

Date: 20030110

Docket: IMM-5163-01

Ottawa, Ontario, the 10th day of January 2003

Present: The Honourable Mr. Justice Pinard

Between:

**JUAN MANUEL CERDA HERNANDEZ
HILDA GABRIELA CASTRO DE CERDA
ANA GABRIELA CERDA CASTRO
TANIA CERDA CASTRO**

Applicants

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER

The application for judicial review of the decision of the Refugee Division of the Immigration and Refugee Board, dated October 15, 2001, ruling that the applicants are not Convention refugees, is dismissed.

"Yvon Pinard"

Judge

Certified true translation

Suzanne M. Gauthier, C. Tr., L.L.L.

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Neutral Citation: 2003 FCT 5

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REASONS FOR ORDER

PINARD J.:

[1] This is an application for judicial review of a decision of the Refugee Division of the Immigration and Refugee Board (the IRB), dated October 15, 2001, ruling that the applicants are not Convention refugees as defined in subsection 2(1) of the *Immigration Act*, R.S.C. 1985, c. I-2 (the Act).

[2] The principal applicant, his wife and their two minor daughters are Mexican citizens. They claim refugee status because of the political opinions attributed to the principal applicant and, in the case of his wife and their daughters, membership in a social group, “the family”.

[3] The IRB refused to grant refugee status to the applicants, concluding that they “[TRANSLATION] have not discharged the burden of proof on them to establish that there would be a reasonable chance of persecution should they return to Mexico”.

[4] The applicants submit, first, that the IRB erred in failing to consider the evidence as a whole or in minimizing the evidence that was presented. It is an elementary principle of law that a tribunal is presumed to have considered all of the evidence that was before it (*Taher v. Minister of Citizenship and Immigration* (September 7, 2000), IMM-5255-99; *Hassan v. M.E.I.* (1992), 147 N.R. 317 (F.C.A.); *Florea v. Minister of Employment and Immigration* (June 11, 1993), A-1307-91 and *Woolaston v. Minister of Manpower and Immigration*, [1973] S.C.R. 102).

[5] The applicants submit in particular that the IRB erred in failing to consider the repressive situation that exists in Mexico. They argue that there is a set of circumstances in that country that should create a presumption of possible persecution for such persons as the principal applicant, given the human rights violations by the Mexican authorities. However, general evidence concerning the political situation in Mexico does not suffice to establish a direct relation to the situation of the applicants (*Canada (Secretary of State) v. Jules* (1994), 84 F.T.R 161). Given the general nature of the

information concerning the situation of repression in Mexico, the IRB did not err in considering and assessing it as it did, without referring explicitly to it in its decision.

[6] The applicants argue that the IRB was in conflict with the decided cases of this Court in rejecting the testimony of the principal applicant because it included some items that were not in the Personal Information Form (PIF).

[7] In this regard, I had occasion to write the following, at paragraph 4 of *Grinevich v. Minister of Citizenship and Immigration* (April 11, 1997), IMM-1773-96:

... Where a refugee claimant fails to mention important facts in his or her PIF, this may legitimately be considered by the Board to be an omission that goes to lack of credibility.

(See also *Sanchez v. Minister of Citizenship and Immigration* (April 20, 2000), IMM-2631-99).

[8] In the case at bar, the items not included in the principal applicant's PIF and introduced during his testimony are not just some "small additions", as the applicants contend. They are allegations that are significant in determining whether the applicants were being persecuted. The IRB's conclusion that the omissions in the PIF undermined the principal applicant's credibility is not unreasonable, in my opinion.

[9] The applicants argue that the IRB erred in its application of the political refugee criteria that are relevant to them. The Board found that their account of the facts was unrelated to any of the five grounds in the Convention. The applicants insist that the ground is social group, i.e. victims of the mafia

and traffickers in automobile parts stolen in Mexico, and that this is an economically and politically disadvantaged class.

[10] However, the case law indicates that individuals such as the applicants who are the targets of criminal acts cannot be considered members of a social group within the meaning of *Canada v. Ward*, [1993] 2 S.C.R. 689 (see *Rizkallah v. M.E.I.* (1992), 156 N.R. 1 (F.C.A.); *Karpounin v. M.E.I.* (1995), 92 F.T.R. 219; *Soberanis v. Minister of Citizenship and Immigration* (October 8, 1996), IMM-401-96; *Vargas v. Canada (M.C.I.)*, 2002 FCT 1019, [2002] F.C.J. No. 1350 (T.D.) (QL) and *Galvan v. Minister of Citizenship and Immigration* (April 7, 2000), IMM-304-99). The IRB did not err in reaching a similar conclusion, and its decision in this regard itself warrants the dismissal of the applicants' claim.

[11] Lastly, the applicants submit that the IRB erred in the assessment of their credibility. In fact, the Board clearly determined that the principal applicant was not credible and provided some detailed reasons in its decision, citing inconsistencies and improbabilities in the principal applicant's PIF and his oral testimony. I have reviewed the evidence, and it seems to me that the IRB did not draw unreasonable inferences that would warrant the intervention of this Court (see *Aguebor v. M.E.I.* (1993), 160 N.R. 315 (F.C.A.)).

[12] For all these reasons, the application for judicial review is dismissed.

“Yvon Pinard”

Judge

OTTAWA, ONTARIO

January 10, 2003

Certified true translation

Suzanne M. Gauthier, C. Tr., L.L.L.

**FEDERAL COURT OF CANADA
TRIAL DIVISION**

**NAMES OF COUNSEL AND
SOLICITORS OF RECORD**

DOCKET NO: IMM-5163-01

STYLE:
MANUEL CERDA HERNANDEZ

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- and -

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PLACE OF HEARING: Montréal,
Quebec

DATE OF HEARING: November 19,
2002

**REASONS FOR ORDER OF THE
HONOURABLE MR. JUSTICE PINARD**

DATED: January 10,
2003

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