

Federal Court



Cour fédérale

Date: 20141016

Docket: IMM-1774-14

Citation: 2014 FC 986

Ottawa, Ontario, October 16, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

S.M.G.L., J.C.M.R. AND L.C.R.

Respondents

JUDGMENT AND REASONS

[1] The Minister seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board granting refugee protection to the respondents. While the story told by the respondents was one that might more commonly be found in a spy novel, the Board was satisfied that the respondents had a well-founded fear of persecution in Mexico based upon their political opinions and membership in a particular social group, arising out of their attempts to expose an international plot to launch cyber-attacks on the United States of America.

[2] The Minister does not take issue with the Board's conclusion that the respondents' claims were credible, asserting only that the Board erred in finding that adequate state protection was not available to the respondents in Mexico. In particular, the Minister says that the Board erred by conflating the respondents' unsuccessful attempts to expose the activities of those behind the cyber-plot with an absence of state protection for the threat to the respondents' lives from these same individuals.

[3] I agree with the respondents that the threat to their personal safety was inextricably intertwined with their whistle-blowing activities. The respondents approached numerous authorities within Mexico for assistance in exposing the cyber-attack plot, without success. In the circumstances, it was reasonable for the Board to conclude that the respondents had successfully rebutted the presumption that adequate state protection would be available to them in Mexico. Consequently, the application will be dismissed.

I. Background

[4] The respondents are Mexican nationals who actively and publicly opposed terrorism. They were each part of a group led by an individual that I will refer to as "M". This group attempted to expose a plot to launch cyber-attacks on nuclear facilities and intelligence centres in the United States.

[5] The plot involved the governments of Iran, Cuba and Venezuela, along with extremists at the National Autonomous University of Mexico. There was also evidence before the Board suggesting that the Iranian government had links to Mexican drug cartels, and that the Mexican government may itself have had some involvement in the plot.

[6] Since his attempts to expose the cyber-plot became known, M has become very ill with a highly unusual strain of Hepatitis C virus. A medical report provided to the Board states that the accelerated progress of M's disease suggests that the virus may have originated in a laboratory in one of the countries involved in the cyber-plot. From this, the Board found that there was credible evidence that M had been intentionally infected with the virus by one or more of the agents of harm feared by the respondents. The Minister does not challenge this finding.

[7] The respondents themselves evidently came under suspicion by the plotters, as they were followed and photographed on a number of occasions, in at least some instances by individuals identified as employees of the Iranian Embassy. At least one of the claimants also received anonymous death threats on several occasions.

[8] The Minister intervened in the respondents' refugee claims, presenting evidence, questioning witnesses and making submissions to the Board. While the story told by the respondents was certainly a most unusual one, counsel for the Minister acknowledged at the hearing of this application that "for the most part" there was no challenge to the credibility of the respondents' story, which was corroborated by a voluminous quantity of documentary evidence.

[9] In addition to their testimony, the respondents produced transcripts of recordings of various meetings and events, documents originating from the American government, newspaper reports and medical evidence. Information was also provided with respect to a television documentary that had been made about the cyber-attack plot, and the respondents' role in attempts to expose it.

[10] Based upon this evidence, the Board was satisfied that the respondents had a well-founded fear of persecution in Mexico, and that adequate state protection would not be available to them in that country. As noted earlier, the Minister is only challenging the Board's state protection finding.

II. Analysis

[11] The respondents put considerable evidence before the Board regarding their attempts to engage the attention of Mexican authorities in this matter. M approached the Mexican police, providing them with details of the plot, including the names of some of the participants. M's claims were supported by audio and visual tape recordings that he had surreptitiously made of various meetings involving participants in the plan at which he was present. M also recorded his meeting with the Mexican police. A transcript of the encounter reveals that the police had no interest in investigating M's allegations or otherwise assisting M, and instead ridiculed, threatened and assaulted him.

[12] M then contacted the Attorney General responsible for combating organized crime in Mexico. He provided information regarding both the cyber-attack plot and his mistreatment at the hands of the Mexican police. The Attorney General's office confiscated M's computer hard drive, but nothing further appears to have been done in response to M's allegations.

[13] The respondent S.M.G.L. contacted numerous Senators in the Mexican government in an effort to alert them to the cyber-attack plot. Only one Senator responded. S.M.G.L. and M subsequently met with the Senator, providing him with copies of the recordings substantiating their claims. They also told him of their concern that they were being followed. The Senator did not offer them any protection, nor did he direct them to any government officials who could

assist them in obtaining state protection. They were just told to be careful, and to report back if anything happened to either of them.

[14] The respondents and their associates continued their efforts to engage the attention of Mexican authorities, contacting several of the major political parties in Mexico, amongst others. They provided the Board with a list of numerous organizations and authorities contacted by the respondents and their associates, all to no avail. Once again, the Minister does not take issue with the respondents' evidence on this point.

[15] After their attempts to obtain assistance in Mexico failed, the respondents approached the American authorities. The actions of the respondents led the U.S. government to declare a Venezuelan diplomat suspected of complicity in the cyber-plot to be *persona non grata*. The respondents also approached the media, which ultimately led to the production of the documentary about their case.

[16] It is apparent from the Board's reasons that it understood that there is a rebuttable presumption that a state will ordinarily be able to protect its citizens: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1. The Board also clearly understood that the test was the adequacy of the available state protection, and that states were not required to provide perfect protection to their citizens. This is the correct formulation of the test: *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636.

[17] When reviewing a Board decision regarding the adequacy of state protection available to individual claimants in their country of origin, it is not this Court's role to parse each line of the Board's reasons looking for error. The Court instead considers "the justification, transparency

and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law”:

Dunsmuir v. New Brunswick, 2008 SCC 9, at para. 47, [2008] 1 S.C.R. 190.

[18] In this case, the Board looked at what had happened to M, finding that “this was a strong indicator of what the claimants may fear if they are returned to Mexico”. In evaluating the risk faced by the respondents, it was reasonably open to the Board to look at what had happened to similarly-situated individuals: *Ward*, above at para. 57.

[19] The evidence adduced by the respondents also demonstrated that the state of Mexico had refused them protection in the past, and was disinterested in protecting them in the future. The Minister has not pointed to anything else the respondents could have done to protect themselves in Mexico.

[20] The Minister submits that the Board only considered whether adequate state protection would be available to the respondents for their whistle-blowing activities, and did not consider whether such protection would be available in relation to the threats to the respondents’ personal safety. The fact is that the respondents were only at risk in Mexico because of their whistle-blowing activities and the people that they feared were those behind the cyber-plot. Given the Mexican authorities’ lack of interest in the cyber-plot, the Board’s finding that they would be unwilling to protect the respondents from the fall-out of their whistle-blowing was one that was reasonably open to the Board on the record before it.

III. Conclusion

[21] For these reasons, the application for judicial review is dismissed. I agree with the parties that given the extraordinary facts of this case, it does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1774-14

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v S.M.G.L., J.C.M.R. AND L.C.R.

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: SEPTEMBER 29, 2014

JUDGMENT AND REASONS: : MACTAVISH J.

DATED: OCTOBER 16, 2014

APPEARANCES:

Helen Park	FOR THE APPLICANT
Erica Olmstead	FOR THE RESPONDENT S.M.G.L.
Fiona Begg	FOR THE RESPONDENT J.C.M.R.
Maria Sokolova	FOR THE RESPONDENT L.C.R.

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE APPLICANT
Edelmann & Co. Barristers and Solicitors Vancouver, British Columbia	FOR THE RESPONDENT S.M.G.L.

Fiona Begg
Barrister and Solicitor
Vancouver, British Columbia

FOR THE RESPONDENT J.C.M.R.

Maria Sokolova
Barrister and Solicitor
Vancouver, British Columbia

FOR THE RESPONDENT
L.C.R.