

Federal Court



Cour fédérale

**Date: 20111018**

**Docket: IMM-1214-11**

**Citation: 2011 FC 1162**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 18, 2011**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**JORGE OCHOA DOMINGUEZ  
CARLA ERICKA VILLAGOMEZ GONZALEZ  
ZURY NAHID OCHOA VILLAGOMEZ**

**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 by the Refugee Protection Division (RPD or panel) of the Immigration and Refugee Board that the applicants are not “Convention refugees” or “persons in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). The RPD made this finding on the ground that there was no nexus between the applicants’ case and the definition of “refugee” in the Convention

because the applicants were not credible and because they had not rebutted the presumption that they could have availed themselves of the protection of their country.

[2] After examining the file and considering the written and oral submissions of the parties, the Court finds that its intervention is not warranted inasmuch as the applicants did not demonstrate that the RPD erred in its assessment of their credibility and of the protection they could have availed themselves of from the authorities in their country.

### **Facts**

[3] The principal applicant, Carla Ericka Villagomez Gonzalez, her husband, Jorge Ochoa Dominguez, and their daughter, Zury Nahid Ochoa Villagomez, are all Mexican citizens.

[4] The principal applicant is alleging that she worked in a duty-free shop in the Mexico City international airport between December 2006 and December 2008. On April 16, 2008, a male passenger apparently approached her and asked her to take a bag out of a secure area in exchange for an amount of money. The principal applicant refused and filed a complaint with a police officer, providing a brief description of this passenger. The police officer, however, was allegedly unable to find this person.

[5] A similar event purportedly occurred in May 2008. This time, after noting the inability of the police to find the individual in question, the principal applicant apparently went to the Office of the Public Prosecutor to file a complaint. The police officers at the Office of the Public Prosecutor apparently told her that they could not open an investigation because of a lack of evidence.

[6] A week later, a similar incident allegedly occurred except that the principal applicant was purportedly threatened with retaliation if she refused the offer. Nevertheless, the principal applicant refused to do what was asked of her.

[7] On May 28, 2008, the principal applicant went to visit her parents and two sisters, all of whom live in Montréal. She then returned to Mexico on July 16, 2008, believing that her problems would have abated. She also obtained a transfer to another store in the airport upon her return to work on July 28.

[8] In late October 2008, the principal applicant alleges that she was again approached by a male passenger who wanted her to take a bag out of the secure area, threatening her with retaliation if she refused to cooperate. The principal applicant then apparently informed her supervisor of the situation. Her supervisor apparently recommended that she be transferred to another airport and did not contact the police or airport security.

[9] After this last incident, the principal applicant purportedly received several anonymous threatening phone calls, sometimes even when she was outside her city of residence. Furthermore, her spouse was apparently followed by two men on December 15, 2008. She apparently went again to the Office of the Public Prosecutor and filed two complaints, one on November 18, 2008, and the other on January 6, 2009.

[10] After filing the last complaint, the principal applicant stated that she sought refuge in the State of Morelos before leaving Mexico for Canada on January 15, 2009, and seeking refugee protection with her husband and daughter here.

### **Impugned decision**

[11] The panel did not call into question the fact that the principal applicant was employed by the Mexico City international airport or that airport's infiltration by organized crime. However, the panel found it implausible that police officers assigned to an airport of that size would not launch an investigation based on the facts alleged by the principal applicant because she had not been threatened or physically assaulted and could not identify the individuals who asked her to participate in criminal activities on three occasions. In the panel's opinion, it was reasonable to believe that a corruption attempt by organized crime in an international airport would not have been taken lightly given the fact that this was not simply a commission of a crime, but also a serious security breach. In addition, the panel was of the opinion that it is very likely that the Mexico City airport has a surveillance camera system, which should have allowed the police to identify the individuals who carried out the activities as alleged by the principal applicant and open an investigation. The panel stated the following in this respect:

The panel can only conclude that it is improbable that certain events, as alleged by the claimant, took place. The panel does not believe the claimant's statements that she was threatened and that she was approached by members of organized crime about cooperating with them. The panel is of the opinion that the claimant was unable to satisfy the panel with respect to the occurrence of certain alleged events, that is, the threats and the recruitment attempts by alleged organized crime members. The panel finds it improbable that, on the three occasions that the claimant approached the police at the Mexico City international airport (she approached the federal police twice and the office of the public ministry once), no

investigation or incident report was initiated. The Mexico City international airport is the country's largest and, consequently, one of the most modern. It is unlikely that, on those three occasions, the police found it unnecessary to open a file and investigate the matter further.

Applicant's Record, at page 13 (page 7 of the decision).

[12] The panel also found it implausible that the principal applicant's supervisor failed to contact the police after an employee reported that possible members of organized crime attempted to corrupt her.

[13] Alternatively, the panel was of the opinion that the principal applicant could have availed herself of the protection of the Mexican authorities, and that she could have taken more steps to obtain the support of other state organizations or institutions to file a complaint and obtain their protection. Based on the jurisprudence, the panel maintained that failure to pursue state protection is fatal to a refugee protection claim. Finally, the panel submitted that the protection by the Mexican state is adequate and that the principal applicant cannot rely on a subjective fear to rebut the existence of such protection.

### **Issues**

[14] This matter essentially raises two issues:

- a. Did the RPD err by finding that the principal applicant lacks credibility?
- b. Did the RPD err by finding that the protection of the Mexican state was available to the principal applicant?

### **Analysis**

**a) Lack of credibility**

[15] The applicants maintained that the panel's decision with respect to their credibility was not based on the evidence in the record and that the Board member did not give them the opportunity to address his concerns.

[16] First, with respect to the submission that the applicants were not given the opportunity to respond to the panel's questioning, a thorough assessment of the record reveals that this is not so. In fact, the hearing transcript shows that the Board member explicitly showed his disbelief regarding the fact that the authorities apparently did not take any action following the principal applicant's complaints (Tribunal Record at pages 349-351 and page 358). The applicants were represented at the hearing and were able to argue all of the facts related to their claim. The principal applicant's affidavit is also silent on this issue and the final submissions by counsel for the applicants did not shed any new light in that respect.

[17] Furthermore, the Board member had no obligation to explain his concerns about the applicants' credibility during the hearing. The onus was on the applicants to present credible evidence corroborating their allegations. The jurisprudence of this Court is clear that the RPD is not obliged to confront a claimant with its implausibility findings (see, *inter alia*, *Ding v. Canada (MCI)*, 2002 FCT 1216 at paragraph 5, [2002] F.C.J. No. 1643 (FC)(QL); *Tekin v. Canada (MCI)*, 2003 FCT 357 at paragraph 14, [2003] F.C.J. No. 506 (FC)(QL)).

[18] The RPD, as a specialized tribunal with sole jurisdiction over the facts, must weigh the evidence submitted and the plausibility of a claimant's account and make the necessary

determinations (*Kumar v. Canada (MEI)*, (1993) 39 A.C.W.S. (3d) 1027, [1993] F.C.J. No. 219 (FCA)(QL); *Aguebor v. Canada (MEI)* (1993), 42 A.C.W.S. (3d) 886 (FCA), 160 N.R. 315 (FCA)).

The RPD was entitled to rely on the implausibilities identified in the applicants' testimony to determine the lack of credibility. In this area, the Court must show great deference. It is insufficient to establish that a different conclusion could have been reached based on the evidence submitted; the intervention of the Court will only be warranted if the decision falls outside a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 S.C.R. 190).

[19] In light of the foregoing, the Court is therefore of the opinion that the panel's decision with respect to the lack of credibility of the principal applicant was reasonable and does not warrant the intervention of the Court.

#### **b) State protection**

[20] Having found the principal applicant's account implausible, the panel was not obliged to rule on the existence of state protection. However, the panel was entitled to find that the applicants had not rebutted the presumption that the Mexican authorities were able to protect them. On the one hand, the documentary evidence indicates that Mexico is making serious efforts to protect its citizens, that corruption is particularly rampant in local and state police forces as opposed to the federal police, and that several public servants and security force members have been dismissed and prosecuted as part of anticorruption operations. On the other hand, the applicants did not follow up on their complaints and did not exhaust all recourses available to them. Once again, it is difficult to believe that no state authority intervened after being informed of the corruption attempts the

principal applicant alleged she was a victim of given that these actions were not only criminal acts, but also serious security threats in the country's largest airport.

[21] It should be noted that state protection issues are also subject to the standard of reasonableness. Given the evidence before it and the implausible nature of the principal applicant's allegations, the panel was entitled to find that the presumption of state protection had not been rebutted.

[22] Consequently, the application for judicial review must be dismissed. Neither party proposed a question for me to certify, and none will be certified.



**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. No question for certification arises.

“Yves de Montigny”

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Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1214-11

**STYLE OF CAUSE:** JORGE OCHOA DOMINGUEZ ET AL.  
and MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 11, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** de MONTIGNY J.

**DATED:** October 18, 2011

**APPEARANCES:**

Cristina Marinelli FOR THE APPLICANTS

Evan Liosis FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Cristina Marinelli FOR THE APPLICANTS  
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec