

Federal Court



Cour fédérale

**Date: 20100917**

**Docket: IMM-4933-09**

**Citation: 2010 FC 929**

**Ottawa, Ontario, September 17, 2010**

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

**BETWEEN:**

**JOSE WALBERTO PINO CRUZ AND  
ROSA MARIA FRANCO QUEVEDO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicants, Mr. Jose Walberto Pino Cruz and Ms. Rosa Maria Franco Quevedo are a married couple who are citizens of Mexico. Upon arriving in Canada in July 2007, they claimed refugee status based on their fears of death or serious harm at the hands of Ms. Quevedo's former husband, Servando Morelos Donnadiou.

[2] In a decision rendered in September 2009, a panel of the Refugee Protection Division (RPD) of the Immigration and Refugee Board determined that the Applicants are not Convention refugees or persons in need of protection, as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), respectively.

[3] The Applicants seek to have the RPD's decision set aside on the basis that the RPD erred by:

- i. failing to consider and to properly apply the Board's Guideline 4, entitled *Women Refugee Claimants Fearing Gender-Related Persecution (Guidelines)*;
- ii. failing to seriously consider the identity and profile of their agent of persecution; and
- iii. failing to assess state protection at an operational level.

[4] For the reasons that follow, this application is dismissed.

## **I. Background**

[5] Ms. Quevedo divorced Mr. Donnadiu in November 2001, after a relationship of approximately 20 years. She met Mr. Cruz in November 2002 and married him in March 2003.

[6] Mr. Donnadiu is a former Major in the Mexican army and served as Director of Municipal Public Security (police chief) of the city of Acambaro, Guanajuato from November 2000 until at least October 2003, when he moved to another city in that state. The Applicants do not know what,

if any, official positions Mr. Donnadiou held after that time. Ms. Quevedo claims that he physically abused her throughout their relationship.

[7] The RPD accepted that Mr. Donnadiou abducted Mr. Cruz on four separate occasions in an attempt to break up the Applicants' marriage. On each occasion, Mr. Donnadiou held Mr. Cruz for between 12 and 30 hours, severely beat him, telephoned Ms. Quevedo several times and threatened to beat Mr. Cruz further or kill him if he and Ms. Quevedo did not separate. According to an affidavit submitted by Ms. Quevedo, those abductions took place on March 20, 2005, October 30, 2005, August 30, 2006, and April 30, 2007, respectively.

[8] The Applicants moved to different cities in Mexico after each of the first three abductions – to Celaya, Guanajuato, then to Leon, Guanajuato, then to Aguascalientes, Aguascalientes. However, each time, Mr. Donnadiou was able to find Mr. Cruz and abduct him again.

[9] In her Personal Information Form, Ms. Quevedo stated that she tried to file a report with the police after the first abduction and was subsequently informed that the report did not proceed due to lack of evidence. However, at the hearing before the RPD, she testified that she and Mr. Cruz decided against contacting the police after being advised that their complaint ultimately would find its way to Mr. Donnadiou. They therefore went to a family services office, where they met the wife of the Mayor of Acambaro, who arranged for them to meet with her husband. The Mayor apparently stated that the matter would be handled internally.

[10] Ms. Quevedo testified that after the second abduction, she and Mr. Cruz went to a local police station in Celaya, however, their complaint did not proceed because they were not able to

identify the individuals who were with Mr. Donnadieu, the location where they took Mr. Cruz, or to provide certain other details requested by the police. She added that she believed that another reason why a formal report was not taken on that occasion is that, once again, it would have ultimately reached Mr. Donnadieu. She stated that she did not attempt to make police reports after the third and fourth abductions, again because she believed that they would be referred to Acambaro. In addition, she did not seek other legal assistance or obtain any medical reports after any of the abductions. After the fourth abduction, the Applicants fled Mexico.

## **II. The decision under review**

[11] The RPD's decision focused on whether the Applicants had established a sufficient objective basis for their claims. In particular, the RPD considered whether adequate state protection is available to the Applicants in Mexico, and whether the Applicants had taken all reasonable steps to avail themselves of that protection.

[12] With respect to state protection, the RPD assigned greater probative weight to the documentary evidence than to the Applicants' opinions. The RPD recognized that there were inconsistencies in the documentary record. However, it found that the preponderance of that evidence suggested that, although not perfect, there is adequate state protection in Mexico for victims of crime, that Mexico is making serious efforts to address the problem of criminality, and that the police are both willing and able to protect victims. The RPD added that, on balance, the evidence further demonstrated that the issues of corruption and deficiencies are being addressed by the state of Mexico.

[13] With respect to the steps taken by the Applicants to avail themselves of state protection, the RPD rejected their explanation that they did not follow through with their reports to the police because their reports would eventually find their way to Mr. Donnadieu. The RPD also noted that the Applicants did not seek redress at a higher level, such as the state police, and that they had fled Mexico soon after the Mayor had apparently obtained an undertaking from Mr. Donnadieu to leave them alone. The RPD stated: “Doubting the effectiveness of the protection offered by the state when one has not really tested it does not rebut the existence of a presumption of state protection.” The RPD then found that there was no information to suggest that the police would not have made genuine and earnest efforts to investigate the Applicants’ allegations and apprehend Mr. Donnadieu, had they made a greater effort to obtain police protection.

[14] Given the foregoing, the RPD concluded that the Applicants had failed to rebut the presumption of state protection with clear and convincing evidence.

### **III. The Standard of Review**

[15] The issue of whether the RPD erred by failing to properly consider and apply the Guidelines is reviewable on a standard of reasonableness (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 66-67).

[16] The issue of whether the RPD erred by failing to seriously consider the identity and profile of Mr. Donnadieu is also reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 51).

[17] The issue of whether the RPD erred by failing to assess state protection at an operational level is in essence a question of whether the RPD properly applied the applicable test of whether the Applicants are able to avail themselves of adequate state protection. As the Applicants conceded, this issue is also reviewable on a standard of reasonableness (*Dunsmuir*, above; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para. 38).

[18] In *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at para. 59, reasonableness was articulated by Justice Ian Binnie as follows:

[...] Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

#### **IV. Analysis**

A. *Did the RPD err by failing to consider and properly apply the Gender Guidelines?*

[19] The Applicants submit that the RPD erred by failing to exhibit sufficient understanding and sensitivity to the Applicants, as required by the Guidelines. In particular, given the gender-related context in which Mr. Donnadieu perpetrated his violence and made his threats, the Applicants assert that the RPD should have displayed greater sensitivity and understanding when considering the Applicants' willingness and ability to seek protection from the police. They maintain that while the RPD mentioned that it had taken the Guidelines into consideration, it failed to demonstrate that it followed the Guidelines.

[20] I am unable to agree with the Applicants.

The Guidelines state:

**When considering whether it is objectively unreasonable** for the claimant not to have sought the protection of the state, **the decision-maker should consider, among other relevant factors, the social, cultural, religious, and economic context in which the claimant finds herself.** If, for example, a woman has suffered gender-related persecution in the form of rape, she may be ostracized from her community for seeking protection from the state. Decision-makers should consider this type of information when determining if the claimant should reasonably have sought state protection.

[21] The Applicants' explanations for not making a greater effort to seek state protection all related to the fact that such protection would not be afforded to them because of the identity and profile of their persecutor, Mr. Donnadieu. They had nothing to do with Mr. Donnadieu's past abuse of Ms. Quevedo.

[22] Moreover, it is not apparent how the RPD could have given greater weight to the Guidelines when the principal victim of the violence in question was Mr. Cruz, whose position relative to his persecutor was very different from that of the victims contemplated by the Guidelines.

[23] In any event, in my opinion, the RPD was appropriately sensitive to Ms. Quevedo's situation in both its hearing and in its assessment of her testimony and the documentary evidence. It delicately summarized her history with Mr. Donnadieu and displayed sensitivity to her explanations for not making greater efforts to seek police protection. In short, I am unable to agree that the manner in which the RPD dealt with the Guidelines was unreasonable in any way.

B. *Did the RPD err by failing to seriously consider the identity and profile of the agent of persecution?*

[24] The Applicants submit that the RPD erred by focusing too much on whether Mr. Donnadieu continues to hold a position of power and influence in Mexico and by not understanding that the very people from whom the RPD expected the Applicants to seek greater protection were directly associated with Mr. Donnadieu. As such, they assert that it was not reasonable to expect them to make a greater effort to seek protection from those people, namely, the police.

[25] I disagree.

[26] In support of their submission on this point, the Applicants referred to *Pech v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 83. In my view, that case is distinguishable, as there was evidence in that case, which this Court accepted, that (i) no amount of police protection might be able to stop the agent of persecution from “his fanatical and psychopathic pursuit of the applicant”, and that (ii) reporting that agent of persecution to the police may not have been a logical or reasonable option. In the case at bar, no such persuasive evidence was adduced.

[27] The RPD recognized that Mr. Donnadieu “has extensive and high level contacts in Mexican society.” It also noted that Mr. Donnadieu was able to track the Applicants down and kidnap Mr. Cruz each of the three times they moved, in an effort to escape his violence. In this regard, the RPD paid specific attention to the chronological order of the Applicants’ moves.

[28] However, the RPD then appropriately noted that:



- i. the Applicants did not know whether Mr. Donnadiou was ever reappointed to his position as Director of Municipal Public Security, after his initial term expired in October 2003;
- ii. there was no evidence that Mr. Donnadiou was even a police officer at the time the abductions and beatings of Mr. Cruz took place;
- iii. Mr. Donnadiou was not a police officer in the cities to which the Applicants had relocated, particularly the last city in which they resided (Aguascalientes), which was in a different state from the state in which Mr. Donnadiou had been employed at the municipal level;
- iv. Mr. Donnadiou had never worked with the police at the state or federal levels;
- v. one of the main functions of the Federal Agency of Investigation is to deal with kidnappers;
- vi. according to the documentary evidence, the Mexican security forces are hierarchical and a complainant can seek redress at a higher level if dissatisfied with results at a lower level; and
- vii. no evidence had been adduced to suggest that the police would not have made genuine and earnest efforts to investigate the Applicants' allegations and to

apprehend Mr. Donnadieu, had the Applicants made a greater effort to pursue state protection.

[29] Based on the foregoing, I am satisfied that the RPD's consideration of the identity and profile of Mr. Donnadieu was not unreasonable. It was certainly within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above). It was also appropriately justified, transparent and intelligible (*Khosa*, above).

*C. Did the RPD err by failing to assess state protection at an operational level?*

[30] The Applicants submit that the RPD did not assess whether the various initiatives that the Mexican government has taken in recent years to improve state protection have actually translated into meaningful protection for persons such as them. They further submit that it was clear from much objective documentary evidence that the state would be either unable or unwilling to protect them. They add that the documentary evidence upon which the RPD relied did not "dig deep enough into the actual situation a victim of domestic violence in Mexico will and can face when trying, genuinely, to access and receive real action and protection."

[31] I disagree.

[32] The RPD reviewed extensive evidence and concluded that the evidence demonstrated, among other things, that:

- i. there are a number of authorities and agencies who will assist members of the public if they believe they have encountered a corrupt official or if they are not satisfied with the services of the security forces;
- ii. recent initiatives to address corruption and bribery reportedly have had a marked effect; and
- iii. Mexico is making serious efforts to address the problem of criminality, and the police are both willing and able to protect victims.

[33] Contrary to the Applicants' submissions, the foregoing findings did in fact address whether adequate state protection is available to the Applicants at the operational level in Mexico. Based on the evidentiary record in this case, these findings and conclusions were not unreasonable.

[34] I am satisfied that, on the particular facts of this case, it was reasonably open to the RPD to conclude that the claimants had failed to rebut the presumption of state protection with clear and convincing evidence.

[35] The RPD was not required to "detail every piece of evidence provided and every argument raised", so long as the decision reached was within the bounds of reasonableness (*Rachewiski v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 244, at para. 17).

[36] The RPD's conclusion on this point was well within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. It was also appropriately justified, transparent and intelligible.

[37] The Applicants' failure to make greater efforts to obtain state protection was inconsistent with their obligation to avail themselves of domestic state protection before seeking international protection (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 724; *Santiago v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 247, at para. 23; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 66, at paras. 11 to 13; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, at paras. 9-10).

## **V. Conclusion**

[38] This application is dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUGES THAT:**

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

"Paul S. Crampton"

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Judge

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

**DOCKET:** IMM-4933-09

**STYLE OF CAUSE:** JOSE WALBERTO PINO CRUZ et al v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 19, 2010

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

**DATED:** September 17, 2010

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