

**Date: 20080924**

**Docket: IMM-576-08**

**Citation: 2008 FC 1076**

**Ottawa, Ontario, September 26, 2008**

**PRESENT: The Honourable Mr. Justice Louis S. Tannenbaum**

**BETWEEN:**

**Ramon LAMOTHE VALERIO  
Elsa Yasmin BRITO HUESCA  
Megan Shaiel LAMOTHE BRITO  
Jesse LAMOTHE BRITO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a January 16, 2008 decision of the Refugee Protection Division (the Panel) that the applicants, a couple and their two children, Mexican citizens, are neither “Convention refugees” nor “persons in need of protection”.

[2] The principal applicant, Ramon Lamothe Valerio, was born on November 28, 1975, in Veracruz, Mexico, and has Mexican citizenship. He is married to the applicant, Elsa Yasmin Brito Huesca, and has two children: a boy, Jesse Lamothe Brito (Jesse), and a girl, Megan Shaiel Lamothe Brito (Megan), who are also applicants in this case.

[3] The applicants' children attended a day care centre in the city of Veracruz, Mexico.

[4] On September 20, 2006, Jesse told his mother that someone was talking to him through a hole in the wall and giving him little gifts.

[5] On September 27, 2006, she reported the event to management at the day care and criticized the lack of supervision. A few days later, while they were taking a walk, Jesse pointed to one of the police officers in the park and said that he was the person who had been talking to him and giving him gifts. His mother learned that the police officer's name was Carlos Espinoza Fuentes (Fuentes) and that he reported to Commander Cadena.

[6] On October 12, 2006, the applicants received a note threatening the lives of their children, saying that they could make money from the children and demanding that the children be handed over. The applicants took the note to the Office of the Public Prosecutor to file a complaint and they were told to come back the next day. The next day, the Public Prosecutor claimed to have misplaced the papers.

[7] On October 16, 2006, the children began attending a different day care centre.

[8] On November 9, 2006, the applicants were the victims of a false alert concerning the kidnapping of Jesse and related extortion. The applicants said that they went to file a complaint with the authorities, but the authorities would not take the complaint.

[9] That evening, the applicants received an initial phone call saying that, since they had refused to pay and had filed a complaint, their son (Jesse) was going to be taken away and killed. They were also told that the same thing would happen to the entire family. They received similar phone calls over the next few days.

[10] On November 14, 2006, Commander Cadena allegedly ordered Fuentes to go to the day care centre to take Jesse away. However, a woman by the name of Maraboto saw Fuentes taking Jesse away. She made Fuentes let go of the boy and the officer drove away in a Veracruz municipal police vehicle.

[11] After that incident, the applicants moved to Mata de Uva, however, according to the mother, they continued receiving threatening phone calls during the two weeks that they lived there; the caller would say that they would be tracked down and she would be raped and then killed, like the rest of the family.

[12] On November 30, 2006, the applicants decided to flee Mexico.

[13] On December 24, 2006, the applicants left Mexico and arrived at Dorval the same day.

[14] On January 30, 2007, the applicants filed a claim for refugee protection.

[15] On November 8, 2007, the Panel heard the claim for refugee protection. The claim was rejected on January 16, 2008.

[16] On February 1, 2008, the applicants filed an application for judicial review of the Panel's decision of January 16, 2008.

[17] In its decision of January 16, 2008, the Panel found that the mother's credibility was undermined. It raised the following points:

- a. Following the incident of October 12, 2006, she said she tried to file a complaint with the Office of the Public Prosecutor, but was told the documents had been misplaced. At the hearing on November 8, 2007, when asked why she had not filed another complaint, she said she tried twice to lay a complaint on November 13, 2006. However, her narrative made no reference to these attempts and she was unable to explain the omission.
- b. Following the incident of November 9, 2006, she allegedly tried to file a complaint with the authorities, but they refused to take it. At the hearing, when she was told that according to the documentary evidence, there was a procedure for filing a complaint with the Federal Prosecutor's Office (MEX101374.EF– June 5, 2006), she told the Panel she was not aware of that possibility.
- c. In her narrative, she said it was Commander Cadena who ordered Fuentes to take Jesse away. The Panel regarded that as mere speculation, not substantiated by any evidence.

[18] The applicant did not submit any issues. However, the respondent put forward an issue, which the Court has rephrased as follows:

- a. Was the Panel's credibility finding unreasonable?
- b. Was the Panel's finding on internal flight alternative unreasonable?

[19] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held that there ought to be only two standards of review: correctness and reasonableness. The Court indicated that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law (see *Dunsmuir* at paragraph 50). When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether the tribunal's decision was correct.

[20] The Supreme Court also indicated that in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir* at paragraph 47).

[21] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law (see *Dunsmuir* at paragraph 54). Appropriate deference to a tribunal is determined based on the following factors: the existence of a privative clause; whether

the decision maker has special expertise in a discrete and special administrative regime; and the nature of the question of law (see *Dunsmuir* at paragraph 55).

[22] With respect to the first issue, the standard of review applicable to a panel's decision based on the refugee applicant's lack of credibility is reasonableness (*Mubiayi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 562 at paragraph 13; and *Aguebor v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 732 (Lexis) at paragraph 4).

[23] As for the second issue at bar, the standard of review to be applied to the question of whether or not an internal flight alternative is available to the applicant is one of reasonableness: *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999 (Lexis). See also: *Vargas v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 367 at paragraph 20; *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358 at paragraph 12; and *Ali v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 193 at paragraph 5.

***a) Was the Panel's credibility finding unreasonable?***

[24] The applicant argued there were no contradictions between her narrative and what she said at the hearing. She complained to the authorities on three occasions: on October 12, 2006, November 8, 2006, and November 9, 2006. Furthermore, she did not make two complaints on November 9, 2006, because the authorities refused to register her complaint. As for her suspicions that Commander Cadena ordered Fuentes to take Jesse away, she said this was her own supposition or deduction and had no bearing on her credibility.

[25] The respondent pointed out that there were sufficient omissions and contradictions between what the applicants said in their testimony and what they related in their Personal Information Form (PIF). The respondent also submitted that the Panel's adverse credibility findings were reasonable given the omissions and lack of evidence on essential elements of their claim.

[26] With respect to the contradiction over the number of times the applicant complained to the authorities on November 13, 2006, the transcript of the hearing indicates the following:

[TRANSLATION]

A. ... we tried to file a complaint, we did ... we did file a complaint. The next day when we went to find out what could be done about it, they told us they didn't have the complaint or the statement or the note in question, as if we ... as if we hadn't even been there.

Q. Yes. And so, did you try to renew the complaint?

A. Yes.

Q. So, what happened?

A. They didn't want to take the complaint.

- Um-hum, accept the complaint.

Q. How is it that ... there is nothing about this second attempt in your narrative?

A. I don't know.

[Emphasis added.]

[27] There is no mention of these two attempts in her narrative dated January 31, 2007.

Moreover, the applicant signed Declaration A at the end of her PIF, which states, among other things:

Declaration A

I declare that the information provided in this form and all attached documents is complete, true and correct.

[Emphasis added.]

[28] Therefore, it was reasonable for the Panel to make an adverse credibility finding; the applicant was unable to give any explanation for the contradiction between her PIF and her testimony.

[29] With regard to the applicant's assertion that it was Commander Cadena who ordered Fuentes to take Jesse away, the Panel said: "[This] is merely speculation intended to support her alleged persecution. This only further undermines her credibility." The transcript of the hearing indicates the following:

[TRANSLATION]

Q. You have some documentary evidence on that, don't you? Some newspaper articles, some...

A. No. I didn't even bring any.

- Rumour has it.

A. Yes.

...

Q. How can you say that? Do you have any evidence of that, of what you're saying?

A. No.

Q. No. Well, then, don't say it or say it, and it will be assessed on the merits. So, then, you figure that since he has to ask permission to use a car, it must be ... Cadena who sent Fuentes to kidnap your child?

A. Are you asking me?

- Yes.

A. We think it was Commander Cadena who sent Carlos Espinoza Fuentes to kidnap my son.

[Emphasis added.]



[30] Therefore, the Court is of the view that given the lack of evidence in support of the applicant's claim that Commander Cadena ordered Jesse's abduction, it was reasonable for the Panel to give it less weight and for that to have undermined the applicant's credibility.

[31] For the foregoing reasons, the Panel's adverse credibility finding was not unreasonable and does not warrant this Court's intervention.

***b) Was the Panel's finding on internal flight alternative unreasonable?***

[32] The applicant feels the Panel disregarded her testimony to the effect that the applicants went into hiding in Mata de Uva and that two weeks after arriving there, they were still receiving threatening phone calls.

[33] The respondent submitted that the applicants were required, but failed, to go to the Mexican authorities before seeking the protection of another country. The respondent also noted that the applicants spent two weeks in Mata de Uva without seeking local police protection. In addition, the applicants acknowledged that they could find work to support the family. It was therefore not unreasonable for the Panel to find that there was an internal flight alternative.

[34] It is settled law that on the issue of internal flight alternative, the burden of proof is on the applicant (*Del Real v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 140 at paragraph 18; and *Palacios v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 816 at paragraph 9). The refugee applicant must show that it would be unreasonable to seek refuge in

another part of the country (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*), [2001] 2 F.C. 164 (F.C.A.) at paragraph 8).

[35] In the case at bar, the applicants have not presented any evidence to support the claim that there was no internal flight alternative available to them in Mexico. On the contrary, they acknowledged that they could support their family in another region of Mexico. Furthermore, over the course of their two-week stay in Mata de Uva, they did not seek out the assistance of the authorities; it was therefore not unreasonable for the Panel to find that there was an internal flight alternative, given that the burden of establishing the opposite was on the applicants.

[36] The Court also agrees with the Panel's finding that the applicant failed to establish, with clear and convincing evidence, that Mexico was unable to provide adequate protection. Other than the complaints filed in Veracruz, the applicants did not avail themselves of any other recourse, in Veracruz or elsewhere.

[37] For these reasons, the Court is of the view that the Panel's finding on internal flight alternative was not unreasonable.

[38] The application for judicial review will accordingly be dismissed. No question of general importance was proposed for certification.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** for the foregoing reasons, the application for judicial review be dismissed.

“Louis S. Tannenbaum”

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Deputy Judge

Certified true translation

Peter Douglas

**Authorities consulted by the Court**

1. *Aguebor v. Canada*, 1993, F.C.J. No. 732.
2. *Aslam v. Canada*, 2006, F.C.J. No. 264.
3. *Pushpanathan v. M.C.I.*, [1998] 1 S.C.R. 982.
4. *Canada (PG) v. Ward*, [1993] 2 S.C.R. 689.
5. *Lizette Guzman Sanchez v. Canada (M.C.I.)*, 2008 FC 66.
6. *Ramirez et al v. Canada (M.C.I.)*, 1007 FC 119.
7. *Rajaratnam v. Canada (M.E.I.)*, 1991, 135 N.R. 300 (F.C.A.).
8. *Fuentez-Valoy, Ruben Dario v. Canada (M.E.I.)*, 1993, F.C.A.,  
No. A-709-90.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-576-08

**STYLE OF CAUSE:** Ramon LAMOTHE VALERIO,  
Elsa Yasmin BRITO HUESCA,  
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**PLACE OF HEARING:** Montréal, QC

**DATE OF HEARING:** August 20, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TANNENBAUM D.J.

**DATE OF REASONS:** September 26, 2008

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