Federal Court  Cour fédérale

Date: 20100514

Docket: IMM-4469-09

Citation: 2010 FC 521

Ottawa, Ontario, May 14, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JOSE MANUEL LARA DEHEZA
JOSE ALBERTO LARA BARRIOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Court recognizes the mixed quality of the evidence contained in the National Documentation Package treating Mexico. In this case, upon review of all the material on record, the Court cannot find that the Refugee Protection Division of the Immigration and Refugee Board (RPD) made a reviewable error. Based on the National Documentation Package and the evidence of the Applicants, the decision which the RPD reached is reasonable on the basis of both the objective and subjective elements of proof. The true question in this case is what weight is to be applied to the evidence. A decision-maker may focus on the corruption in Mexico to conclude that state protection

will not be reasonably forthcoming; or, as is the case at bar, the decision-maker may focus on the political will and means at the disposal of the Mexican state to conclude that it can protect its citizens. The Court reiterates the authoritative words of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions… (Emphasis added).

[2] The Court cannot unreasonably criticize a decision that was made with regard to evidence which, in and of itself, may not be complete and, thus, may not be ideal. The Court would not be justified in returning a matter for re-determination by providing conclusive reasons based on non-definitive evidence. To do so would be to attempt to substantiate a climate of certainty in regard to the evidence, when, in fact, the evidence does not maintain that certainty, whatsoever. Such a Court ruling would place the RPD in a Catch-22 situation to which its individual panels could not respond on the basis of the National Documentation Package which it currently has before them.

II. Judicial Procedure

[3] This is an application for judicial review of an August 6, 2009 decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) finding the Applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

III. Background

[4] The Applicants, Mr. Jose Manuel Lara Deheza and his son, Mr. Jose Alberto Lara Barrios, are citizens of Mexico who have made claims for refugee protection due to their fears of three corrupt government officials. The Applicants claim Guillermo Zorrilla Fernandez, a corrupt politician and two federal police officers, Carlos Baez Pinzon and Jorge Rosas Minzono, are responsible for the death of Mr. Deheza's friend, Carlos Orozco Martinez, who had information linking Fernandez to the murder of another politician.

[5] The Applicant, Mr. Deheza, alleges that he was threatened by these police officers in the city of Martinez de la Torre in the state of Veracruz after the murder of his friend, Carlos Orozco Martinez. Mr. Deheza alleges he then fled to the city of Jalapa where he made a complaint regarding the police officers to the late Mr. Orozco Martinez' uncle, a government minister. Mr. Orozco Martinez' uncle promised to investigate the matter.

[6] On September 30, 2005, after making this complaint, Mr. Deheza alleges he was shot at while driving his car. As a result, Mr. Deheza fled to the city of Coatzacoalcos. On June 28, 2007, Mr. Deheza alleges he was walking with his son, the second Applicant, Mr. Barrios, in Coatzacoalcos when shots were fired at them, by men in a white van. Mr. Deheza states that he fled Coatzacoalcos to the city of Guadalajara the day after this shooting. Mr. Barrios reported the incident to the police nearly three months after the incident, on September 19, 2007. Mr. Deheza fled to Canada on September 29, 2007, and made a refugee claim on September 5, 2008 about one

year subsequent to his arrival. The son of Mr. Deheza fled to Canada on July 30, 2008 and made a refugee claim the same day as his father, five weeks after his arrival.

IV. Decision under Review

[7] The RPD denied the Applicants' claim for protection.

[8] As a preliminary matter, the RPD held that the Applicants had not established a nexus to section 96 grounds. The RPD noted the Federal Court of Appeal held, in *Klinko v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 228 (QL), [2000] 3 F.C. 327, that denunciation of corruption can constitute an expression of political opinion when government corruption is widespread and such denunciation is seen as a challenge to the state apparatus. The RPD found the Applicants' denunciations are not a challenge to the state apparatus, but rather are accusations against one allegedly corrupt government official. The RPD further noted that victims of a personal vendetta or criminality do not fit within the definition of a section 96 refugee.

[9] The RPD found that the "determinative issue" in this case was whether there was an internal flight alternative (IFA) available to the Applicants in Mexico City. When asked about the availability of protection in Mexico City, Mr. Deheza responded that it was the most dangerous city in the country and stated that Fernandez could track his movements by using a federal police database.

[10] The RPD rejected Mr. Deheza's testimony and held that Fernandez and the officers are unlikely to pursue the Applicants to Mexico City. The RPD referenced evidence located in the Immigration and Refugee Board's (IRB) National Documentation Package stating that no reports exist of police, government authorities or individuals using the government databases to track individuals.

[11] The RPD rejected Mr. Deheza's testimony as unsubstantiated and concluded that the Applicants have an IFA in Mexico City.

[12] The RPD also held that adequate state protection exists in Mexico for the victims of crime. Despite evidence showing that criminality and corruption are widespread in Mexico, including Mexico City, the RPD held that the Mexican government is in effective control of its territory and has a number of agencies which deal with corrupt government officials.

[13] The RPD also noted that the burden placed on a claimant to show an absence of state protection increases proportionally to the level of democracy in the country of origin. The RPD held that Mexico is a functioning democracy and that the Applicants had not shown that state protection would not be reasonably forthcoming if it was requested in Mexico City.

V. Issues

[14] Although the Applicants submit there are nine issues, the Court concludes that this case is characterized as having three:

1) Does a nexus to a Convention ground exist?

2) Did the RPD make an unreasonable finding that an IFA exists in Mexico City?

3) Was the RPD's finding that state protection would be forthcoming in Mexico City reasonable?

VI. Relevant Legislative Provisions

[15] Sections 96 and 97 of the IRPA state:

Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	Personne à protéger
97. (1) A person in need of protection is a person in Canada whose removal to their country	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not

(iv) la menace ou le

caused by the inability of that country to provide adequate health or medical care.	risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VII. Positions of the Parties

Applicants' Position

1) Does a nexus to a Convention ground exist?

[16] The Applicants submit they are being persecuted by a Mexican politician and two police officers after Mr. Deheza obtained information allegedly linking Fernandez to drug trafficking and murder.

[17] The Applicants cite the case of *Klinko*, above, for the proposition that denunciations of widespread government corruption may be sufficient to engage the machinery of the state and constitute persecution for political opinion under section 96 of the IRPA. The Applicants argue that denunciations of Mr. Fernandez's corruption should be seen in the wider context of systemic corruption in the Mexican government, which would fall under the *Klinko* ruling.

2) Did the RPD make an unreasonable finding that an IFA exists in Mexico City?

[18] The Applicants submit the RPD erred by finding a viable IFA in Mexico City without regard to the totality of the evidence. The Applicants state that Mr. Fernandez is a member of the Mexican government and take issue with the information contained in the National Documentation Package that the Mexican database regarding Voter Registration Cards (VRC) is secure from such

persons. Also, the Applicants refer to another document which suggests that officials in charge of such lists can be bribed. The Applicants conclude that, given the endemic corruption in Mexico, the RPD's suggestion that confidential information can only be accessed through legal means is unreasonable.

[19] The Applicants submit it is unreasonable for the RPD to find the persecutors lack the motivation and the means to pursue Mr. Deheza and his son to Mexico City due to the fact that they already pursued them on prior occasions, including to the large city of Guadalajara.

[20] The Applicants cite the case of *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 399, 166 A.C.W.S. (3d) 325, wherein the court held that it was unreasonable for the RPD to find an IFA in Mexico City without citing evidence showing how state protection was qualitatively different from other cities in Mexico. The Applicants submit the RPD committed this error.

3) Was the RPD's finding that state protection would be forthcoming in Mexico City reasonable?

[21] The Applicants cite several documentary sources showing problems with the apparatus of state protection in Mexico.

[22] The Applicants submit the RPD erred by including agencies related to the punishment of corrupt officials, such as human rights commissions, in the analysis as to whether state protection is available. The Applicants cite the case of *Flores Zepeda v. Canada (Minister of Citizenship and*

Immigration), 2008 FC 491, [2009] 1 F.C.R. 237, wherein Justice Danièle Tremblay-Lamer rejected that these agencies constitute avenues of state protection *per se* in the absence of evidence to the contrary and held instead that the police force is the only institution mandated with the protection of a nation's citizens.

Respondent's Position

1) Does a nexus to a Convention ground exist?

[23] The Respondent distinguishes this case from *Klinko,* above, because this case does not involve wide ranging allegations of general government corruption, but instead refers to specific criminal acts of certain government agents. As a result, the Respondent submits there is no nexus to a section 96 ground.

2) Did the RPD make an unreasonable finding that an IFA exists in Mexico City?

[24] The Respondent submits the test to show that an IFA is unreasonable is quite onerous; it involves demonstrating to the RPD the existence of conditions which would jeopardize the safety of an applicant in an otherwise safe area. The Respondent argues this test requires concrete evidence of danger. The Respondent argues that Mr. Deheza's testimony regarding the dangers in Mexico City is speculative; the RPD, reasonably, concluded that the police officers and politician would not be able to find the Applicants if they relocated to Mexico City.

3) Was the RPD's finding that state protection would be forthcoming in Mexico City reasonable?

[25] The Respondent submits the Applicants must establish that they are unwilling or unable to avail themselves of the protection of the state in their country of origin. The Respondent also submits that it is not sufficient for the Applicants to merely show that the Mexican government has not always been effective at providing protection.

VIII. Standard of Review

[26] The Court agrees with the Respondent that the questions of whether there was a viable IFA and whether there is adequate state protection are to be reviewed on a standard of reasonableness.

[27] In the case of *La Hoz v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 762, 278 F.T.R. 229, Justice Edmond Blanchard held that the question of whether a claim has a nexus to a section 96 ground is a question of mixed fact and law which is reviewable on the old standard of reasonableness *simpliciter*. Accordingly, due to the RPD's specialized function, this Court will review this question on the current standard of reasonableness.

[28] In the case of *Dunsmuir*, above, the Supreme Court of Canada described the standard of reasonableness as follows:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the

> process of articulating the reasons and to outcomes. 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.

IX. Analysis

1) Does a nexus to a Convention ground exist?

[29] In order to be considered refugees under section 96 of the IRPA, the Applicants must show that they have a well-founded fear of persecution for reasons of “race, religion, nationality, membership in a particular social group or political opinion” (section 96 of the IRPA).

[30] As noted above, the Applicants argue their denunciations of the police officers and their information regarding Mr. Fernandez amounts to an expression of a political opinion. In *Klinko*, above, six Ukrainian businessmen made an organized protest against widespread government corruption. Mr. Klinko suffered retaliation due to his allegations.

[31] The Federal Court of Appeal held the following:

> [34] The opinion expressed by Mr. Klinko took the form of a denunciation of state officials' corruption. This denunciation of infractions committed by state officials led to reprisals against him. I have no doubt that the widespread government corruption raised by the claimant's opinion is a "matter in which the machinery of state, government, and policy may be engaged".
>
> [35] Indeed, the record contains ample evidence that the machinery of government in the Ukraine was actually "engaged" in the subject-matter of Mr. Klinko's complaint. The country information reports, in the present instance, contain statements by the President of Ukraine and two senior members of the Security Service of Ukraine about the extent of corruption within the government and the need to eradicate it both politically and economically. Where, as in this case, the corrupt elements so permeate the government as to be part of its very

> fabric, a denunciation of the existing corruption is an expression of "political opinion". Mr. Klinko's persecution, in my view, should have been found to be on account of his "political opinion".

[32] Although there may be widespread corruption in Mexico, Mr. Deheza's alleged information is only against one tightly-knit group of three individuals, not against corrupt elements that have become part of the fabric of government.

[33] The RPD reasonably found that Mr. Deheza's situation is not due to generalized state corruption, but rather that he is the victim of either a personal vendetta or criminality. The Federal Court has consistently held that fear of vendettas (*Hamaisa v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 997, [2009] F.C.J. No. 1300 (QL)) and criminality (*Zefi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636, 123 A.C.W.S. (3d) 739) is envisaged by section 97 of the IRPA. As a result, the Court agrees with the RPD that these Applicants would then only be considered under section 97.

2) Did the RPD make an unreasonable finding that an IFA exists in Mexico City?

[34] The Federal Court of Appeal recognized the test for an IFA in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2118 (QL), [2001] 2 F.C. 164, as laid out in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1172 (QL), [1994] 1 F.C. 589:

> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great

physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.

Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.

Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere.

In conclusion, it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country. (*Ranganathan* at para. 13).

[35] In *Ranganathan*, above, the Federal Court of Appeal elaborated on this test as follows:

[15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of

> conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations. (Emphasis added).

[36] The RPD found there was insufficient evidence to support Mr. Deheza's general assertions that Mexico City was not safe. In this case, the RPD noted the deficiencies of the Mexican state, but a review of the evidence before the Board can reasonably lead to the conclusion that Mexico is, nevertheless, in effective control of its territory and has a functioning police and judiciary.

[37] The Applicants submit the RPD failed to mention specific evidence showing how Mexico City is different from other cities in Mexico; however, the Court notes that the RPD raised the issue of relocating to Mexico City and Mr. Deheza failed to provide any "actual and concrete" evidence that Mexico City was not safe. The RPD found Mr. Deheza's testimony speculative and was therefore faced with weighing several factors: (1) the presumption that states can protect their citizens, (2) evidence showing that, for all its problems, Mexico has the mechanisms and political will to provide that protection and (3) Mr. Deheza's testimony. It is the Court's conclusion that the RPD took these factors into cognizance and weighed them appropriately. As a result, the Court, in recognition of the standard of reasonableness, cannot find a reviewable error.

[38] The burden is on the Applicants to show that subparagraph 97(1)(*b*)(ii) of the IRPA is met in this case. Subparagraph 97(1)(*b*)(ii) requires the Applicants to show that the risk to their lives or

to cruel and unusual treatment or punishment would be faced by them in every part of the country. The case of *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] 3 F.C.R. 239 shows that the burden of proof is on the Applicants to establish their case on a burden of proof. In this case, the Applicants did not discharge the burden, recognizing it as being that of the standard of reasonableness, the Court can find no reviewable error.

[39] One of the RPD's primary findings was that the Applicants could not be tracked by their persecutors via a federal database which records use of VRCs. The RPD noted the evidence, in this case, an IRB Request for Information Report (RIR) which supports the Board's conclusion that VRCs are not used to track people. Although the Applicants have asked this Court to speculate as to the probative value of this evidence, the fact remains that it is contained within the National Documentation Package as evidence on which to rely. Although the Applicants cite general evidence of corruption in Mexico, the RPD dealt with such claims and reasonably referred to the specific evidence that VRCs are not used for the purposes of tracking as inferred by the Applicants.

[40] The dissemination of information on employment registration cards was raised as evidence during the hearing before this Court; however, no evidence had been brought to the RPD in this regard. Moreover, without evidence of actual linkage between data bases, disseminated for use by corrupt individuals for the purposes of tracking, the Court, on the basis of the evidence, or lack thereof, before the RPD, cannot find an error in the RPD's reasons.

3) Was the RPD's finding that state protection would be forthcoming in Mexico City reasonable?

[41] The Court recognizes that allegations of corruption by police forces may add a layer of difficulty to decisions made under section 97; however, the Court cannot accept that the mere making of such allegations will justify a positive decision from the RPD. The RPD must be satisfied that these allegations are substantiated and that the state in question is not reasonably able to provide protection in the circumstances (Reference is made to the case of *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636, wherein these issues were canvassed by the Federal Court of Appeal). The RPD held, in this case, that the burden was not met and this Court, after a review of the evidence, finds no error in its reasoning on the face of the evidence.

[42] The Court recognizes the mixed quality of the evidence contained in the National Documentation Package treating Mexico. In this case, upon review of all the material on record, the Court cannot find that the RPD made a reviewable error. Based on the National Documentation Package and the evidence of the Applicants, the decision which the RPD reached is reasonable on the basis of both the objective and subjective elements of proof. The true question in this case is what weight is to be applied to the evidence. It is clear from the reasons that the RPD considered the conflicting evidence in respect of state protection in Mexico, assigned weight to the evidence and came to a decision which was reasonable on the face of the evidence itself. The Court reiterates the authoritative words of the Supreme Court of Canada in *Dunsmuir*, above:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one

> specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions… (Emphasis added).

[43] It is the Court's conclusion that the RPD's findings are within the range of acceptable and rational solutions having regard to the circumstances of the case.

[44] With respect to the Applicants' argument that government institutions confronting police corruption do not constitute state protection *per se*, the Court finds that the RPD was not suggesting that these institutions are alternatives to seeking police protection; rather, these institutions demonstrate that Mexico, with effective control of its territory is making significant attempts and has the operational means, even under existing circumstances, to protect its citizens.

[45] The importance of a state having the will and the means to protect its citizens is discussed in the test for state protection, in *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL), 37 A.C.W.S. (3d) 1259.

> … On the other hand, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection.

X. Conclusion

[46] The Court is cognizant that the burden of proof is on the Applicants to rebut the presumption that Mexico can provide effective state protection. The jurisprudence establishes that claimants must provide "clear and convincing evidence" of the state's inability to protect them (*Canada (Attorney*

General) v. Ward, [1993] 2 S.C.R. 689). The RPD recognized that corruption is a problem in Mexico, but, noted that Mexico is a state in effective control of its territory, and that it has the will and the means to confront the situation as described by the Applicants.

[47] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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