

Date: 20080528

Docket: IMM-4386-07

Citation: 2008 FC 680

Toronto, Ontario, May 28, 2008

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

**VIRGINIA GONZALEZ CERVANTES
GUSTAVO FABIAN AGAPITO
DINA MILDRED VALLEJO GONZALEZ
PAOLA AIDE FABIAN GONZALEZ
ALEXIS NEFERTITI FABIAN GONZALEZ
ANTONIO GONZALEZ CERVANTES**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants contend that the Refugee Protection Division (the board) unreasonably determined that the Federal District of Mexico City is a viable internal flight alternative (IFA) and that state protection exists there. For the reasons that follow, I conclude that the board's determination was reasonable.

Background

[2] The applicants' claim was based on fear of Efrain Fabian Reyes (the estranged paternal uncle of the male applicant Gustavo Fabian Agapitoa) allegedly charged with criminal offences. The lawyer who prosecuted Reyes is the female applicant's uncle. No threats or problems arose from his prosecution of Reyes.

[3] Shortly after Reyes was charged with fraud, Gustavo Fabian Agapitoa (Gustavo) and Virginia Gonzalez Cervantes (Virginia) began to receive threats, in writing and by telephone. Reyes apparently blamed Gustavo for revealing his hiding place in Guadalajara. Although the threats were reported to the police, names and addresses were requested by the police for the formal complaint.

[4] The applicants claim that they followed up with the police many times and were always told that their complaint was "in process". One day, Gustavo was forced into a car and assaulted by two people. He was told that this "was nothing compared to what would come". Gustavo managed to escape from the car and asked a police officer for help. The officer could do nothing since Gustavo did not have the licence number. The telephone threats continued. The callers stated that wherever the family went, they would be found. The applicants fled to Canada.

The Decision

[5] The board noted a number of credibility concerns. However, it found the determinative issue to be the availability of a viable IFA in Mexico City where adequate state protection is available. It concluded that the applicants had not rebutted the presumption of state protection with clear and convincing evidence.

The Issue

[6] The only issue is whether the board erred in its conclusion on state protection. The other grounds advanced in the written submissions were not relied upon at the hearing.

The Standard of Review

[7] Questions of fact, discretion, policy, and questions where the legal issues are intertwined with the factual issues will attract a standard of review of reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with the existence of justification, transparency and intelligibility within the decision-making process as well as whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9. The parties agree, and I concur, that the adequacy and availability of state protection involves questions of fact and the weighing of evidence intertwined with legal issues and attracts a standard of reasonableness.

Analysis

[8] The applicants do not take issue with the choice of Mexico City as an IFA. It is the finding of state protection that concerns them. Their submission can be succinctly stated. They maintain that the panel ignored the negative evidence relating to the availability of state protection and failed to explain why it preferred the pieces of documentary evidence that it cited. Further, it erred by equating “adequate protection” with the “serious efforts” of the state to provide protection.

[9] The applicants are correct that the board did not specifically refer to the documents relied upon by them when analysing the issue of state protection. However, the fact that a tribunal fails to recite all of the evidence does not mean that the decision is necessarily flawed. There is a presumption that the board has considered all of the evidence. In circumstances where the evidence is contradictory to the board’s conclusion and is central to the claim, failure to acknowledge it may, and often will, constitute reviewable error.

[10] However, that is not the situation here. In *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, Mr. Justice Létourneau discussed the quality of the evidence required to rebut the presumption of state protection. Such evidence must be reliable and probative. Moreover, it must have sufficient probative value to meet the applicable standard of proof. In short, an applicant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate (para. 30).

[11] The documentary evidence paints a mixed picture and the board's decision is concise. However, the difficulty for the applicants is that the documentation relied upon by them, viewed in context, is not probative. The documents are not central to the applicants' claim. They do not relate to the applicants' circumstances or to circumstances analogous to those of the applicants. There is no obligation on the board to refer to documentary evidence that is not probative in relation to the applicants' claims.

[12] The board was aware that there are issues, systemically, with state protection in Mexico, generally, and in Mexico City. It focussed on Mexico City and concluded that it had functioning state protection. The board was aware of the existence of corruption and criminality. It identified the proper test and applied it. Although it referred to the efforts that were being made, the board did not equate "efforts" to adequate protection. In the end, the board simply was not satisfied that the applicants could not relocate to Mexico City and approach the state for protection. The board provided an analysis in support of its determination. I am satisfied that its conclusion falls within a range of reasonable outcomes that were available to it.

[13] Counsel did not suggest a question for certification and none arises.

ORDER

The application for judicial review is dismissed.

"Carolyn Layden-Stevenson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: *VIRGINIA GONZALEZ CERVANTES, GUSTAVO FABIAN AGAPITO, DINA MILDRED VALLEJO GONZALEZ, PAOLA AIDE FABIAN GONZALEZ, ALEXIS NEFERTITI FABIAN GONZALEZ, ANTONIO GONZALEZ CERVANTES v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION*

PLACE OF HEARING: Toronto, Ontario

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REASONS FOR ORDER AND ORDER: LAYDEN-STEVENSON J.

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