

Federal Court



Cour fédérale

Date: 20100106

Docket: IMM-1906-09

Citation: 2010 FC 13

Ottawa, Ontario, January 6, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

**GONZALO DANIEL BOLANOS PORTILLO
MA TRINIDAD QUINTANAR RESENDIZ
DANIEL BOLANOS QUINTANAR
ANA KAREN BOLANOS QUINTANAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the panel) on March 20, 2009, determining that the applicants were not Convention refugees or persons in need of protection.

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[2] The principal applicant, Ma Trinidad Quintanar Resendiz, her husband, Gonzalo Daniel Bolanos Portillo, and their two children, Daniel Bolanos Quintanar and Ana Karen Bolanos Quintanar, are citizens of Mexico. Mr. Bolanos Portillo and the children base their refugee protection claims on the claim by Ms. Quintanar Resendiz.

[3] The principal applicant had worked for the Santander bank since 1995. She was the head of investments. On January 19, 2007, General Rolando Hidalgo Eddy (General Eddy) allegedly approached her and asked her for personal information about 20 of the bank's biggest customers. He allegedly also wished to obtain information concerning recent transactions and any insurance that may have been taken out on mortgages that the bank might have in its records.

[4] That information can be provided only with a judicial warrant from the Attorney General of the Republic. General Eddy allegedly offered the applicant 100,000 pesos for each individual about whom information was provided.

[5] The principal applicant stated that she had several days to consider this offer, but refused it when General Eddy returned to the bank on February 5, 2007.

[6] Two weeks later, on February 23, the applicant's husband was allegedly stopped by a Federal Investigation Agency patrol, and was kidnapped and beaten, and threatened that if his wife did not cooperate with the general's offer, he and the children would suffer the consequences.

[7] The physician whom the applicant's husband went to see after the attack allegedly decided to give him a medical certificate, but did not want to be involved in the situation because he was afraid of reprisals by the assailants.

[8] On February 27, 2007, the applicant allegedly left her employment and the family moved to La Matanza, Nopala de Villagran. They allegedly filed a report with the public prosecutor in Tlanepantla, in Mexico state, and stayed in San Juan Del Rio for three months.

[9] On May 23, 2007, the applicant allegedly received a call from General Eddy in which he referred to the report she had filed, and warned her not to file another report because that would give him reason to kill them and rape her family members, including the children. The next day, the family went into hiding in Mexico DF. They left Mexico on June 17, 2007.

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[10] The panel did not believe the applicants' account, which it found not to be credible. It further concluded that both state protection and an internal flight alternative were available.

[11] In this case, although I cannot unreservedly adopt the panel's assessment of the applicants' credibility, the panel nonetheless considered that the applicants had not met their burden of proving that the state was unable to protect them.

[12] There must be evidence proving that the state is unable to protect a claimant, and the claimant “must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful” (*Villasenor v. Minister of Citizenship and Immigration*, 2006 FC 1080, at paragraph 15; see also *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 and *Canada (Minister of Citizenship and Immigration) v. Kadenko*, [1996] F.C.J. No. 1376 (F.C.A.) (QL)). In addition, there have been several judgments confirming that state protection is available in Mexico (see *Flores de la Rosa v. Minister of Citizenship and Immigration*, 2008 FC 83).

[13] In *Navarro v. Minister of Citizenship and Immigration*, 2008 FC 358, at paragraph 16, Justice Yves de Montigny considered it to be insufficient for the claimant to have reported an assault to the public prosecutor and left Mexico shortly after making the complaint. In this case, the applicant tried to pursue her complaint. She contacted her lawyer. Three months went by and then she received the call from General Eddy. However, if we consider as a whole the evidence in the applicant’s testimony and the documents submitted, there is no clear and convincing evidence to rebut the presumption of state protection. For example, the applicant admitted that she doubted her lawyer’s competence; the delay could thus have been a result of his dubious competence.

[14] The panel also found that it was not unreasonable to conclude that the applicant and her family could have had an internal flight alternative in Mexico. That conclusion appears to me to be entirely reasonable. They moved to La Matanza and they had no problems; there was no evidence before the panel that General Eddy could have found the applicant and her family; the general’s call was made to the applicant’s mobile telephone; there is no evidence that the general knew where she

was hiding; and after the applicant left her employment at the bank, the general had no reason to try to find her.

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[15] For all these reasons, intervention by this Court is not warranted and the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision made by the Refugee Protection Division of the Immigration and Refugee Board on March 20, 2009, is dismissed.

“Yvon Pinard”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1906-09

STYLE OF CAUSE: GONZALO DANIEL BOLANOS PORTILLO, MA
TRINIDAD QUINTANAR RESENDIZ, DANIEL
BOLANOS QUINTANAR, ANA KAREN BOLANOS
QUINTANAR v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 24, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: January 6, 2010

APPEARANCES:

Claudette Menghile FOR THE APPLICANTS

Marjolaine Breton FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile FOR THE APPLICANTS
Montréal, Quebec

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada