

Federal Court



Cour fédérale

Date: 20140819

Docket: IMM-7870-13

Citation: 2014 FC 807

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 19, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**JUAN AARON OBED PONCE GALLEGOS
ENRIQUE SERNA DE LA CRUZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by the Refugee Protection Division of the Immigration and Refugee Protection Board (the RPD) dated November 19, 2013,

rejecting the applicants' claim for protection as refugees or persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

II. Facts

[2] The applicants are citizens of Mexico from the city of Calvillo. They are common-law spouses. They allege to have been targeted by the police in Mexico because they are homosexuals.

[3] The applicants allegedly publicly advertised their relationship for the first time in 2008, and as of May 2008, they purportedly started to be intercepted and beaten by police. They were also reportedly discriminated against by members of the public.

[4] After a number of incidents with police, the principal applicant, Juan Gallegos, allegedly filed a complaint with the Public Ministry, but the employee registering his complaint purportedly ridiculed him and asked him to leave the premises. The discrimination and threats from the public and police continued unabated for months afterwards.

[5] The applicants arrived in Canada on September 25, 2008, and claimed refugee protection on the same day.

III. Analysis

[6] In this case, the key point at issue is, in essence, whether the applicants could benefit from an internal flight alternative (IFA) in the city of Guadalajara if they had to return to Mexico. The RPD concluded that the applicants had an IFA in Guadalajara, which, according to the documentary evidence, was relatively liberal towards homosexuals. The RPD noted that the documentary evidence shows that “LGBT people (lesbians, gays, bisexuals and transsexuals) are able to show affection to each other in the centre [of Guadalajara] without being bothered by authorities” (at page 4). It nevertheless recognized that there continued to be discrimination against homosexuals outside Guadalajara.

[7] The applicants argue that the RPD erred in concluding that they can live safely in Guadalajara, as the evidence available clearly reveals that in general, Mexican authorities do not respect human rights. In short, they submit that the RPD [TRANSLATION] “turned a blind eye to evidence that contradicted its thesis” (applicants’ factum at paragraph 25).

[8] Despite the applicants’ allegations, the Court is not inclined to accept that the RPD’s findings regarding the existence of an IFA do not fall within a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). Contrary to the applicants’ submissions, the reasons that the RPD made its decision are fully supported by the evidence in the record. However, the RPD was not required to mention all the documentary evidence (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, 36 ACWS (3d) 635 (CA); *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL/Lexis) (CA)).

[9] In this case, the RPD acknowledged that the situation for homosexuals in Mexico was not perfect and that there were problems. The RPD was also alive to the applicants' alleged discrimination as members of the homosexual community in Mexico (it had no doubts about their credibility). However, after consulting the documentary evidence, the RPD found that there was no serious possibility of the applicants being subjected to a danger of torture, or to a risk to their lives or to a risk of cruel and unusual treatment or punishment in the city of Guadalajara.

[10] The Court is of the opinion that it has come to this conclusion reasonably. A reading of the decision and record shows that homosexuals in Guadalajara do not appear to suffer discrimination, much less persecution. None of the evidence put forth by the applicants shows that there is a sustained or systemic violation of basic human rights of homosexuals in Guadalajara demonstrative of a failure of state protection (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689). The Court does not accept that a single reference of violence against certain members of the LGBT community in Guadalajara in the National Documentation Package on Mexico (September 17, 2012, Tab 6.6) or references to the overall discrimination against homosexuals in Mexico support the applicants' submission that no IFA exists in Mexico. The evidence, read as a whole, rather suggests that homosexuals in Guadalajara can live openly without discrimination or problems with the authorities.

[11] The Court notes that it was for the applicants to demonstrate, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including Guadalajara and that it would be unduly harsh for the applicants to relocate to the proposed IFA (see *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), 31 ACWS (3d)

139, 140 NR 138 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, (1993), 109 DLR (4th) 682, 22 Imm LR (2d) 241 (FCA)). It required actual and concrete evidence (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, at paragraph 15, 102 ACWS (3d) 592 (CA)).

[12] In this case, the applicants did not provide convincing evidence that the first branch of the test set out in *Rasaratnam*, above, was met. Similarly, they failed to demonstrate that it would be objectively unreasonable to avail themselves of the IFA in Guadalajara.

[13] The Court cannot intervene in this case by reason only of the fact that the applicants are in disagreement over the weight assigned to the evidence by the RPD.

IV. Conclusion

[14] For all of the above reasons, the applicants' application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the applicants' application for judicial review is dismissed without any question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Daniela Guglietta, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7870-13

STYLE OF CAUSE: JUAN AARON OBED PONCE GALLEGOS,
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PLACE OF HEARING: MONTRÉAL, QUEBEC

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APPEARANCES:

Sandra Palmieri FOR THE APPLICANTS

Myriam Larose FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sandra Palmieri FOR THE APPLICANTS
Lawyer
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec