

**Date: 20090407**

**Docket: IMM-3979-08**

**Citation: 2009 FC 352**

**Montréal, Quebec, April 7, 2009**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**CUNA BALLESTEROS JOSE LUIS  
MIRELES SALAZAR RUTH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The principal applicant José Luis Cuna Ballesteros (applicant) and his spouse Ruth Mireles Salazar, both citizens of Mexico, seek under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), judicial review of the decision dated August 15, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (panel), determining that they

are neither “refugees” nor “persons in need of protection” as defined in sections 96 and 97 of the Act, and consequently denying their refugee claim.

## II. Facts

[2] The applicant submits that when he was acting as financial auditor for the Agricultural and Peasant Workers Independent Central (*Central independiente de obreros agricolas y campesinos*, or CIOAC), he received death threats after internally reporting fraudulent management by one of the officers of the CIOAC.

[3] Nevertheless, the applicant thought it appropriate in that situation to be interviewed by the media on the mismanagement of the CIOAC, which resulted in media coverage informing the public of the matter. From that point on, the applicant began to fear the senior officers of the CIOAC as well as the peasants represented by this union because he had reported fraud and because of his role as financial auditor of the CIOAC at that time.

[4] Having thus lost the support of union management and subsequently receiving (both he and his spouse) threats that the applicant merely reported to police in August 2006 without taking further measures, he and his spouse then decided, on February 7, 2007, to leave their country and claim refugee protection in Canada.

III. Decision of the panel

[5] After having considered and commented on the principal evidence and highlighted the discrepancies, inconsistencies and implausibilities in the applicant's account and that of his spouse, the panel found that they were not credible and that, even if their account were accepted as true, the applicants had not made any serious efforts to avail themselves of the protection of their country of origin, and consequently did not rebut the presumption of state protection that applies in a democratic state such as Mexico.

[6] For these reasons, the panel found that the applicants did not qualify as "Convention refugees" or as "persons in need of protection" and consequently denied their refugee claim.

IV. Issue

[7] Did the Board make an unreasonable error by making a negative assessment regarding the credibility of the applicants and refusing to grant them the status of "refugees" or "persons in need of protection", and by finding that they had failed to discharge the burden of showing that they had made sufficient efforts to avail themselves of their country's protection before seeking Canada's protection?

V. Analysis

*Standard of review*

[8] This proceeding raises questions of mixed fact and law and is therefore subject to the standard of reasonableness as defined in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*). The panel's decision must therefore be treated with deference because the panel enjoys a certain expertise in proceedings under its jurisdiction such as this.

[9] This standard does not open the door to the intervention desired by the applicants. The Court needs only to determine if the impugned decision is reasonably justified in light of the evidence and the relevant law.

[10] Within this standard of review, can the Court conclude that the Board erred when it determined that the applicant's spouse is neither a "refugee" nor a "person in need of protection" as defined in the Act?

*Parties' claims*

[11] Briefly, the applicants are criticizing the panel for erring by not believing their account given under oath and by not properly considering their country's special situation and the reasons why they did not seek its protection.

[12] The respondent for his part maintains that the applicants failed to exhaust the alleged avenues available to them in Mexico before claiming refugee status in Canada, that moreover, as noted by the panel, the credibility of their account left something to be desired in many respects, and that furthermore the decision of the panel discloses no unreasonable error that could warrant the intervention of this Court.

*Have the applicants satisfied their obligation to exhaust the avenues available to them in Mexico before being able to claim refugee status in Canada?*

[13] The applicant purportedly made only one complaint to the Mexican authorities before claiming refugee status in Canada, and even on this point, his testimony was contradictory and vague.

[14] However, even if the applicant did make a complaint to the Mexican police, he should have done so more than once. The police are not the only organization in Mexico that can offer protection to its citizens in a case of publicized fraud of which there were several victims amongst the peasants doing business with the CIOAC.

[15] Instead, the applicants should have exhausted every avenue offered to them in Mexico before coming to claim refugee status in Canada (*Valencia v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1136).

[16] It must also be recalled that there is a presumption of state protection, particularly in a democratic state such as Mexico (*De La Rosa v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 83; *Santos v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 793; *Lazcano v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1630; *Baldomino v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1638).

[17] The applicants' failure to make any serious or reasonable efforts to avail themselves of their country's protection does not allow them to rebut this presumption, is fatal to their claim, and justifies the panel's findings in its decision.

#### *Credibility of the applicants*

[18] Even if this finding by the Court on the above issue is sufficient for this application to be dismissed, it may perhaps be useful to discuss the credibility of the applicants insofar as the panel made it the principal ground for denying the refugee claim and the applicants are challenging this finding.

[19] Contrary to the claims of the applicants, the fact that they swore to the truthfulness of their account under oath did not prevent the panel from doubting it, given that, in this proceeding, the panel made a point to note within the evidence several significant discrepancies and implausibilities that weakened their account to the point of making it not credible.

[20] The applicants maintain that before concluding that there was inconsistency and implausibility in their account, the panel should have taken into account all of the factors and circumstances that could influence their ability to coherently testify without any discrepancies, which the applicants criticize it for failing to do.

[21] However, the fact that the panel failed to set out in its decision all of the evidence that the applicants feel support their claims does not mean that the panel disregarded and failed to consider said evidence.

[22] Let us recall that the panel is presumed to have considered all of the evidence that it is responsible for analyzing and weighing (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A)). The applicants forget that when a panel finds that a refugee claimant is not credible, as in this proceeding, it is not obligated to explain all of the material supporting the allegations contrary to those it accepts. It is sufficient for the panel, as in this proceeding, to properly explain the reasons that lead it to question the credibility of the applicants.

[23] In attempting to persuade the Court that the panel erred in drawing negative inferences from the evidence regarding their credibility, the applicants are in fact seeking to justify the evidence that the panel disregarded or called into question because it was found to be unreliable, unsatisfactory, contradictory or implausible. Let us not forget that the applicants had every opportunity to fully present their account to the panel and to convince it, but were unfortunately unsuccessful.

[24] It is not up to this Court at this stage to repeat the exercise, reassess the evidence and substitute its opinion for that of the panel which, in addition to enjoying a certain expertise in the matter, possesses the unique advantage of having heard the applicants on their account and having been able to assess their behaviour and their explanations on the discrepancies that the panel objected to. The panel clearly remains more qualified than this Court to assess the credibility of the applicants as it did in this proceeding.

[25] The Court must verify only whether the Board's decision was justified and reasonable in the sense stated in *Dunsmuir*, above. Credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review. They cannot be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State) (C.A.)*, [1997] 1 F.C. 608, 67 A.C.W.S. (3d) 978, at paragraph 24; *Dunsmuir*, above). This is certainly not the case here.

[26] Here, the panel considered the explanations of the applicants throughout their testimony but did not believe the grounds cited for leaving Mexico and claiming refugee status in Canada because of the discrepancies, inconsistencies and implausibilities in their account. Having no obligation to accept all of the explanations given by the applicants, the panel could reject those it did not deem credible or reject them all (*Aguebor v. Canada (Minister of Employment and Immigration) (F.C.A.)*, [1993] F.C.J. No. 732, 42 A.C.W.S. (3d) 886; *Rathore v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 42 (T.D.) (QL)).



[27] The evidence here allowed the panel to find that the applicants' account lacked credibility and determine that they had not discharged the burden of demonstrating that they were "refugees" or "persons in need of protection" as defined in the Act, and consequently deny their refugee claim.

[28] Consequently, the Court finds that the decision presently under review is not unreasonable, and therefore the application for judicial review of this decision is dismissed. No serious question of general importance was proposed and none will be certified.

**JUDGMENT**

**FOR THESE REASONS, THE COURT:**

**DISMISSES** the application for judicial review.

“Maurice E. Lagacé”

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Deputy Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-3979-08

**STYLE OF CAUSE:** CUNA BALLESTEROS JOSE LUIS ET AL. v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 24, 2009

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

**DATED:** April 7, 2009

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