2582-01

TORONTO, ONTARIO, THIS 19<sup>TH</sup> DAY OF MARCH, 2002

Present: THE HONOURABLE MR. JUSTICE McKEOWN

BETWEEN:

EDNA YAMILE GUERRERO CABARCAS

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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Respondent

ORDER

The application for judicial review is dismissed.

"W. P. McKeown"

JUDGE

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Neutral citation: 2002 FCT 297

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## REASONS FOR ORDER

### McKEOWN J.

The applicant seeks judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the "Board") dated April 24, 2001, wherein the Board determined that the applicant is not a Convention Refugee.

The issues are:

- 1) whether the Board erred in failing to consider the mixed motivation of the alleged persecutors; and
- 2) whether the Board erred in making erroneous findings of fact with respect to the lack of political activity.

The applicant claimed to fear persecution from the FARC guerilla group and from the estranged wife of her former boyfriend. The Board accepted that the applicant was harassed by the estranged wife of her former boyfriend. The Board also stated that:

... we do not find credible the claimant's evidence that she was also targeted by the FARC for her perceived political opinion.

The applicant relies on *Shahiraj v. Canada (MCI)*, [2001] F.C.J. 734 for her submission that a mixed motivation of the persecutor, which includes a motive based on a Convention ground, will be sufficient for Convention purposes. The applicant points out that submissions were made to the Board that they should consider mixed motivation and this was even before the *Shahiraj* case was decided. However, *Shahiraj* relies on a Federal Court of Appeal case, *Zhu v. MEI*, [1994] F.C.J. No. 80 (C.A.), where the Board decided the claimant's acts in that case were motivated more by friendship than by political motivation and so no nexus was established. In the case before me, the Board did not compare the two motivations and decide there was no nexus. Rather, it rejected the applicant's evidence that she is targeted by FARC because of her perceived political opinion. This is different from both the *Zhu* case and the *Shahiraj* case where the Board accepted that there was both a criminal motivation and political motivation involved.

The applicant submits that in discussing the facts, the Board appears to have accepted the evidence with regard to attacks by members of the FARC, but did not consider that there was political motivation in addition to the personal motivation. However, I note that the Board uses the word "alleged" in discussing whether the men who attacked the applicant and her sister were members of FARC. The Board also referred to the fact that the estranged wife of the applicant's former boyfriend had family members in FARC. The Board noted that the

applicant's difficulties were only linked to the estranged wife because of the applicant's affair with her husband.

In my view the Board did not err in failing to consider the mixed motivation of the persecutors in this case. While the law is clear that mixed motivation is sufficient if the motivation in part is linked to a Convention ground, in this case the Board thoroughly reviewed the evidence and reasonably concluded that the motivation was solely due to the personal vendetta of the wife. The evidence indicates that the former boyfriend himself admitted that his estranged wife had close family ties to members of FARC and that she had asked them to harass the applicant. I also find that it was open to the Board to find that FARC would not have been harassing the applicant because of her work as a bureaucrat answering a phone, or because she did some low-profile work with a political candidate. It would have been helpful if the Board had mentioned that they had considered the mixed motivation argument but that it was not applicable because of their findings. However, I do not think that the omission of such a statement means that the Board did not look at the possibility of mixed motivation being involved in the matter before them.

The applicant also submitted that the Board made several erroneous findings of fact. The Board made an erroneous finding of fact when it stated:

When asked if she spoke publicly at political meetings, the claimant replied that [the former boyfriend] and the local party contacts did. She then added that she talked to the youth, but this was not done publicly.

The transcripts clearly indicate that the applicant would speak to youth groups at the public meetings. There was nothing in the transcript that would indicate this was not done publicly.

The Board also misstated the extent of the social activism of the applicant when it stated at page 6:

The claimant has no history of social activism that will cause the FARC to persecute her. ... After this university activism, the only community involvement she had in Colombia was involvement in the campaign for [the former boyfriend]. There is no evidence that any of the other nine members of the steering committee were targeted by the FARC for their political opinion.

The applicant testified that her activities of trying to obtain legal assistance and medical and dental assistance to those parts of the city's population who could not afford such services continued after the election campaign.

In my view these two errors by the Board are not sufficient to return this matter to a differently constituted Board. The Board's other findings were open to it on the evidence and it was reasonable for the Board to make negative findings based on inconsistent answers with respect to whether other members of the group were having problems. The applicant testified that the group received a couple of calls but then said that only she and her sister and former boyfriend were targeted. She originally stated this was because of their community activities

but then changed her answer to say this was because of her relationship with the former boyfriend. The Board also pointed out she was not the only campaign worker who provided legal advice to the poor and when she was confronted with this information and asked why she was targeted she admitted it was because of her relationship with the former boyfriend. The Board makes a clear finding that the only person responsible for all the harassment and persecution she experienced in Colombia was the estranged wife and the reason for this harassment and persecution was "her desire to separate the claimant from" the former boyfriend. The claimant herself confirmed this in her personal information form narrative:

When I got back to Bogota and told [the former boyfriend] he had spoken with his wife and had learned from her that she was the one to be involved in all this. She said to him that she had warned me to keep away from him but because I did not comply with her request she did not care if she hurt my sister since she was always covering up for me.

Accordingly, I find there was no reversible error in the two erroneous findings of fact by the Board. The application for judicial review is dismissed. The applicant submitted a certified question with respect to mixed motivation but it is not dispositive of this case because on the facts there was no mixed motivation.

"W. P. McKeown"

JUDGE

TORONTO, ONTARIO

March 19, 2002

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

COURT NO: IMM-2582-01

STYLE OF CAUSE: EDNA YAMILE GUERRERO CABARCAS

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND

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DATE OF HEARING: WEDNESDAY, MARCH 13, 2002

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: McKEOWN J.

DATED: TUESDAY, MARCH 19, 2002

**APPEARANCES BY:** Mr. Micheal Crane

For the Applicant

Mr. John Loncar

For the Respondent

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Morris Rosenberg

Deputy Attorney General of Canada

For the Respondent

**FEDERAL COURT OF CANADA**

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