

Federal Court



Cour fédérale

**Date: 20090924**

**Docket: IMM-969-09**

**Citation: 2009 FC 962**

**Ottawa, Ontario, September 24, 2009**

**PRESENT: The Honourable Mr. Justice Mainville**

**BETWEEN:**

**SEVERO RICARDO SOTO GALICIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**Background**

[1] The Applicant is a citizen of Mexico. He arrived in Canada on September 17, 2007 and shortly thereafter made a claim as a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (the “Act”). The principal basis for the Applicant’s claim is that he is fearful for his life in light of his knowledge concerning weapons traffic activities carried out by his former employer and a corrupt police official in Mexico.

[2] A hearing to adjudicate this claim was held on February 2, 2009 before a Panel of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Panel”). The claim was rejected in a decision of the Panel dated February 6, 2009 (the “Decision”).

[3] The Applicant submitted to this Court an Application for leave and for judicial review of this Decision, and leave was granted by Justice Mandamin on June 24, 2009.

[4] A hearing on this judicial review was held before me in Toronto on September 22, 2009.

### **The Decision under Review**

[5] In its Decision, the Panel reviews the claims of the Applicant, which are that he worked as a sales manager in a company in Mexico City and eventually became aware in June of 2007 that this company was engaged in an arms traffic operation. The Applicant related this information to the police, only to realize later that one of the senior officers of the police to which he complained was involved in this operation with his employer. He also claims he was abducted and threatened on August 15, 2007, and that he made a complaint to the police about this.

[6] The Applicant also claims that his employer further threatened him if he did not keep quiet. He also claims to have made an additional complaint to the police about this. The Applicant soon after decided to leave his employer and flee to Chihuahua to live with one of his friends. While in Chihuahua, he claims he was attacked by two men acting on behalf of his former employer and the

senior police officer involved in the arms traffic operations. They severely beat him and he had to be hospitalized for four days as a result. He then decided to flee to Canada.

[7] The Panel concluded that the Applicant did not have a well-grounded fear of persecution. The Panel concluded that the Applicant had not been attacked in Chihuahua by men acting for his former employer, but by common criminals. The Panel concluded that his former employer had no interest in pursuing the Applicant and therefore did not find he had a well-founded fear of persecution at the hands of his former employer and the employer's accomplice in the police.

[8] In a lengthy review of the status of state protection in Mexico, the Panel also concluded that adequate state protection existed in Mexico for individuals like the Applicant.

[9] Finally, the Panel concluded that the Applicant had an internal flight alternative in Mexico, specifically in Chihuahua. This conclusion flowed from the Panel's determination of the Applicant's credibility. Indeed the Panel did not believe the testimony of the Applicant that the individuals who had attacked him in Chihuahua were acting for his former employer.

[10] Thus the Panel concluded that the Applicant was neither a Convention refugee nor a person in need of protection under the meaning of the Act.

### **Position of the Applicant**

[11] The Applicant recognized that the Decision of the Panel was largely based on issues of credibility; he nevertheless noted that the Panel had made findings of fact that contradicted the evidence presented.

[12] In particular, the Panel found that the Applicant had failed to submit a medical report concerning his hospitalization in Chihuahua and referred to the Applicant's testimony concerning attempts by the Applicant to secure this report through his mother. In fact, ample medical evidence had been presented to the Panel on the hospitalization of the Applicant, and no mention of the Applicant's mother in regard to this matter can be found in the record.

[13] In addition, counsel for the Applicant disputed the Panel's finding on the availability of state protection. Counsel noted that various reports came to different conclusions in this regard, and the Panel only relied on those reports that concluded that state protection was available, and thus ignored the other contrary reports. The Panel offered no explanation as to why it selected certain reports and ignored others.

[14] Further, counsel for the Applicant noted that in its Decision, the Panel relied extensively on the availability of the complaint procedure before the Mexican Human Rights Commission. Yet the documentation relied on by the Panel stated that this complaint procedure was not available in regard to members of the Federal Judicial Branch to which one of the Applicant's persecutors belonged.

### **Position of the Respondent**

[15] The Respondent recognized that the Panel erred in regard to the medical evidence, which was clearly part of the record before it.

[16] However, counsel for the Respondent took the position that the Panel's Decision did not turn exclusively on credibility or evidentiary issues related to the Applicant's narrative, but also extended to determinations concerning the availability of state protection and of an internal flight alternative for the Applicant. Consequently even if this Court found that the Panel's assessment of the Applicant's evidence and credibility was deficient, this did not affect the Panel's finding on the availability of both state protection and of an internal flight alternative.

[17] Concerning the issue of state protection, counsel for the Respondent noted that the Applicant had only made one or two formal complaints to the police concerning the harassment from his employer and his accomplice in the police. Other police reports made by the Applicant were either unrelated to this or not pursued by the Applicant. Further, the Applicant admitted in his testimony before the Panel that not all police officers in Mexico were corrupt, and consequently he should have sought assistance from various agencies in Mexico rather than fleeing to Canada.

[18] Furthermore, the Panel recognized that problems existed in Mexico in regard to police corruption, but also concluded that these were being addressed by the Mexican authorities. It was not necessary in this context for the Panel to review all reports on Mexico and to explain why it was relying on one rather than another as suggested by the Applicant's counsel. The Panel noted the

issues and made a conclusion on the matter based on its assessment of the evidence. Consequently no reviewable error existed.

### **Analysis**

[19] I find that the Panel made determinant errors in its Decision. This is not a case where the weight given to the evidence is at stake. Nor is it a case where evidence was considered but not mentioned in the reasons for decision. Rather this is a case in which the Panel simply did not examine the record carefully and made capricious and fanciful conclusions of facts as a result thereof. These capricious findings of facts are such as to bring into discredit the entire assessment by the Panel of the evidence and of the Applicant's credibility. Furthermore, as noted below, these capricious findings also affect the conclusions of the Panel in regard to the internal flight alternative.

[20] At the outset of its Decision, the Panel questions the Applicant's narrative on the basis that he did not provide any medical evidence related to his injuries following the attack in Chihuahua:

At the hearing the claimant did not provide the medical report to establish that he was beaten and hospitalised in Chihuahua. He indicated that his mother had sent him the report but was lost in mail. The claimant had ample time, after filing his Personal Information Form (PIF), to obtain a copy of the medical report allegedly lost in the mail. His mother would have been able to send him a copy since she was able to obtain the report initially. There is no evidence to suggest that his mother made any attempt to seek another report from the hospital he was allegedly admitted to. In the least, he could have asked his mother to provide an affidavit to establish that she had sent the hospital report which was lost in the mail. The claimant has the onus to establish his claim. (Decision, pages 2-3)

[21] This whole statement is simply absurd. Not only was a very detailed medical report from a Dr. Ramon Gonzalez Arellano submitted to the Panel with a certified English translation (Tribunal Record, pages 252-256), but so were drug prescriptions (Tribunal Record, pages 267-268), blood analysis results (Tribunal Record, pages 269-270) and urine analysis results (Tribunal Record, pages 271-272).

[22] Moreover, nowhere in the record can any reference be found to the Applicant's mother seeking medical reports or of documents lost in the mail. On the contrary the transcript of the hearing shows that the Applicant testified that his mother was living in Mexico City and was elderly and somewhat senile (Tribunal Record, pages 334 and 346-347).

[23] This clearly taints the Decision. One cannot but infer that the Panel proceeded to discredit the entire testimony on the Applicant based on these fanciful findings.

[24] Furthermore, since the Panel's determination in regard to an internal flight alternative was entirely dependent on its finding that the Applicant was not credible when he alleged that he was being pursued by his former employer, and since this credibility determination was itself made taking into account a seriously flawed and fanciful analysis, I cannot accept that the Panel's determination in this regard is reasonable.

[25] Though I recognize that the Panel's credibility determinations do not necessarily affect the analysis of the Panel on the availability of state protection, they certainly colour this analysis. This is

particularly so in light of the Applicant's claim that one of the agents of persecution was an officer of the Federal Judicial Branch. The Panel took great care to discuss a potential complaint by the Applicant to the Mexican Human Rights Commission, yet as counsel for the Applicant has aptly noted, the documentation in the record seems to indicate that this Branch is outside the jurisdiction of this Commission. Consequently I do not believe the Decision can be maintained on the sole basis of the determination of the availability of state protection, as counsel for the Minister has invited me to do.

[26] The determination of claims regarding refugees and persons in need of protection literally concern matters of persecution, of danger of torture, of risk to life or of risk of cruel and unusual treatment or punishment. These very serious issues must be determined in a fair and equitable manner based on the evidence presented. Serious mistakes of the nature of those found here are simply not acceptable. Faced with such a deficient Decision, the Court has little choice but to quash it: *Peng v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 119, 19 Imm. L.R.(2d) 220; *Kithome v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1995] F.C.J. No. 122, 52 A.C.W.S. (3d) 1337; *Saleem v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1383, 66 A.C.W.S. (3d) 944.

## **Conclusion**

[27] Consequently the application for judicial review is granted.



**Certification**

[28] No certified question was proposed and none is warranted in this case.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is allowed and the matter is referred to a different panel of the Refugee Protection Division of the Immigration and Refugee Board of Canada for a new hearing and for redetermination.

"Robert M. Mainville"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-969-09

**STYLE OF CAUSE:** SEVERO RICARDO SOTO GALICIA v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 22, 2009

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

**DATED:** September 24, 2009

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