

Date: 20090702

Docket: IMM-2557-09

Citation: 2009 FC 685

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 2, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**MARIA ISABEL POZOS MARTINEZ
SERGIO OMAR HERNANDEZ POZOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The principal applicant Maria Isabel Pozos Martinez, is a citizen of Mexico. She claimed refugee protection a few months after arriving in Canada in 2003. Her application was dismissed on April 21, 1998, following a hearing before the Immigration and Refugee board (IRB) in 2007.

[2] An application for leave and for judicial review was filed against the decision, but that application was dismissed. There was also an application for a pre-removal risk assessment (PRAR) with new evidence that was dismissed.

[3] Ms. Pozos Martinez and her son are now subject to deportation to their country of origin, despite the fact that there is evidence of danger for both following an in-depth review by the Court.

II. Facts

[4] This is a particular case based on very specific facts that are substantial based on a review of the evidence that was not analyzed and that was even set aside due to a series of technical misunderstandings.

[5] Ms. Pozos Martinez was born on December 26, 1964 in the city of Cordoba, in the Mexican state of Veracruz. She claimed refugee protection in Canada due to a well-founded fear of persecution based on her membership in a specific social group, namely women who were victims of spousal abuse in Mexico, and the fact that her spouse is a member of the judicial police in Mexico.

[6] Ms. Pozos Martinez fears being persecuted in her country of origin by Armando Salina Vera, a judicial police officer in Mexico who was her boyfriend. She had a romantic relationship with him from 1998 to 2000, but tried to end that relationship because he became very violent

toward her. She was able to leave him in about mid-2000, but he continued harassing her until 2006, to the extent that her life was in danger.

[7] After a particularly violence incident in November 2006, she filed a complaint against him. Ms. Pozos Martinez filed a complaint with the municipal authorities in her city and her situation received local television coverage. Her distress is known to people in her city and she has evidence of it in her PRRA. She fled to Canada with her son to save her life and she also fears for the life of her son, who is also threatened by the same person.

III. Issue

[8] Have the applicants shown the existence of a serious issue and irreparable harm and that the balance of convenience is in their favour?

IV. Analysis

[9] The applicants must meet the conditions in the three-part test set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (FCA). The three conditions must be met, meaning that failure to meet any one of them would be fatal.

A. Serious issue

[10] Ms. Pozos Martinez and her son risk being deported to Mexico. If Ms. Pozos Martinez is deported to Mexico, she faces a high risk of torture and death. Armando Salina Vera is still looking for her and still threatens her. He is a member of the judicial police and therefore has a privileged position within the Mexican administration.

[11] A letter from the Movement Against Rape and Incest in the record support Ms. Pozos Martinez, clearly indicating the impunity that exists in Mexico in matters of spousal abuse and women.

[12] Two years ago, the *General Law on Women's Access to a Life Free of Violence* came into effect. "Amnesty International" notes that that law has had no impact to date in most of Mexico's 32 states. That law falls under civil law, which is a state jurisdiction. According to "Amnesty International", as reported in the letter from the Movement Against Rape and Incest, nearly one quarter of Mexican women are victims of sexual or physical violence. That is largely due to the impunity enjoyed by the authors of such violence. When complaints are filed, few legal proceedings are launched due to the fear experienced by the women.

[13] The appropriate measures needed to prevent and punish acts of violence against women are not implemented. In a report cited by the Movement Against Rape and Incest, Human Rights Watch refers to a [translation] "total and widespread failure of the Mexican justice system regarding the implementation of effective solutions to the serious problem of domestic and sexual violence, including incest and spousal rape".

B. Irreparable harm

[14] The life of Ms. Pozos Martinez seems to be in danger. She has suffered very serious sexual and physical abuse in the past and has even lost a child. She has been the victim of systemic spousal abuse and is still threatened by her former spouse, a member of the judicial police in Mexico. If Ms. Pozos Martinez were deported to her country of origin, she risks being exposed to torture and even death.

[15] That danger to the applicants' lives as victims of domestic abuse is strongly supported by reports regarding current conditions. Ms. Pozos Martinez's former common-law spouse also enjoys a privileged position as a member of the judicial police in his country.

[16] Ms. Pozos Martinez risk torture and death if she is deported to her country of origin and there would be irreparable harm in this case.

C. Balance of convenience

[17] A stay would allow Ms. Pozos Martinez to remain in Canada while the court examines the facts presented in support of the application for leave and for judicial review. Ms. Pozos Martinez fears for her safety in Mexico and it would be precarious to remove the applicant and her son without her case being examined by the Federal Court.

[18] In light of the above, following a careful review, the motion record and the documents submitted in support of the application have convinced the Court that a serious issue has been raised that merits review, also given the possibility of irreparable harm, and the balance of convenience is in favour of issuing a stay.

V. Conclusion

[19] For all these reasons, in this particular case, following a positive assessment of the three criteria in the *Toth* test, above, the motion for a stay filed by the applicants is allowed.

JUDGMENT

THE COURT ORDERS that, for all these reasons, in this particular case, following a positive assessment of the three criteria in the *Toth* test, above, the motion for a stay filed by the applicants is allowed.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2775-09

STYLE OF CAUSE: MARIA ISABEL POZOS MARTINEZ
SERGIO OMAR HERNANDEZ POZOS
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND THE MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 29, 2009

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

DATED: July 2, 2009

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANTS

Émilie Tremblay FOR THE RESPONDENTS

SOLICITORS OF RECORD:

ISTVANFFY LAW OFFICE FOR THE APPLICANTS
Montréal, Quebec

JOHN H. SIMS, QC FOR THE RESPONDENTS
Deputy Attorney General of Canada