Federal Court  Cour fédérale

Date: 20120504

Docket: IMM-4654-11

Citation: 2012 FC 546

Ottawa, Ontario, May 4, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOSE HERIBERTO RENDEROS MORAN
ELVIA LICETH AREVALO DE RENDEROS
JOSE HERIBERTO RENDEROS AREVALO
KATHERINE LISSETH RENDEROS AREVALO (a.k.a. KATHERINE LISSE RENDEROS AREVALO)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 6 June 2011 (Decision), which refused the

Applicants' claim for protection as Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicants are citizens of El Salvador. They fear of persecution from the Mara Salvatruchas' (Maras) gang who they say extorted money from them and threatened them.

[3] The Maras first contacted the Female Applicant, Elvia Liceth Arevalo de Renderos, in October 2005. They called the family's grocery store and demanded $100 plus additional payments of $45 each week thereafter. The Principal Applicant, Jose Heriberto Renderos Moran, says he went to the police after this incident. The police said a detective would visit him to continue the investigation, but no one came to help.

[4] The Applicants paid the money for three months but were very afraid because the Maras threatened them each time they visited. After a few months, Osiris Candel, the head of the Maras, was arrested and the Maras appeared to forget about the Applicants.

[5] In November 2006, the Applicants received another call from the Maras who demanded a $3000 one-time payment, saying the Applicants would be left alone if they paid. The Applicants paid the demand, but two weeks later they were again asked to pay $3000. The Principal Applicant contacted his friend from the army, Nelson Villalta (Villalta), who put him in touch with Sub-Commissioner Amaya of the Policia National Civil (Sub-Commissioner), who in turn referred him to the Anti-Extortion Unit (Unit). The Unit attempted a sting operation, but the Principal Applicant

says it failed because the Maras recognized the police vehicle. The Principal Applicant says the Maras maintained a threatening presence outside the family's business and home.

[6] The Principal Applicant says the Maras attempted to extort money from his family again in September 2009. He went to the police, who attempted another sting operation which involved the Principal Applicant depositing money into a bank account to pay the extortion demand. However, the Principal Applicant says he deposited the money into his own account instead of the Maras' account. He says the police failed to inform him that at least some of the money had to go into the Maras' account for them to pursue charges.

[7] The Applicants say they continued to receive threats from the Maras and that armed individuals would sometimes enter their store. In November 2009, the Principal Applicant sent his two children, Jose Heriberto Renderos Arevalo and Katherine Lisseth Renderos Arevalo (Minor Applicants), to the United States of America (USA) to stay with his brother-in-law so they would be safe.

[8] The Principal Applicant says his friend from the army, Captain Donis, informed him in December 2009 that the police officers who had assisted the Applicants were actually involved with the Maras, which is why their efforts had been unsuccessful. Realizing there was no protection for his family, the Principal Applicant fled to the USA on 15 December 2009. He came to Canada on 25 May 2010, and claimed refugee protection at the port of entry. The other Applicants arrived on 23 August 2010, and also made their claims at the port of entry.

[9] The RPD joined the Applicants' claims under subsection 49(1) of the *Refugee Protection Division Rules* SOR/2002-228 (Rules) and heard them together on 18 May 2011. The Applicants all

adopted the Principal Applicant's narrative as their own, so the RPD determined their claims on the basis of his narrative and testimony at the hearing. The RPD made its Decision on 6 June 2011 and notified the Applicants of the outcome on 14 June 2011.

DECISION UNDER REVIEW

[10] In the Decision the RPD found the Principal Applicant was not credible and that he had not rebutted the presumption of state protection. Accordingly, it refused the Applicants claims for protection under sections 96 and 97 of the Act.

Credibility

[11] The RPD found the November 2006 extortion incident did not occur because Villalta's two letters of support, which the Applicants submitted to prove their claim, did not mention that he put the Principal Applicant in touch with the Sub-Commissioner. The RPD also noted that one of the letters was not dated, so it was not credible.

[12] The RPD also found the September 2009 extortion incident did not occur. It was implausible that the police would not inform the Principal Applicant that he had to deposit some money into the Maras' account. The RPD also noted that the Principal Applicant could have fixed the error by withdrawing the money from his account and depositing it into the Maras' account.

[13] The RPD assigned little weight to any of the letters the Applicants submitted to support their claims because they had not retained the original envelopes to prove the letters were sent from El Salvador. The RPD also noted that a letter from the Catholic Bishop of the Diocese of Sonsonate

(Bishop's Letter) was dated September 19, 2004, six years before they came to Canada. The RPD rejected the Applicants' claim that this was a typographical error and that it should read 2009.

State Protection

[14] The RPD said the determinative issue in the Applicants' claim was state protection. It canvassed the law on state protection, noting the presumption that states are capable of protecting their citizens which can only be rebutted by clear and convincing evidence. The RPD also noted that claimants must approach the state for protection where it might be reasonably forthcoming, and the mere fact that a state is not always successful at protecting its citizens is insufficient to support a conclusion that there is no state protection.

[15] The RPD noted the Principal Applicant's allegation that he sought police protection in 2005 and in November 2006:

> The principal claimant said that he reported the extortion demand made in November of 2006. I have already made a credibility finding that the agents of persecution did not extort any money from the principal claimant in November of 2006. However, even if money was extorted on that date, I find that the police did attempt to provide assistance to the principal claimant by setting up a sting operation. Even though the operation failed, the police did provide assistance to the principal claimant, and made an attempt to apprehend the agents of persecution.

[16] The RPD also reviewed the Principal Applicant's claim that he sought protection after the September 2009 extortion incident and again noted its finding that this incident did not occur. It also said at paragraph 28 that "even if they did extort money, the police once again set up a sting operation, which again failed. This failure to apprehend the criminals does not demonstrate that protection was not offered to the principal claimant."

[17] The RPD noted the Principal Applicant's allegation that the police were involved with the Maras and said the documentary evidence indicated that gang violence was a serious problem in El Salvador, but also that the government was making serious efforts to combat gang violence and criminality. The RPD then adopted the Immigration and Refugee Board's Response to Information Request SLV103445.FE as its reasons for concluding state protection is available to the Applicants in El Salvador.

[18] The RPD concluded that the Principal Applicant had not proven that if he were to return to El Salvador, protection would not be reasonably forthcoming. The RPD refused the Applicants' claims on this basis.

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
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 themself of the protection of each of those countries;	*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;
[…]	[…]

Person in Need of Protection	**Personne à protéger**
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	**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*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*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*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(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,	(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) the risk is not caused by the inability of that country to provide adequate health or	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care	médicaux ou de santé adéquats.
[…]	[…]

ISSUES

[20] The Applicants raise the following issues for review:

a. Whether the RPD's credibility findings are reasonable;

b. Whether the RPD's finding that there was adequate state protection was reasonable.

STANDARD OF REVIEW

[21] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[22] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Finally, in *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, Justice Michael Kelen held at paragraph 17 that the standard of

review on a credibility determination is reasonableness. The standard of review on the first issue is reasonableness.

[23] Reasonableness is also the standard of review applicable to the second issue the Applicants have raised. In *Pacasum v Canada (Minister of Citizenship and Immigration),* 2008 FC 822 at paragraph 18, Justice Yves de Montigny held that state protection is a question of mixed fact and law to be evaluated on the standard of reasonableness. Further, the Federal Court of Appeal held in *Hinzman v Canada (Minister of Citizenship and Immigration)* 2007 FCA 171 that the standard of review on a state protection finding is reasonableness.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa,* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicants

[25] The Applicants argue that the RPD's credibility findings were unreasonable because it based those findings on speculation. The RPD also misconstrued the evidence, made factual errors, and

erroneously required them to produce comprehensive corroborative documentary evidence. The RPD also erred in its assessment of the availability of state protection in El Salvador.

Unreasonable Credibility Finding

[26] The RPD unreasonably found it implausible that the police would not have informed the Principal Applicant of the importance of depositing money into the Maras' account in the sting operation. This conclusion ignores the Principal Applicant's evidence that he later learned that these police officers were working with the Maras, which explains why they did not provide effective assistance. Relying on *Jones v Great Western Railway Co.* (1930), 47 TLR 39 at 45 (HL) the Applicants say that the RPD misconstrued this aspect of their evidence. The RPD's conclusion on this issue was speculative and made without regard to the evidence of police corruption.

Corroborative Evidence

[27] The RPD erroneously rejected the letters from Villalta because the letters did not contain certain details. The Applicants note, however, that the letters confirm the main aspects of their story, including that the Principal Applicant was extorted by the Maras, that he unsuccessfully sought protection, and that the Applicants were forced to leave the country. The Applicants say the letters of support are not meant to corroborate every aspect of the narrative, and following *Mahmud v Canada (Minister of Citizenship and Immigration)* [1999] FCJ No 729 at paragraph 11, it is a reviewable error to reject them because of what they do not say.

[28] The RPD also committed a factual error when it found one of the letters from Villalta was undated – both letters actually have dates on them. The Applicants acknowledge that the RPD correctly found that the Bishop's Letter had the wrong year – 2004 instead of 2009 – but say the RPD unreasonably rejected their explanation that this was a simple typographical error.

[29] The RPD unreasonably questioned the authenticity of these documents simply because the Applicants did not provide the original envelopes. *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 teaches that there must be a valid reason to doubt the authenticity of documents. Although the Applicants did not provide the original envelopes, this was not a valid reason to doubt the authenticity of the letters. The RPD also erred by failing to make a clear finding regarding the authenticity of the documents (see *Jacques v Canada (Minister of Citizenship and Immigration)*, 2010 FC 423 at paragraph 16).

Unreasonable State Protection Finding

[30] The Applicants note the RPD accepted that the police set up two unsuccessful sting operations. It was perverse and illogical for the RPD to conclude that state protection was available when corrupt police officers set up two failed sting operations (see *Kaur v Canada (Minister of Citizenship and Immigration)* 2006 FC 1120 at paragraph 9). The Applicants say their numerous failed attempts to seek protection show they have clearly rebutted the presumption of state protection (see *G.D.C.P v Canada (Minister of Citizenship and Immigration)* 2002 FCT 989).

[31] The Applicants emphasize that all the evidence must be considered by the RPD and, pointing to *Polgari v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 957, argue that the RPD cannot assess parts of the evidence in isolation from each other.

[32] The RPD committed too many errors in reaching its Decision for the Court to conclude that those errors were not central to the case (see *Katalayi v Canada (Minister of Citizenship and Immigration),* [1997] FCJ No 1494 (TD).

The Respondent

[33] The Respondent argues that the RPD reasonably concluded that the Applicants had not proven that state protection would not be forthcoming and dismissed their claims on that basis. The RPD's credibility findings were also reasonably open to it and the Court should not intervene.

State Protection Findings Were Reasonable

[34] The RPD's conclusion on state protection was determinative of the Applicants' claims and was reasonably open to it. The RPD considered the police response to each of the Applicants complaints of extortion. This was a reasonable basis for the conclusion the Applicants had not proven state protection would not be available.

[35] In the absence of a complete state breakdown, there is a presumption that the state is capable of protecting its citizens (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at paragraph 50). The Applicants' own evidence, including that showing the arrest and imprisonment of the Maras' leader, the two sting operations, and the police and army patrols around the Applicants' business shows that state protection is available to them in El Salvador.

[36] The fact that the police were unsuccessful in arresting the extortionists does not render the RPD's conclusion on state protection unreasonable (see *Llana v Canada (Minister of Citizenship and Immigration)* 2011 FC 1450 at paragraph 31). It is not enough to show a state has not always

been effective at protecting claimants. *Flores v Canada (Minister of Citizenship and Immigration)* 2008 FC 723 at paragraph 11 establishes that the test for protection is adequacy, not perfection.

[37] The onus was on the Applicants to produce clear and convincing evidence to rebut the presumption of state protection and it was open to the RPD to conclude they had not met this onus. The RPD considered the Principal Applicant's evidence that he heard the police were involved with the Maras, but was not convinced. This is a reasonable outcome, so the Court should not interfere.

[38] The RPD also reasonably found, based on the documentary evidence, that El Salvador was making serious efforts to combat gang violence. It was open to the RPD to prefer the documentary evidence over the Applicant's own evidence (*Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1087 (CA)), so the Court should leave the Decision undisturbed. It is not open to the Court to re-weigh the evidence before the RPD and substitute its own conclusion.

Reasonable Credibility Findings

[39] It was also reasonable for the RPD to find implausible the Principal Applicant's assertion that the police would not explain the importance of depositing the extortion money into the proper account for the success of the sting operation. The RPD also found it implausible that the Principal Applicant would not have simply withdrawn the money from his account and deposited it in the proper account when he learned of the mistake. It is open to the RPD to make adverse credibility findings on contradictions in the claimant's testimony or on implausiblities. See *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA).

[40] It was also reasonably open to the RPD to draw a negative inference from the omission of a significant detail from the Applicants' documentary evidence. Neither of Villalta's letters mentioned that he had put the Principal Applicant in touch with the Unit; this detail was crucial to the Principal Applicant's story. Further, no material error arises from the RPD's finding that one of the letters from Villalta was undated.

[41] The Respondent emphasizes that the RPD is best placed to evaluate the credibility of claimants and its findings should not be set aside as long as the inferences drawn are reasonable: *Aguebor*, above, at paragraph 4.

[42] Finally, the Respondent argues that, due to the noted omissions, and its inconsistency with other documentary evidence, it was open to the RPD to accord little weight to the Applicants' documentary evidence. It is for the RPD to determine how much weight to give to each piece of evidence: *Biswas v Canada (Minister of Citizenship and Immigration)* 2007 FC 1151 at paragraph 7. It was also open to the RPD to reject the Bishop's Letter because it was dated before the Applicants' problems allegedly began and to reject the other letters because there were no accompanying original envelopes. It was reasonable to expect the Applicants to retain the envelopes to prove the letters came from El Salvador.

ANALYSIS

[43] As the Decision makes clear, even though the RPD questioned the Principal Applicant's credibility, the determinative issue was state protection and the RPD examined this issue assuming that the Principal Applicant's narrative was true.

[44] In deciding that the Applicants had not rebutted the presumption of state protection the RPD relied upon a range of evidence.

[45] In this case, the Applicants' own evidence indicated protection from their home state was available. The Applicants indicated how the police had responded to their complaints that they were receiving extortion demands and made active efforts against the criminal gang. In particular, the RPD noted:

i. The leader of the criminal gang that the Applicants said extorted money from them was arrested, convicted and imprisoned. The Principal Applicant said the extortion demands stopped for several months after this arrest. The Principal Applicant also indicated the gang leader was still in jail in 2009;

ii. The Principal Applicant said the police set up a sting operation to apprehend the gang members who were extorting money from the Applicant in 2006 even though the sting failed because the extortionists recognized one of the unmarked police cars at the drop-off location for the extortion payment;

iii. The Principal Applicant said that for a week after the unsuccessful sting operation in 2006, the police and army patrolled the area around his business;

iv. The Principal Applicant said that the police set up another sting operation to apprehend the gang members who were attempting to extort money from him in 2009. He said the police were unable to make any arrests because he deposited the extortion payment into his own bank account rather than the account to which he claimed he had been instructed to deposit the money by the gang.

[46] Moreover, based on its review of the country condition documentation, I agree with the Respondent that the RPD reasonably found that the evidence showed El Salvador was making serious efforts to combat gang criminality that are operationally adequate. El Salvador has involved its police force in international security programs, such as anti-gang efforts led by the US Federal Bureau of Investigation. The government has also brought in the El Salvador army to support the police in combating the criminal gang problem, which was referenced in the Applicants' evidence. It was open to the RPD to find the documentary evidence demonstrates the state security apparatus is engaged in combating gangs in El Salvador and to prefer this evidence to that of the Applicants.

[47] The Applicants raise a number of issues with regard to the reasonableness of the RPD's state protection finding.

[48] First of all, they say that the RPD failed to mention and take into account all of the efforts the principal Applicant had made to secure protection from the authorities. They refer the Court to paragraphs 7, 8, 9, 11, and 27 of the principal Applicant's PIF narrative, which suggest that he was diligent in seeking state protection.

[49] When I examine these paragraphs in the PIF, it is clear that none of them contradict the RPD's finding or require specific mention. For example, in paragraph 3, the fact that a detective did not come on the occasion referred to does not show the state was unwilling or unable to protect the Applicants. There was nothing to stop the Principal Applicant from following up himself on the events he is referring to back in 2005. Subsequent events show that police were willing to act. It was after this that the Maras leader was arrested and jailed.

[50] Paragraph 7 merely concludes that "I came with the detective back to store to survey it, but everything looked fine." I do not see how this shows the police were unwilling or unable to act.

[51] The same applies to paragraph 8. The fact that the GTA "patrolled the zone" shows the authorities were willing to act and even if this was not "a permanent solution," it does not suggest the police would not respond if needed.

[52] In paragraph 9, the fact that the Commissioner said "they do not have enough elements to give protection to all the Salvadorians," does not mean the Applicant was not protected. In his case, there obviously was a police response.

[53] In paragraph 11, we again see the police acting. The fact that the detectives needed more "proofs" before they could proceed does not suggest a lack of state protection. Authorities always need proof before they can proceed.

[54] In any event, some of these matters are referred to and dealt with by the RPD in its Decision. The RPD looked at what the police actually did do for the Applicants and concluded that this more than demonstrated that the Applicants had not rebutted the presumption of state protection. There was nothing unreasonable about this approach.

[55] The Principal Applicant also says that the RPD dealt unreasonably with the two letters from his friend, Nelson Villalta. On this issue the RPD found as follows, at paragraphs 10 and 11 of the Decision:

> However, the principal claimant submitted two letters from his friend, Nelson Villalta, and in neither of the letters does the writer mention that he had assisted the principal claimant in putting him in touch with the extortion unit of the police, and that this unit set up a

> sting operation to capture the extortionists. This is not a minor detail of the claimant's story. It is a major aspect that demonstrates what efforts the principal claimant took to seek state protection. I find it unreasonable that the person responsible for putting the principal claimant in touch with the extortion unit of the police would not mention this important fact in two different letters written in support of the principal claimant's claim.
>
> Furthermore, the letter in Exhibit C-9 is not dated by the author. I find it unreasonable that an individual, with a military background and trained in providing details, and who is writing in his official capacity as director of the Sonsonate Chamber of Commerce, would not date his correspondence with the principal claimant.

[56] The Principal Applicant says that the RPD makes a mistake here because exhibit C-9 is dated. This mistake appears to have occurred because the date of the letter appears in the text itself, which is in Spanish. The CTR shows that the date was translated at the hearing, so this is definitely an error.

[57] This error is not, however, material enough to render the RPD's approach and general findings on state protection unreasonable. The date issue is an additional reason for discounting the letters. The principal reason is set out in paragraph 10. There is no reason to think that the RPD would not have dealt with the other letter, which it mistakenly thought was undated, in a different way if it had not made the mistake.

[58] The Applicants also say in relation to paragraph 10 that it was unreasonable to expect that the letters would be fully comprehensive in the way the RPD expected. The Applicants rely upon *Mahmud*, above, at paragraph 11:

> In the present case, in effect, the CRDD found the letters submitted by the applicant to be contradictory of the applicant's evidence, not for what they say, but for what they do not say. To follow established authority, the letters must be considered for what they do say. On

> their face they support the applicant's evidence, and do not provide evidence contradicting that evidence.

[59] I do not see what relevance this point has for the state protection analysis. The RPD relies upon the sting operation (i.e. assumes it to be true) to show that the police were willing to act. The error made by the RPD only affects the credibility finding. It does not impact the reasonableness of the state protection finding which were based upon the sting operation having occurred, as well as all the other factors listed by the RPD.

[60] The Applicant also complains that, at paragraph 16 of the Decision, the RPD rejects his explanation:

> The Panel asked the principal claimant if the police officers who had accompanied him to the bank had informed him that he needed to deposit money into the bank account of the agents of persecution, and he stated that they had not. The Panel asked him if these officers were part of the extortion unit, and he replied that they were.
>
> I reject this explanation. First of all, even if the principal claimant had deposited the money into his own account, he could have made a withdrawal and deposited the money into the account of the agents of persecution. Secondly, I find it implausible that the police officers, after receiving the complaint of the principal claimant, setting up the sting operation to obtain evidence of the extortion, and accompany the principal claimant to the bank where he was to make a deposit, would not advise him that he needed to make a deposit into the account of the agents of persecution before charges could be laid. For all of these reasons, I find that the agents of persecution did not extort any money from the principal claimant in September of 2009, and that the police report which he filed on that date was done in order to embellish his claim.

[61] The CTR shows that the Principal Applicant’s testimony on this point was as follows:

> Claimant: When I went to the bank, when I made the deposit I was together with the detectives and the only thing we had to hand in physically was a bag with

paper, cut paper, and a copy of two bills, $20.00 bills that were in the Fiscalia office, that was planned so that we could hand it or give it to them physically being there. When asked for the deposit in the account they did not tell me if that was not going to take place then the actual act of the extortion would not have taken place.

Member: Well who made the decision to deposit the money in your account?

Claimant: I did and with the knowledge of the detectives.

Member: And the detectives never told you that you should deposit at least $20.00 in the other account?

Claimant: They never told me. The fiscale told me that it was afterwards, because they had the name and account number of the person that I was going to deposit in my name, they had the address and they did not proceed against them.

Member: Well how could they proceed against them if there was no extortion, you never deposited the money in the account?

Claimant: I was not told… I was not informed about it.

[62] The Principal Applicant says that the RPD's finding of implausibility in paragraph 16 of the Decision is entirely speculative and is contradicted by his clear evidence.

[63] Once again, however, this matter goes to the credibility analysis. I do not see how it impacts the state protection analysis, which assumes the sting operation to be true, and that it demonstrates the authorities will act.

[64] In their written submissions the Applicants complain that "the finding of the Panel that state protection is available because corrupt officers set up two sting operations that failed, is perverse and illogical."

[65] First of all, the state protection analysis is based upon a range of factors as set out above, as well as the documentary package before the RPD. Secondly, I do not see evidence that the sting operations were set up by corrupt officers. Why would corrupt officers "set-up" a sting operation and then, according to the Principal Applicant's own evidence, knowingly allow the Principal Applicant to deposit the money into his own account? The possible involvement of corrupt officers and their attempts to thwart the states attempts to protect the Applicants does not suggest that the state would not respond in the future with officers who do have the ability to protect the Applicants.

[66] All in all, I cannot find a reviewable error with the state protection analysis and, as this is the determinative issue, I cannot interfere with the Decision.

[67] The parties agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. Application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4654-11
STYLE OF CAUSE:	**JOSE HERIBERTO RENDEROS MORAN; ELVIA LICETH AREVALO DE RENDEROS; JOSE HERIBERTO RENDEROS AREVALO; KATHERINE LISSETH RENDEROS AREVALO (a.k.a. KATHERINE LISSE RENDEROS AREVALO)**
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 14, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	May 4, 2012

APPEARANCES:

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