

Federal Court



Cour fédérale

Date: 20090521

Docket: IMM-4148-08

Citation: 2009 FC 511

Ottawa, Ontario, this 21st day of May 2009

Present: The Honourable Orville Frenette

BETWEEN:

**JOSE ALFREDO GONZALEZ MENESES,
MANYUSIN IVETTE VILLALOBOS ARELLANO,
JONATHAN IVAN GONZALEZ VILLALOBOS,
STEPHANIA ANDREA GONZALEZ VILLALOBOS**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), rendered on August 21, 2008,

determining that the applicants were not Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the Act.

I. The Facts

[2] The principal applicant, Jose Alfredo Gonzalez Meneses, his wife and two children are Mexican citizens. They resided in the city of Puebla, Mexico. They claimed refugee protection under sections 96 and 97 of the Act, alleging they had received threats from unidentified individuals who threatened to kidnap the principal applicant's wife and children unless he paid them 80,000 Mexican pesos by the end of August 2007.

[3] The principal applicant claimed he had begun receiving threatening telephone calls which he reported to the police in Puebla by telephone but received no response. He alleges that on April 25, 2007, three unknown individuals approached him near his residence and threatened to kidnap his children if he did not come up with the money by the end of the month. The next day he went to the Public Ministry office to make a report about the incident. About three weeks later, while attending an emergency at the Public Ministry, he saw the same man who had approached him on April 25, 2007, wearing a black safety vest recognizing him (or almost recognizing him) as a Judicial Police officer. He feared the police. He discussed these events with his wife and they decided to leave Mexico.

[4] The applicants came to Canada on August 21, 2007 and claimed refugee protection at the airport the same day.

II. The Impugned Decision

[5] The Board, in its 14-page decision, elaborated the facts and the reasons why the applicants' alleged fears were not based upon persuasive evidence that members of the Judicial Police were involved in the threats of kidnapping and money demands. The presumption of state protection had not been rebutted.

[6] The Board concluded that if such threats were made, it was the result of being targets or victims of crime, which could not be linked to any Convention ground. The Board considered the documentation filed, including that there was evidence of corruption and bribery by officials and police or security forces but that since 2000 the Mexican State had made significant efforts to eradicate corruption and criminality. The Board found Mexico to be a democratic state, even if not a perfect one, and that it had effective state protection. However the applicants had not rebutted the presumption of state protection and had not taken reasonable steps to obtain state protection.

III. The Issue

[7] Was the Board's decision reasonable?

IV. The Legislation

[8] Sections 96 and 97 of the Act read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

V. The Standard of Review

[9] The jurisprudence has established that the standard of review for the assessment of facts or mixed facts and law is one of reasonableness and, on questions of law the standard is correctness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). Deference must be given to decisions in findings of fact (*Minister of Citizenship and Immigration v. Khosa*, 2009 SCC 12). Breaches of the rules of natural justice or procedural fairness are also governed by the standard of review of correctness (*Juste v. Minister of Citizenship and Immigration*, 2008 FC 670, paragraphs 23 and 24; *Bielecki v. Minister of Citizenship and Immigration*, 2008 FC 442, paragraph 28; *Hasan v. Minister of Citizenship and Immigration*, 2008 FC 1069, paragraph 8).

VI. Presumption of State Protection

[10] The Federal Court of Appeal in *Canada (M.C.I.) v. Flores Carrillo*, [2008] 4 F.C.R. 636, in a case involving a claim for refugee protection from a Mexican citizen, concluded that such claim failed because Carrillo failed to rebut the presumption of state protection “with clear and convincing evidence within the preponderance of probability category”.

VII. Analysis

A. *Lack of Nexus*

[11] As the Board has noted in its reasons, this Court has clearly held that victims of crime, corruption or vendettas generally fail to establish a link between their fear of persecution and one of the Convention grounds in the definition of Convention refugee.

[12] In the present case, the applicants claim that their lives and safety are threatened by three unidentified individuals who they allege are Judicial Police officers. The Board therefore concluded that they were victims of crime and consequently did not meet the Convention refugee definition.

[13] This Court has held that victims of crime do not necessarily have a nexus to one of the Convention grounds (*Bacchus v. Minister of Citizenship and Immigration*, 2004 FC 821; see also *Rawji v. Canada (Minister of Employment and Immigration)* (1994), 87 F.T.R. 166; *Mousavi-Samani v. Canada (Minister of Citizenship and Immigration)* (1997), 74 A.C.W.S. (3d) 655).

[14] In Justice Michel Beaudry's recent decision *Castro v. Minister of Citizenship and Immigration*, 2008 FC 1282, he notes:

[25] It is trite law that for an applicant to succeed on a refugee claim under section 96 of *IRPA*, the claimant cannot only show that they have suffered or will suffer persecution in their country of origin. This persecution must also be linked to one of the Convention grounds set out in the definition of refugee pursuant to subsection 2(1) of the Act. As explained in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 61:

. . . the drafters of the Convention limited the included bases for a well-founded fear of persecution to "race, religion, nationality, membership in a

particular social group or political opinion”. Although the delegates inserted the social group category in order to cover any possible lacuna left by the other four groups, this does not necessarily lead to the conclusion that any association bound by some common thread is included. If this were the case, the enumeration of these bases would have been superfluous; the definition of “refugee” could have been limited to individuals who have a well-founded fear of persecution without more. The drafters’ decision to list these bases was intended to function as another built-in limitation to the obligations of signatory states. . . .

[26] The Applicant claims he has a well-founded fear of a group of individuals involved in money laundering on the basis of being a victim of crime. This does not fall under one of the enumerated categories of the Convention refugee definition and as such, the Board’s decision in this regard is reasonable.

[15] Based on the above, the Board’s decision regarding the applicants’ lack of nexus was reasonable.

B. State Protection

[16] The principal applicant bases most of his submissions attacking the Board’s decision on state protection. He alleges that documentary evidence shows that 70 percent of kidnappings in Mexico involve policemen or former policemen. He submits that the majority of the population has no faith in the state’s enforcement institutions (police and courts).

[17] The principal applicant argues the Board failed to justify its decision on this point. He also claims the Board ignored some of his evidence.

[18] The respondent answers that the applicants made only one effort to obtain police protection by a telephone call with no follow-up. The principal applicant did verify one week later but was told the investigation was ongoing. He states that the Board considered all of the evidence.

[19] The evidence shows that the principal applicant, instead of following-up to establish the identity of the individuals or seeking further state protection or moving to another area of Mexico, decided to come to Canada. The onus of rebutting the presumption of state protection is upon the applicant. Furthermore, the more democratic the state's institution, the more the claimant must do to exhaust all courses of action, available to him or to her (*Hinzman v. Minister of Citizenship and Immigration*, 2007 FCA 171, at paragraphs 56 and 57; *Nava v. Minister of Citizenship and Immigration*, 2008 FC 706, at paragraphs 19 and 20; *Granados v. Minister of Citizenship and Immigration*, 2009 FC 210, at paragraph 19).

[20] An analysis of the Board's decision shows that the applicants have not rebutted the presumption of adequate state protection or internal flight alternative, based on a reasonable interpretation of the facts satisfying the requirements of *Dunsmuir, supra*, and the case law (see *Carillo, supra* and *Suarez v. Minister of Citizenship and Immigration*, 2009 FC 227).

[21] The applicants rely upon the decision in *Capitaine v. Minister of Citizenship and Immigration*, 2008 FC 98; however a reading of that case reveals that the applicants in that case made three serious attempts at finding an internal flight alternative. They also requested police assistance in the past, without success, concerning three robberies and previous kidnappings. Therefore the facts are very different than the ones in this case and call for a different conclusion.

VIII. Conclusion

[22] For all the above reasons, the applicants have not persuaded me that the Board committed any reasonable error. This application for judicial review will therefore be dismissed.

JUDGMENT

This Court orders that:

The application for judicial review of the Immigration and Refugee Board's decision of August 21, 2008, is dismissed.

No questions are to be certified.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4148-08

STYLE OF CAUSE: JOSE ALFREDO GONZALEZ MENESES et al. v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 27, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** The Honourable Orville Frenette, Deputy Judge

DATED: May 21, 2009

APPEARANCES:

Mr. B. J. Maierovits FOR THE APPLICANTS

Ms. N. Muhammed-Ally FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joel Etienne Law Firm FOR THE APPLICANTS
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada