

**Date: 20080421**

**Docket: IMM-3279-07**

**Citation: 2008 FC 514**

**Ottawa, Ontario, April 21, 2008**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**GRACIELA BLAZQUEZ DE HERNANDEZ  
(a.k.a. Graciela Blazquez de Hernande)  
DANIELA HERNANDEZ BLAZQUEZ  
MARIA GUADELUPE HERNANDEZ BLAZQUEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Graciela Blazquez de Hernandez (Ms. Blazquez) and her two children, Daniela Hernandez Blazquez and Maria Guadalupe Hernandez Blazquez, from a negative decision of the Refugee Protection Division of the Immigration and Refugee Board rendered on June 12, 2007.

## **I. Background**

[2] The Applicants are citizens of Mexico who arrived in Canada in 2006 along with Ms. Blazquez's husband, Sergio Hernandez Cervantes (Mr. Hernandez Cervantes), and their adult son, Sergio Hernandez Blazquez (Mr. Hernandez). At that time, all of the members of the family claimed refugee protection based primarily on a risk narrative provided by Mr. Hernandez.

[3] Mr. Hernandez claimed to have been beaten and later threatened because of his volunteer work for a group searching for missing children in Mexico. These events were apparently connected in some way to his efforts to locate a particular child. Within a few days of the alleged assault, Mr. Hernandez left for Canada without having made a police complaint. His excuses for failing to report these crimes were that he did not trust the Mexican police and that any complaint would have been futile.

[4] Not long after the departure of Mr. Hernandez from Mexico, the rest of his family followed. They claimed that they had also received threats and had had their home and business premises ransacked by the same people who had allegedly accosted Mr. Hernandez. Mr. Hernandez Cervantes claimed that he had reported these events through his lawyer to the local police in the form of two denunciations. Those denunciations were tendered in evidence to the Board and it is apparent they there were, indeed, filed with the authorities. Nevertheless, within a few days of filing these reports with the police, Ms. Blazquez and her husband left for Canada. Their two daughters followed them some weeks later.

## **II. The Board Decision**

[5] The Board rejected the Applicants' refugee claims on state protection grounds and, in particular, because they had not taken reasonable or adequate steps to seek protection within Mexico before coming to Canada. The determinative passage from the Board's decision was the following:

The panel finds that it is unreasonable for the claimants not to have made greater efforts to seek police protection or the protection of another state authority. The panel further finds it is unreasonable for the claimants not to take additional steps or measures to access the protection of the state of Mexico that was and is available to them. Claimants are required to show that they have sought all avenues of protection reasonably available to them before seeking international protection. This is supported in case law, where the Federal Court held that the claimant should take reasonable steps to ensure their protection.

In this particular case, the claimants did not take all reasonable steps; indeed he took no steps at all. The panel is of the opinion that he ought to have shown that he had taken all steps reasonable in the circumstances before seeking international protection in Canada.

[footnotes omitted]

[6] Neither Mr. Hernandez Cervantes nor Mr. Hernandez have joined in this application and, according to Ms. Blazquez, their respective whereabouts are unknown to her.

## **III. Issues**

- [7] (a) Did the Board err in its treatment of the evidence bearing on the Applicants' alleged efforts to seek state protection?
- (b) Did the Board apply the wrong legal test to the issue of state protection?

#### IV. Analysis

[8] The standard of review analysis applicable to the judicial review of administrative decisions was recently altered by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Formerly, the standard of review for factual matters such as the first issue in the case at bar has been that of patent unreasonableness, while pure issues of law were considered on a standard of correctness. In *Campos Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358 at paras. 12-14, Justice Yves de Montigny considered the *Dunsmuir* decision and took from it – correctly in my view – that the courts must continue to show restraint in their review of administrative decisions involving factual determinations or when the decision-maker is applying discretion or policy. To the same effect is the decision of Justice Roger Hughes in *Khanna v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 335 where he held at para. 4 that reasonableness is the “deferential standard to be applied where the question is one of fact, discretion or policy and shall apply where the legal and factual issues are intertwined and cannot readily be separated”. Having regard to these recent decisions, I would adopt the standard of reasonableness for the first issue in this case. Because I can identify no error of law with respect to the second issue raised by the Applicants, it is unnecessary to conduct a further standard of review analysis.

[9] The Applicants assert that the Board made a factual error by holding that no efforts had been made by any of them to access state protection in Mexico before they left for Canada. In the alternative, they say that the Board had a duty at least to refer to their evidence of the two police complaints and that the failure to do so indicates that this evidence was overlooked.

[10] I am not convinced that the Board failed to distinguish between Mr. Hernandez's obvious failure to seek state protection and the steps which the rest of his family took in that regard. It would have been better for the Board to have more clearly articulated that distinction in the evidence; however, where the Board referred to the claimants as a group, it consistently referred to their state protection efforts as being inadequate, insufficient or unreasonable. Where it referred to Mr. Hernandez, it noted that he had taken "no steps at all". These passages seem to me to indicate an appreciation by the Board that some effort to pursue state protection in Mexico had been taken by Mr. Hernandez Cervantes on behalf of the Applicants.

[11] It is unfortunate that the Board failed to mention specifically in its decision the two police denunciations and the related testimony from Mr. Hernandez Cervantes. If I was convinced that this evidence had been overlooked and that it could be material to the outcome of the case, I would not hesitate to send the matter back for redetermination. However, as noted above, the Board did generally acknowledge this evidence and found it to be insufficient to rebut the presumption of state protection. In other words, it found that the Applicants had failed to adduce clear and convincing evidence that Mexico is unable or unwilling to protect them. That finding is unassailable because the Applicants left for Canada within days of their police complaints and well before any resolution of those complaints could reasonably have been expected. Even at that, no evidence was tendered to establish what had become of the complaints or whether the complaints could even be further pursued by the Mexican authorities in the absence of the Applicants. In summary, there was no evidentiary foundation in this case for a state protection finding that would be favourable to the Applicants. The failure by the Board to mention specifically the police denunciations was,

therefore, not material to the outcome of the case because that outcome was inevitable on this record: see *Kandasamy v. Canada (MCI)*, 2007 FC 791, 159 A.C.W.S. (3d) 262 at para. 14.

[12] I would add, in conclusion, that the evidentiary issues raised on this application are the apparent result of the Board's rather cursory treatment of the case-specific evidence in favour of lengthy and largely irrelevant references to country condition reports dealing with police, legislative, judicial and correctional reforms in Mexico. This was not a claim which was based on allegations of police corruption or abuse and no meaningful evidence was tendered to establish that the authorities were indifferent to what was, at most, a case of simple criminality. Greater attention by the Board in its decision to the particular facts of this case would likely have avoided this application.

[13] I can identify no error by the Board in its identification of the legal test for state protection. Whether or not the test is one of "effective" protection or "serious efforts", the essential fact remains that these Applicants failed to establish that they had taken reasonable steps to pursue state protection. The musings by the Board about police corruption in Mexico were, as noted above, irrelevant to the facts of this case. Therefore, the issue of the adequacy of police protection in Mexico due to problems of corruption simply does not arise on this record.

[14] In the result, this application for judicial review is dismissed.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“ R. L. Barnes ”

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Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3279-07

**STYLE OF CAUSE:** GRACIELA BLAZQUEZ DE HERNANDEZ ET AL  
v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** April 2, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** BARNES, J

**DATED:** April 21, 2008

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