

REASONS FOR JUDGMENT

ROULEAU. J

The applicant, a sixty-four year old citizen of Nicaragua, seeks judicial review of a decision by the Convention Refugee Determination Division of the Immigration and Refugee Board dated January 19, 1994 wherein it was determined that she was not a Convention refugee.

The applicant, born on February 22, 1930, in Managua, Nicaragua, seeks to be declared a Convention refugee because of a well-founded fear of persecution by reason of her political opinion and membership in a particular social group.

The applicant's fears are connected with her daughter's previous problems in Nicaragua with the Sandinistas. She fled to Canada after declining to participate in popular militias when asked by the Sandinista government. The government passed a law that all deserters to the cause would have their properties confiscated and about six months after her daughter left in November 1988, the daughter's house in which the applicant lived was confiscated, forcing her to move from inn to inn and live in difficult circumstances. She eventually moved in with a friend in Managua who subsequently moved to Costa Rica.

The applicant submits that since she depends on her landed Canadian daughter for emotional and economic support, going back to Nicaragua would be very difficult for her because she has no home to return to and there are no relatives or family to take care of her even though the applicant has a sister in Nicaragua; she explained that she had not spoken to her since 1989. Moreover, if she returned, there would be war again; she would have to endure hunger and the Sandinistas would cause problems; finally, she would be stigmatized since it would be known that she had left the country seeking refugee status elsewhere.

The applicant argues that the Panel erred in law in viewing the harm suffered by her through the confiscation of the family home as a single episode which had occurred in the past and was not characterized by the persistence that is generally a requisite element of persecution. It was argued that the Panel's determination that the right under attack is a fourth level right, as described by James C. Hathaway in the Law of Refugee Status. Toronto: Butterworths, 1991, was erroneous; rather, the right at issue in this case is the right to an adequate standard of living. It is a third level right as set out in the international Covenant of Economic Social and Cultural Rights, the violation of which will, in extreme circumstances and as those experienced by this application, constitute persecution; that the confiscation of the family home did, for all intents and purposes, deprive a woman who was almost sixty years of age, of the essential right to shelter.

This deprivation subjected the applicant to cruel and degrading treatment amounting to persecution, and fundamentally violated her integrity and human dignity; that the ongoing effect of the original act of confiscation was sufficient to establish persecution. Consequently, the Panel, after having accepted the evidence that the applicant has no one to turn to for help in Nicaragua, and in light of the documentary evidence of current conditions in Nicaragua including pervasive conflicts over land and property, it could not reasonably go on to find that the applicant is not at serious risk of ongoing harm and continued violation of her human dignity and integrity if she is forced to return.

The respondent submits that on the evidence advanced by the applicant and in light of the governing jurisprudence clarifying the meaning of "persecution", the applicant has fallen far short of showing a reasonable chance of persecution on her return to Nicaragua.

Since the Convention refugee test is prospective and forward-looking in nature and that the findings of the Panel must be considered in light of the definition of "persecution" enunciated by this Court, the allegations of the applicant in the present case, revealing personal inconvenience and harassment, do not bring her within the definition and the panel was quite correct in so finding.

Further, in *Mojgan Sagharich v. M. E. I.*, A-169-91, August 5, 1993 (F. C. A), the Federal Court of Appeal has enunciated the following proposition on the "discrimination versus persecution" issue;

(i) Discrimination will only amount to persecution where it is "serious or systematic enough to be characterized as persecution".

(ii) As the dividing line between discrimination and persecution is difficult to establish, the Court will not intervene unless the conclusion reached "appears to be capricious or unreasonable".

The main issue is whether the confiscation of the applicant's house and its impact on her amount to persecution. The Board wrote:

The claimant's problem with the Sandinistas centred solely around the loss of her house and the ensuing disruption in the claimant's life.

Having considered the foregoing the Panel finds that the harm feared by the claimant does not constitute persecution, even viewed on a cumulative basis. The Sandinistas confiscated the claimant's family home and she had some difficulty in finding accommodation until she went to live with a friend. There was no evidence that the Sandinistas prevented her from obtaining other housing for a Convention reason or otherwise although it was difficult for the claimant to secure adequate shelter because of her personal circumstances unrelated to the Convention refugee definition. The evidence indicates the claimant did receive adequate medical treatment in Nicaragua.

It is for me to determine if the decision of the Board stating that the applicant failed to demonstrate a "well-founded fear of persecution" pursuant to s. 2(1) of the Immigration Act was reasonably drawn from the evidence.

According to *Rajudeen v. M. E. I.*, (1984). N. R. 129:

This Court as well as the Supreme Court of Canada has made reference in a number of cases to the subjective and objective components necessary to satisfy the definition of Convention refugee. The subjective component relates to the existence of the fear of persecution in the mind of the refugee. The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis of that fear.

(emphasis added)

in the present case, I have not been persuaded that the Board did err in deciding as it did. Even though the applicant might suffer from not having a home to go back to in Nicaragua, it does not amount to persecution as defined by the jurisprudence. I agree with the Panel when it stated that:

The panel concurs with Professor James Hathaway's assertion that protection from property confiscation is a fourth level right and although recognized in the Universal Declaration of Human Rights is:

□ not codified in either of the binding covenants on human rights and may be thus outside the scene of a state's basic duty of protection. The right to own and be free from arbitrary deprivation of property and the right to be protected against unemployment are examples of rights which are included in this group, and which will not ordinarily suffice in and of themselves as the foundation for a claim of failure of state protection □ Similarly a claim grounded solely on the actual or anticipated confiscation of property or damage to goods, without any attendant risk to personal security or basic livelihood, is not of sufficient gravity to warrant the granting of refugee status.

(emphasis added)

Though counsel argues that it should have been a third level of human rights abuse and should support a finding of persecution as determined by Professor Hathaway, it was open to the Board to make such a definition after its very careful and sympathetic analysis of the evidence.

This is judicial review and counsel suggests that I should analyze all the facts canvassed by the Board and arrive at a different conclusion thus supporting a finding of persecution. This I cannot do unless I can determine that the findings were capricious. In *Sagharich, supra*, the Federal Court of Appeal wrote:

□It remains, however, that, in all cases, it is for the Board to draw the conclusion in a particular factual context by proceeding with a careful analysis of the evidence adduced and a proper balancing of the various elements contained therein, and the intervention of this Court is not warranted unless the conclusion reached appears to be capricious or unreasonable.

The onus still remains with the applicant, and unfortunately though the Board was sympathetic, it was not convinced that the trials and tribulation of the applicant amounted to persecution. I agree.

Accordingly, the application for judicial review is dismissed.

"P. ROULEAU"

JUDGE

OTTAWA, Ontario

December 9, 1994

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.:	IMM-1192-94
STYLE OF CAUSE:	Rosa Etelvina Ramirez v. the Solicitor General of Canada
REASONS FOR ORDER BY:	The Honourable Mr, Justice Rouleau
DATER:	December 9, 1994
REPRESENTATIONS BY:	
Ms. Karin Eisen	For the Applicant
Mr. David Tyndale	For the Respondent
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