

Date: 20050522

Docket: IMM-4775-07

Citation: 2008 FC 651

Toronto, Ontario, May 22, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**SAID ALFONSECA ANDRADE,
XOCHITL TECALCO OLAGUEZ,
ELENA ALFONSECA TECALCO,
LUDWIG ALFONSECA TECALCO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board dismissed the applicants' claim for refugee protection on the basis that adequate state protection was available to them in Mexico.

[2] For the reasons that follow, I find that the Board erred in its state protection analysis, and that its two negative credibility findings were not reasonable. As a consequence, the application for judicial review will be allowed.

I. Background

[3] Said Alfonseca Andrade worked as a financial officer in the administration of the Municipal President of San Juan de Rio, a Ms. Lopez. He alleges that in the course of his employment, he discovered that money earmarked for a road construction project was being diverted to Ms. Lopez' relatives.

[4] The principal applicant feared Ms. Lopez, who was evidently a very influential individual. Not only was she a powerful politician, but her husband had been a senior officer with the federal police.

[5] In order to protect himself in case of an audit or investigation, the principal applicant says that he photocopied documents relating to the diversion of funds from the project. He says that he then tried to resign from his position, but that Ms. Lopez refused to accept his resignation. Shortly thereafter, the principal applicant simply stopped showing up for work.

[6] It is alleged that a few days later, the principal applicant and his wife were involved in a serious car accident, which was allegedly orchestrated by Ms. Lopez. He reported the accident to the police, who took a report. Although the report does record the applicant's suspicion that the "accident" was related to problems at work, it does not mention Ms. Lopez by name. The applicant says that the police refused to write down his suspicion that Ms. Lopez was behind it.

[7] Approximately one week later, the applicant says that the family's home was broken into, and the documents relating to the road construction project were taken. The applicant again went to the state police to report the theft, and the police report makes reference to documents relating to the construction project having been stolen, although once again there is no reference to the applicant's belief that Ms. Lopez was behind the break-in.

[8] The police evidently carried out an investigation into both events. They concluded that the car 'accident' was not an accident at all, and that the car had been deliberately run off the road. No one was ever arrested or charged, however, with respect to either crime, as the police found that there was insufficient evidence available to hold anyone responsible.

[9] The applicants further allege that after the break-in at their home, they moved on several occasions to other cities, but were always found by associates of Ms. Lopez.

[10] The principal applicant claims that corrupt state police officers were covering for Ms. Lopez, and that in light of her continuing influence in Mexico, the family continues to be at risk.

[11] Amongst other things, the Board found that Ms. Lopez was no longer in a position of influence, and that, in any event, adequate state protection was available to the applicants in Mexico.

II. Standard of Review

[12] At issue in this case are the Board's credibility findings and its state protection analysis. Both of these are to be reviewed against the standard of reasonableness: see *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, and *Valdez Mendoza v. Canada (Citizenship and Immigration)*, 2008 FC 387.

[13] As the Supreme Court of Canada recently stated in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, in reviewing a decision against the reasonableness standard, a reviewing court must consider the justification, transparency and intelligibility of the decision-making process. The court must also consider whether the decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and law: see *Dunsmuir* at paragraph 47.

III. Analysis

[14] The Board seemingly accepted most of the applicants' story as true, making only two negative credibility findings. The Board did not accept that the principal applicant told the police that he believed that Ms. Lopez was behind the car accident, as her name did not appear in the police report. The Board also did not accept that Ms. Lopez was no longer in a position of influence, and would still pose a risk to the applicants.

[15] With respect to the first negative credibility finding, the principal applicant testified that he told the police that he thought that Ms. Lopez was behind the car accident, but that the police officer

refused to write her name down, ostensibly because she was a public official and had not been seen at the accident scene. The Board found that this explanation was not satisfactory.

[16] Given that the Board accepted that the principal applicant sought the assistance of the police with respect to the car accident, and that he went as far as telling the police of his belief that the accident related to something going on at his workplace, it does not make sense that he would not have given the police the name of Ms. Lopez, given his belief that she had arranged the incident.

[17] Moreover, in rejecting the principal applicant's explanation as to why her name did not appear on the police report as "not satisfactory", the Board did not appear to have understood that central to the claim was the applicants' belief that corrupt state police officers were conspiring to protect Ms. Lopez.

[18] Also problematic is the Board's finding that Ms. Lopez would no longer have any influence in Mexico, as her husband was no longer a senior police officer, she was no longer the municipal president, and she had been charged with theft.

[19] In this regard, the Board failed to address the evidence that Ms. Lopez continued to be very well connected within her party, that she had a number of relatives who were politicians, and that she continued to wield considerable influence. Moreover, the Board did not address the principal applicant's testimony that Ms. Lopez' husband's retirement from the police had not severed all of his police contacts, and eliminated his influence.

[20] The Board's state protection analysis is similarly flawed. In particular, the vast majority of the Board's analysis is devoted to a consideration of the efforts that have been made to combat corruption within the *federal* police, and the avenues available to those seeking to complain about the activities of the police at the federal level.

[21] This is problematic, in that it is the *state* police who, the applicants say, are working with Ms. Lopez, and who had had denied him protection.

[22] Finally, the Board found that it was possible to complain to federal authorities about public officials, based upon a newspaper report about the federal criminal charges that had been laid against Ms. Lopez. However, this finding appears to have been made without regard to the principal applicant's explanation that Ms. Lopez had been charged with the theft of *federal* funds, which brought the matter within federal jurisdiction, whereas the incidents involving the principal claimant were *state* matters, and thus involved only the state police.

IV. Conclusion

[23] For these reasons, the application for judicial review is allowed.

V. Certification

[24] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4775-07

STYLE OF CAUSE: SAID ALFONSECA ANDRADE, XOCHITL TECALCO
OLAGUEZ, ELENA ALFONSECA TECALCO,
LUDWIG ALFONSECA TECALCO v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 15, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: MAY 22, 2008

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