

Federal Court



Cour fédérale

**Date: 20100910**

**Docket: IMM-5-10**

**Citation: 2010 FC 890**

**Ottawa, Ontario, September 10, 2010**

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

**BETWEEN:**

**JAZMIN ALEJANDRA CORREA JUAREZ  
MERCEDES MONSERRATH CHAVEZ CORREA  
VALERIA GORETTI CHAVEZ CORREA**

**Applicants**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) dated December 8, 2009 concluding that the applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27 because of lack of credibility and lack of a subjective fear.

## **FACTS**

### **Background**

[2] The applicants are citizens of Mexico. Twenty-eight (28) year old Ms. Jazmin Alejandra Correa Juarez is the applicant mother who is a nurse by profession. She has two daughters, six (6) year old Mercedes Monserrath Chavez Correa and five (5) year old Valeria Goretti Chavez Correa, who are also applicants. The applicants arrived in Canada on January 29, 2008 and immediately made a claim for refugee status, which was joined with the already existing refugee claim of Mr. Fransisco Javier Chavez Ramirez (Mr. Chavez), the common law spouse of the applicant mother and the father of the applicant daughters.

[3] The applicants cohabited with Mr. Chavez in the City La Purisima, in the Mexican state of Aguascalientes between 2002 and 2007, and upon their arrival in Canada in 2008. Throughout their cohabitation, the applicant mother suffered emotional and physical abuse at the hands of Mr. Chavez. At no time, in either Mexico or Canada, did the applicant mother contact the police for protection. On June 8, 2007 Mr. Chavez fled for fear of a number of men who beat him and threatened to kill him. The applicant mother experienced the same threats from Mr. Chavez's assailants and began to fear for her life as well which led to her departure on January 29, 2008. Neither Mr. Chavez nor the applicant mother contacted the police and reported Mr. Chavez's assailants. Mr. Chavez filed his refugee claim November 1, 2007 and the applicants joined their refugee claim to his upon their arrival. On February 19, 2009 the applicant mother separated from Mr. Chavez after a particularly violent beating and moved into the Redwood Shelter for Abused Women with the daughter applicants.

[4] Mr. Chavez's and the applicants' first refugee claim was dismissed on April 15, 2009 because no efforts were made by the applicants to seek state protection. The applicant mother applied on July 3, 2009 to reopen her refugee claim on the basis that Mr. Chavez was her agent of persecution and she was not able to pursue an independent claim for refugee status based on domestic abuse before she separated from Mr. Chavez. The RPD agreed to reopen the refugee claim on July 14, 2009 and heard the domestic abuse claim on November 9, 2009.

### **Decision under review**

[5] The reopened refugee claim was dismissed by the RPD in a 21-page decision on December 8, 2009 because the applicants lacked credibility and state protection was available.

[6] The RPD reached several adverse credibility findings which are summarized as follows:

1. the applicant did not provide any objective documentary evidence to corroborate Mr. Chavez's assault such as medical reports or police reports;
2. a statutory declaration dated June 1, 2009 from Ms. Ivette Jaque Barroilhet (Ms. Barroilhet), a Women's Councillor at the Redwood Shelter for Abused Women who interviewed the applicant mother and Mr. Chavez, was based solely on the applicant mother's and Mr. Chavez's self serving statements and it did not confirm whether the applicant mother suffered any injuries or had visible marks from her abuse;
3. an affidavit dated June 22, 2009 by Mr. Manuel Quintanilla Hernandez (Mr. Quintanilla), a Canadian citizen, was implausible when it states that Mr. Quintanilla did not intervene when he witnessed Mr. Chavez violently assault the applicant while in the company of Mr. Chavez's brother because he was a guest;
4. when asked why she did not call the police in Canada when Mr. Chavez assaulted her while they were in the company of Mr. Quintanilla and Mr. Chavez's brother, the applicant mother stated that she was afraid the police would find out that her guests did not have legal status, despite the fact that Mr. Quintanilla is a Canadian citizen;

5. the applicant mother was evasive and provided inconsistent and unconvincing explanations when asked why she did not call the police in Canada;
6. Mr. Chavez's attendance at the Redwood Shelter for Abused Women where he stated to Ms. Barroilhet that he was "the aggressor" before the applicant mother had the chance to make her allegations indicate that the present refugee claim and allegations of domestic abuse were fabricated and concocted jointly with Mr. Chavez;
7. the allegations from the previous refugee claim, that the applicants received threats subsequent to Mr. Chavez's departure, lacked credibility because Mr. Chavez's parents and brother who lived with the applicants in the same house received no such threats;
8. the applicant provided an evasive answer when asked why she did not report domestic violence to the examining Immigration Officer when upon arrival in Canada;
9. the applicant mother arranged to meet an immigration lawyer before she met a criminal or family lawyer, suggesting that she was more interested in refugee status than protection; and
10. when questioned about a possible internal flight alternative, the applicant never mentioned the men who threatened her who were the subject of the first refugee claim but spoke only of Mr. Chavez locating her.

The above findings led the RPD to conclude that the applicant mother's testimony was evasive, incoherent, inconsistent, and lacked credibility or trustworthiness.

[7] The RPD determined that the applicant mother never attempted to contact the police or other forms of authority. The RPD acknowledged that corruption and lack of sensitivity towards domestic violence exists in Mexico's police services. The RPD determined that the applicants could not rebut the presumption of state protection with "clear and convincing" evidence because they did not access any of Mexico's or Canada's avenues for state protection. The RPD noted the applicant mother did not avail herself of Canada's state protection, despite her knowledge that it would be effective. The refugee claim was therefore dismissed.

## LEGISLATION

[8] Section 96 of IRPA grants protection to Convention refugees:

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,

(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.

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) 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.

[9] Section 97 of IRPA grants protection to certain categories of persons:

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

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,

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.

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.

## ISSUES

[10] The applicants in their memorandum raise the following issues:

1. whether the RPD member exceeded and failed to exercise jurisdiction by failing to refer to and apply the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution (the Gender Guidelines) and the Supreme Court of Canada's decision in *R. v. Lavallee*;

2. whether the RPD erred in basing its decision on erroneous findings of fact made in a perverse or capricious manner, in that the Board:
  - a. did not reasonably apply the sensitivity and understanding required by the Gender Guidelines;
  - b. drew unreasonable inferences concerning the implausibility of the evidence without giving the applicant an opportunity to explain why the evidence is plausible;
  - c. discarded evidence merely because it was not corroborated without determining it to not be credible and trustworthy;
  - d. misconstrued or ignored the evidence and relied upon these findings when making an adverse determination as to credibility; and
  - e. relied on the truthfulness of the applicant's evidence in part in order to find that she lacked credibility.
3. whether the RPD exceeded jurisdiction by making negative findings of credibility related to evidence submitted in support of a previous decided refugee claim contrary to the doctrines of *res judicata* and issue estoppel;
4. whether the RPD erred in failing to consider evidence contrary to its finding on state protection in Mexico, and whether the RPD misapplied the legal test?
5. whether, under all the circumstances, the RPD's decision was an unreasonable one?

## **STANDARD OF REVIEW**

[11] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to “ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of

(deference) to be accorded with regard to a particular category of question”: see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[12] Questions of credibility and state protection concern determinations of fact and mixed fact and law. It is clear that as a result of *Dunsmuir* and *Khosa* such issues are to be reviewed on a standard of reasonableness. Recent case law has reaffirmed that the standard of review for determining whether the applicant has a valid IFA is reasonableness: *Mejia v. Canada (MCI)*, 2009 FC 354, per Justice Russell at para. 29; *Syvyryn v. Canada (MCI)*, 2009 FC 1027, 84 Imm. L.R. (3d) 316, per Justice Snider at para. 3; and my decision in *Perea v. Canada (MCI)*, 2009 FC 1173 at para. 23. The applicant submits that failure to consider *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* (Gender Guidelines) amounts to failure to exercise jurisdiction and thus reviewable on a correctness standard. This Court has reviewed the failure to consider the Gender Guidelines on a reasonableness standard: see my decision in *Cornejo v. Canada (MCI)*, 2010 FC 261, at paras. 16-18. The issue of the RPD’s assessment of the Gender Guidelines will therefore be reviewed on a reasonableness standard.

[13] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir, supra*, at paragraph 47; *Khosa, supra*, at para. 59.



## ANALYSIS

### Overview

[14] The RPD heard the evidence and saw the witnesses. It found, in a detailed 21-page decision, that:

1. while the RPD “bears in mind that abused women are reluctant to report their abusers to the police”, the RPD concludes that the several different reasons which the applicant gave for not reporting her physically abusive common-law spouse (hereinafter referred to as the “husband”) to the police while in Mexico or in Canada are inconsistent, and not credible. As a result, the RPD found on the balance of probabilities, that the applicant was not a victim of domestic violence;
2. moreover, the RPD found that the alleged abuser, the applicant’s husband, was a willing participant “in this scheme of exaggeration and fabrication” designed to make a fraudulent refugee claim. The RPD rhetorically asked itself: “Why else would the alleged abuser go to the women’s shelter to “identify himself as the aggressor”?”. The applicant’s husband went to the Shelter to confirm that he was abusing his wife presumably so that the person at the Shelter would corroborate the basis for the refugee claim which the applicant intended to submit;
3. the RPD made several other credibility findings against the applicant which are cited above. These findings were all reasonably open to the panel on the evidence, and this Court cannot substitute its opinion, even if the Court’s opinion differed from that of the RPD;

4. the RPD concluded that the applicant with her husband concocted this refugee claim based on domestic abuse after their earlier refugee claim on another basis was rejected. The Board is responsible for assessing such credibility matters, and identifying such fraudulent claims when they present themselves;
5. according to the RPD, the applicant did not seek medical treatment or police assistance because no assaults occurred; and
6. the RPD was clearly attentive to the Gender Guidelines for abused women, but decided, in its exhaustive decision, that this claim was fraudulent. The Court must respect such a decision, and congratulate the RPD for ferreting out a fraud.

[15] The Court will now consider in more detail four of the issues identified by the applicant.

**Issue No. 1: Whether the RPD member exceeded and failed to exercise jurisdiction by failing to refer to and apply the Chairperson’s Guidelines on Women Refugee Claimants Fearing Gender- Related Persecution (the Gender Guidelines) and the Supreme Court of Canada’s decision in *R. v. Lavallee***

[16] The applicants submit that the RPD failed to consider the applicant mother’s testimony and actions in a manner that is sensitive to the situation of a victim of domestic violence. The applicant submits that the RPD failed to exhibit the knowledge required of domestic abuse in order to reach a fair decision.

[17] The relationship between the Gender Guidelines and the onus of the applicant to prove her claim with credible evidence is set out in *Karanja v. Canada (MCI)*, 2006 FC 574, per Justice Pinard at paragraphs 5-7 of his decision:

¶5 The applicant is correct that the Gender Guidelines (issued on March 9, 1993 by the Chairperson of the Immigration and Refugee Board pursuant to paragraph 159(1)(h) of the *Immigration Act* and entitled Women Refugee Claimants Fearing Gender-Related Persecution) indicate that in the context of a gender-based claim, the Board should be particularly sensitive to a female applicant's difficulty in testifying. However, the Gender Guidelines, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence. The applicant bears the onus of proving her claim. As Justice Pelletier indicated in *Newton v. Minister of Citizenship and Immigration* (2002), 182 F.T.R. 294, at paragraph 18, "the Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth" and, at paragraph 17:

The Guidelines are an aid for the CRDD panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The Guidelines do not create new grounds for finding a person to be a victim of persecution. To that extent, the grounds remain the same, but the question becomes whether the panel was sensitive to the factors which may influence the testimony of women who have been the victims of persecution... .

¶6 Furthermore, the Board's failure to specifically mention the Gender Guidelines does not mean that they were not considered and is not material or fatal to the Board's decision. The Board is presumed to have taken all of the evidence into account, and there is nothing that suggests that the Board did not consider the Gender Guidelines (see *S.I. v. Canada (M.C.I.)*, [2004] F.C.J. No. 2015 (F.C.) (QL); *Farah v. Canada (M.C.I.)*, [2002] F.C.J. No. 416 (T.D.) (QL); and *Nuray Gunel v. The Minister of Citizenship and Immigration* (October 6, 2004), IMM-8526-03).

¶7 The Gender Guidelines specifically state that the female refugee claimant must demonstrate that the harm feared is sufficiently serious to amount to persecution. In this case, there were numerous negative credibility findings by the Board and such findings are open to the Board to make.

[Emphasis in original]

[18] The principles in *Karanja, supra* were followed in *Alfazadeh v. Canada (MCI)*, 2006 FC 1173, per Justice Harrington where he held at paragraph 6 that the RPD is presumed to have considered the Gender Guidelines, in my decision in *Cornejo, supra*, where I held at paragraph 27 that the Gender Guidelines are not intended to serve as a cure for deficiencies in a refugee claim, and in *I.M.P.P. v. Canada (MCI)*, 2010 FC 259, per Justice Mosley at paragraph 47.

[19] The RPD briefly mentioned the Gender Guidelines at paragraph 32 of the decision, but elaborated at length at paragraph 25 on the difficulties that face domestically abused women in Mexico:

¶25 ...The panel bears in mind that abused women are sometimes reluctant to report their abusers to the police. For example, most public officials acknowledge that domestic and sexual violence is underreported and Amnesty International's report explores the obstacles Mexican women face when trying to report cases of domestic violence, including the refusal of officials to accept complaints, deficient investigations and poor enforcement of protection measures...

[20] The above statement in my view demonstrates that the RPD was sensitive to the applicant mother's circumstances as a domestically abused woman. The applicant mother's testimony was tainted by numerous credibility findings which cannot all be excused by the Gender Guidelines. The

RPD properly considered the applicant mother's testimony in accordance with her circumstances. The adverse credibility findings, which are reviewed later on in these reasons, are not tainted by a lack of sensitivity. This ground of review must fail.

**Issue No. 2: Whether the RPD erred in basing its decision on erroneous findings of fact made in a perverse or capricious manner**

[21] The applicants submit that the RPD erred in rendering its credibility findings for the following reasons:

- a. lack of sensitivity to Gender Guidelines;
- b. unreasonable findings as to the implausibility of the evidence;
- c. discarding of evidence merely because it was not corroborated without determining it to not be credible and trustworthy;
- d. misconstruing or ignoring evidence; and
- e. selective use of the evidence, specifically the applicant mother's testimony which was used to impugn the documentary evidence.

[22] Sworn testimony is presumed true unless there is a reason to doubt its truthfulness:

*Maldonado v. Canada (MEI)*, [1980] 2 F.C. 302 (F.C.A.), per Justice Heald at para. 5. Before the RPD can impeach a claimant's credibility, it must have clear reasons for doing so: *Hilo v. Canada (MEI)*, (1991), 130 N.R. 236 (F.C.A.), per Justice Heald at para. 6. The RPD is entitled to draw adverse findings of credibility from the applicant's testimony by assessing vagueness, hesitation, inconsistencies, contradictions and demeanor, for which deference is entitled when judicially reviewed: *Zheng v. Canada (MCI)*, 2007 FC 673, 158 A.C.W.S. (3d) 799, per Justice Shore at para. 17. The Court is not in as good a position as the RPD to assess the credibility of the evidence:

*Aguebor v. Canada (MEI)* (1993), 160 N.R. 315 (F.C.A.). When a credibility finding is based on a number of points, the reviewing Court's analysis does not involve determining whether each point in the RPD's reasoning meets the reasonableness test: *Jarada v. Canada (MCI)*, 2005 FC 409, per Justice de Montigny at para. 22.

[23] The RPD made ten credibility findings against the applicant mother. They are summarized at paragraph 6 of this decision. The applicants submit that all of the RPD's findings are tainted by the failure to apply the Gender Guidelines and the Supreme Court's decision in *R. v. Lavallee* [1990] 1 S.C.R. 852 which warned against assessing the reasonableness of testimony and actions of domestically abused women against an objective standard of reasonableness without considering the particular circumstances of a domestic abuse victim and the effects of the victimization.

[24] The Court determined in the previous issue that the RPD was sensitive to the applicant mother's victimization and was aware of the Gender Guidelines. While some of the credibility findings are based on implausibility, which the RPD is entitled to assess, some are based on unexplained gaps in the evidence and clear inconsistencies between the testimony and documentary evidence which are not mitigated by the Gender Guidelines.

[25] The applicant failed to obtain any corroborating evidence of Mr. Chavez's assault either by way of medical attention or police reports for a period of five years in Mexico and two years in Canada. It was reasonably open to the RPD to find that the applicant mother could not provide a

credible explanation for why she did not avail herself of medical or police assistance in Canada. It was also reasonably open to the RPD to find that Mr. Chavez's eager admission to being the "the aggressor" when the applicant mother turned to the Redwood Shelter for assistance to be contrary to common sense and indicative of a joint intent to convince Ms. Barroilhet at the Shelter that the applicant mother was abused. The applicant mother could not disabuse the RPD of its suspicions by providing a cultural or social reason for why Mr. Chavez would act the way he had. The RPD's suspicions understandably increased with the evasive demeanour of the testimony.

[26] It was reasonably open to the RPD to find that the applicant was generally an evasive and incoherent witness. The applicant was evasive at page 13 of the hearing transcript when she was asked why she cannot return to Mexico and live in a different city, despite her ability to earn income as a nurse:

RPO: Now if you had to return to Mexico could you not go to another area and start your life again?

CLAIMANT: I do not think so.

RPO: Why not?

CLAIMANT: Because first of all I do not have family to where to go and live in other states and besides that the economic situation it would not be easy for me with two daughters (*sic*).

RPO: But you are a nurse; could you not get work as a nurse?

CLAIMANT: Yes I could but it is difficult to go to a place where you do not know anybody with two small daughters.

RPO: But you are here in Canada; do you have anybody here?

CLAIMANT: No.

RPO: Well then how is that different?

CLAIMANT: I do not what to say is different (*sic*).

In contrast to the above line of questioning, the applicant answered at page 14 of the transcript with clarity the questions relating to the ability of police in Mexico to protect her from Mr. Chavez:

RPO: And why do you say that?

CLAIMANT: Because I know the corruption that exists in my country.

[27] The occasions of the applicant giving unclear testimony on issues that do not relate to her victimization are too numerous to adequately set out in these reasons. The Court has addressed a number of the testimonial defects sufficient to demonstrate the reasonableness of the RPD's overall credibility determination. It was reasonably open to the RPD to highlight the inconsistency between the applicant mother's testimony where she cites Mr. Quintanilla's lack of immigration status as a reason for not calling the police when her husband assaulted her, and Mr. Quintanilla's Affidavit where he is identified as a citizen. Normally, the Court would have no difficulty finding that the RPD was overzealous in identifying defects in the testimony when such detailed examination forms the focal point: *Attakora v. Canada (MEI)* (1989), 99 N.R. 168 (F.C.A.), per Justice Heald. This is not the conclusion the Court reaches on the present facts. The applicant's testimony was suspect from the beginning and contained many small defects which are significant when considered as a whole.



[28] I have reviewed the certified record, including the transcript of the hearing. I have reviewed the inconsistencies and implausibilities noted by the Board. The RPD has complete jurisdiction to weigh the evidence and determine the plausibility of testimony. I find that the applicants' complaints pertain to the RPD's rejection of explanations proffered when the RPD took issue with his evidence. I conclude that it was reasonably open for the Board to reject these explanations on the evidence. The Board provided clear and adequate reasons for doing so. Accordingly, this ground of review must fail.

**Issue No. 3: Whether the RPD erred in failing to consider evidence contrary to its finding on state protection in Mexico, and whether the RPD misapplied the legal test**

[29] The applicants submit that the RPD ignored evidence and reached an unreasonable determination with respect to state protection.

[30] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, the Court held that refugee protection is a form of "surrogate protection" intended only in cases where protection from the home state is unavailable. As Mr. Justice La Forest held at page 709:

... International refugee law was formulated to serve as a back-up to the protection one expects from the state of which an individual is a national. It was meant to come into play only in situations when that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other states becomes engaged. ...

Further, the Court held that, except in situations where there has been a complete breakdown of the state apparatus, there is a general presumption that a state is capable of protecting its citizens.

[31] While the presumption of state protection may be rebutted, this can only occur where the refugee claimant provides “clear and convincing” evidence confirming the state's inability to provide protection. Such evidence can include testimony of similarly situated individuals let down by the state protection arrangement, or the refugee claimant's own testimony of past incidents in which state protection was not provided: *Ward, supra*, pp. 724-725. Refugee claimants must make “reasonable efforts” at seeking out state protection, and that the burden on the claimant increases where the state in question is democratic: *Kadenko v. Canada (Solicitor General)* (1996), 206 N.R. 272 (F.C.A.), at para. 5.

[32] The Federal Court of Appeal recently clarified the presumption of state protection in *Carillo v. Canada (MCI)*, 2008 FCA 94, 69 Imm. L.R. (3d) 309, per Justice Létourneau. The Court held at paragraphs 33-35 that the RPD's assessment of Mexico's state protection was reasonably open to it based on the facts before it:

¶33 The Board found that the respondent had failed to make determined efforts to seek protection. She reported to police only once during more than four years of alleged abuse...

¶34 In addition, the Board concluded based on the evidence before it that the respondent did not make additional effort to seek protection from the authorities when the local police officers allegedly did not provide the protection she was seeking... She could have sought redress through National or State Human Rights Commissions, the Secretariat of Public Administration, the Program Against Impunity, the General Comptrollers's Assistance Directorate and the complaints procedure at the office of the Federal Attorney General ...

[33] The applicant mother in this case failed to approach the police in Mexico in the five years that she cohabited with Mr. Chavez. She also failed to avail herself of Canada's superior state protection once she arrived here with her daughters. It was reasonably open to the RPD to find that the explanations for not seeking Canadian state protection were inconsistent with the reasons for not seeking Mexican state protection.

[34] In this case, the RPD acknowledged at paragraph 59 of the decision that responsiveness to gender based violence is not perfect in Mexico but determined at paragraphs 61-62 that the applicant could not rebut the presumption of state protection because she has a subjective reluctance to engage the state and does not have a well founded fear of persecution:

¶61 ...the claimant did not present clear and convincing evidence that the police in this case, whether for domestic violence or the threats against her made by enemies of Mr. Chavez, would not provide adequate protection if called upon to do so. A claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.

¶62 The panel finds that the claimant made no attempt to seek state protection in Mexico, and finds that the reason was because she did not have a well-founded fear.

[Emphasis added]

The RPD further determined that the applicant mother's subjective reluctance to avail herself of state protection extended to Canada, but for different reasons, none of which were satisfactory.

[35] The RPD may not have referred to specific documentation but it is clear from the reasons that the RPD read and considered the applicants' written submissions and the documentary

references which they cited. It is also clear that the RPD chose to reject those submissions. It was reasonably open to the RPD to find that the presumption of state protection was not rebutted on the facts at bar. This ground of review must therefore fail.

**Issue No. 4: Whether, under all the circumstances, the RPD's decision was an unreasonable one**

[36] In view of the reasons articulated under the first three issues this Court concludes that it was reasonably open to the RPD to determine that the applicants were not Convention refugees or persons in need of protection and dismiss their claim for refugee status. The application for judicial review will accordingly be dismissed.

**CERTIFIED QUESTION**

[37] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

The application for judicial review is dismissed.

“Michael A. Kelen”

---

Judge

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

**DOCKET:** IMM-5-10

**STYLE OF CAUSE:** *Jazmin Alejandra Correa Juarez et al. v. The Minister of  
Citizenship and Immigration*

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 25, 2010

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

**DATED:** September 10, 2010

**APPEARANCES:**

Ms. M. Shannon Black FOR THE APPLICANTS

Mr. David Joseph FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ms. M. Shannon Black FOR THE APPLICANTS  
Barrister & Solicitor  
Toronto, Ontario

Mr. Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada