

Federal Court



Cour fédérale

**Date: 20101220**

**Docket: IMM-5911-09**

**Citation: 2010 FC 1276**

**Ottawa, Ontario, December 20, 2010**

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

**BETWEEN:**

**FRANCISCO JOSÉ CADENA RAMIREZ  
(a.k.a. FRANCISCO JOSE CADENA  
RAMIREZ)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**A. Background**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) for judicial review of the decision dated October 29, 2009, of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). The RPD

rejected the applicant's claim for *Convention* refugee protection under section 96 of the *IRPA*, as well as his claim under section 97 of the *IRPA*.

[2] The applicant's claim for status under the *Convention* was based on fear of persecution in Mexico because of his political opinion as a member of the Party of the Democratic Revolution (PRD) at the hand of his cousin and the President of the municipality who was a member of the Institutional Revolutionary Party (PRI). For the reasons that follow, this application for judicial review of that decision is dismissed.

## **B. Facts**

[3] The applicant is a 28 year old citizen of Mexico. Since 2005, he worked as a legal advisor in the municipality of San Andres, Tuxtla, Mexico. In August, 2006, there was a robbery at the municipality's Treasury Department. A formal investigation was commenced, statements were taken, and the President of the municipality and the applicant's cousin were implicated.

[4] In December, 2006, some five months after the robbery, the applicant's cousin asked the applicant for all statements made to the Public Ministry with respect to the robbery. The applicant refused. The next day, the President of the municipality accused the applicant of providing confidential information in the Mayor's office to the PRD and requested his resignation. The applicant refused to resign. On January 5, 2007, the applicant was arrested by the municipal police, detained for several hours and beaten. The police told him to resign.

[5] The applicant approached the Public Ministry in San Andres to make a denunciation against the President of the municipality and his cousin. The Ministry advised against this at which point

the applicant then decided to move to Mexico City. While in Mexico City, individuals went to the applicant's parents' home in San Andres looking for him and beat his father. This incident was not reported to the police. The applicant left Mexico City on March 25, 2007 and entered Canada on a visitor's visa. He made a request for asylum nine days thereafter.

[6] The applicant subsequently received a subpoena from the Public Ministry to testify in the robbery prosecution.

### **C. Issues**

[7] While the applicant raises nine issues in his memorandum of argument they, in essence, can be collapsed into the following:

- a. Whether the Refugee Protection Division (RPD) failed in finding that there was no nexus between the persecution suffered by the applicant and a recognized ground under the *Convention* in the applicant's claim;
- b. Whether the RPD erred in its analysis of the components of state protection;
- c. Whether the RPD erred in finding that there was an available Internal Flight Alternative (IFA) in Mexico City; and
- d. Whether the reasons meet the requisite standards of justification, transparency and intelligibility.

### **D. Analysis**

#### **a. Absence of Nexus**

[8] Questions as to whether there is a nexus between a fear of persecution and a *Convention* ground is a question of mixed fact and law, reviewable on a standard of reasonableness: *Ariyathurai v Canada (Citizenship and Immigration)*, 2009 FC 716 at para. 6.

[9] To be considered a *Convention* Refugee a claimant must have a well founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. The claim is to be assessed from the perspective of the applicant: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1. Victims of personal vendettas or local criminality do not fall within the definition of a *Convention* Refugee: *Vargas v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1019, at para. 6.

[10] In this case, there was no evidence before the RPD that the applicant's cousin or the President of the municipality had imputed any political opinion to the applicant or threatened him on the basis of any *Convention* ground. Indeed, the applicant had been working as a legal advisor to the municipality for some eighteen months prior to the events in question. The RPD, having looked at the evidence, came to the conclusion that the applicant was pursued by his cousin and the President of the municipality because he would not cooperate with their request to disclose the statements given to the police, and not because he was a member of the PRD. I note as well that while not mentioned by the RPD in its reasons, the respondent highlights in its submissions the fact that there was testimony before the RPD that the applicant was in a relationship with his cousin's former girlfriend. The applicant testified that: "The person I lived with was a person who had a previous relationship with my cousin even when he was married to someone else. That was one of the main reasons why he was so upset. And I believe that it is one of the reasons why he acted in that manner. He said that he was never going to forget about that and I was going to be sorry."

[11] On the evidence before it, the RPD concluded that there was no nexus between the *Convention* ground and the motivation of the persecutors. This conclusion was fully open to the RPD and is reasonable.

**b. State Protection**

[12] The question whether the RPD erred in finding that the applicant had failed to rebut the presumption of adequate state protection is reviewable on a standard of reasonableness. In short, the RPD decision will stand unless it does not fall within the range of possible acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para. 47.

[13] The applicant made only one effort to approach local police in Tuxtla, which generally would not be enough to rebut the presumption of state protection. Applicants are obliged to make “determined efforts” to access state protection and “additional efforts” may be required to rebut the presumption: *Canada (MCI) v Carrillo*, 2008 FCA 94, [2008] 4 FCR 636. In this case, however, the RPD conceded that the President of the municipality and the applicant’s cousin may have had some influence locally and therefore did not make a determination regarding the applicant’s efforts to obtain state protection in Tuxtla, but rather proceeded to the question of whether Mexico City was a viable IFA.

**c. Internal Flight Alternative**

[14] The applicant contends that the RPD erred in holding that the legal system in Mexico is effective, in finding that Mexico is addressing corruption and that the applicant would be able to get assistance from other political parties in Mexico. It asserts that in arriving at its findings, the RPD failed to address evidence by both the Human Rights Watch and the United States Department of State found in the country condition reports that contradicted its findings, as required by the case law. The applicant relies on the decisions of this Court in *Sanchez v Canada (MCI)*, 2008 FC 1336 for the proposition that the RPD must engage with evidence that contradicts its own conclusions. It further relies on the decisions of *Cruz Martinez v Canada (Citizenship and Immigration)*, 2008 FC 399 and *Barajas v Canada (Citizenship and Immigration)*, 2010 FC 21, in support of the argument that the RPD failed to give special consideration to the applicant's unique circumstances.

[15] In my view, these cases are distinguishable from the facts as found by the RPD. *Sanchez*, for example, involved the failure of the RPD to address specific evidence directly relevant to the claim in that case, namely that the police had extensive linkages with kidnapping groups and would not intervene to protect the applicant, the victim of a kidnapping. In *Martinez*, the applicant had been kidnapped and held hostage by the police for three days for refusing to sell drugs on their behalf. The finding of an IFA in that case was made without any evidentiary basis to establish why the applicant's situation would be different in Mexico City than it had been in his home province. In *Barajas*, the applicant was beaten by three policemen who told him that he should not have taken his complaint to the police, and there were clear indications from the police in large cities that he would receive no protection from them. In *Barajas*, as well as *Martinez*, the persecutors were the police themselves and there was evidence of harassment in various parts of Mexico. In these

circumstances, the Court found it was entirely unreasonable to expect the applicant to have either gone to the police in other cities or to have sought recourse in alternative institutions.

[16] Applicant's counsel also relied on the decision of this Court in *Favela v Canada (Minister of Citizenship and Immigration)* (FC No IMM-174-09), Gibson, August 28, 2009. In that case, the conclusion of the RPD that other large metropolitan areas, such as Mexico City, were viable flight alternatives was set aside. The applicants had previously suffered intimidation and extortion at the hands of a drug cartel which had continued when they fled to another large city. No evidence was cited as to why moving to another large city would be qualitatively different. The distinction between the facts of *Favela*, and the case at bar are evident, and the case cannot stand as support for the argument that the RPD erred in its analysis of Mexico City as an IFA in this instance.

[17] In this case, the RPD acted in accordance with the direction of the jurisprudence by situating the applicant's particular claim in the broader context of the availability of state protection in Mexico as a whole. It found the agent of persecution here was local and individual, and the motives were personal to the parties. The RPD noted that there was no serious possibility that the applicant would be sought out in Mexico City. Indeed, he had not been sought out, nor had his family been approached in over two years. Even if the police at the local level could not provide state protection, this does not amount to inadequate state-wide protection. As Pelletier J. stated in *Zhuravlev v Canada (MCI)*, [2000] 4 FC 3 (TD):

The question of refusal to provide protection should be addressed on the same basis as the inability to provide protection. A local refusal to provide protection is not a state refusal in the absence of evidence

of a broader state policy to not extend state protection to the target group.

[18] In this regard, the RPD noted that the applicant had been subpoenaed to testify with respect to the robbery of the Treasury Department, which would suggest that certain aspects of the police and judicial machinery of government are functioning.

[19] The RPD noted that the applicant's evidence as to why Mexico City is not an IFA was weak. The applicant simply asserted that Mexico City would not be "suitable". The burden of proving that an IFA does not exist or is unreasonable in the circumstances, rests with the applicant: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 109 DLR (4<sup>th</sup>) 682 (FCA), at para. 12, and an applicant does not rebut the presumption of state protection by asserting a subjective concern about the ability of the state to protect: *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1126. The applicant's evidence before the RPD fell short of the standard of proof required, namely providing some actual and concrete evidence of conditions in Mexico City which would discharge the burden: *Morales v Canada (Minister of Citizenship and Immigration)*, 2009 FC 216.

[20] The applicant asked the RPD to extrapolate the threat faced in San Andres to Mexico City, something which the Board reasonably refused to do. Failures by local authorities to provide protection does not mean that the state as a whole fails to protect its citizens: *Zhuravljev*. In addition, there was no evidence before the Board that the applicant faced any threat while in Mexico City, and he made no requests to the police for protection during the time he lived there. In sum, I am satisfied that it was reasonably open to the RPD to conclude that the applicant had not established, with clear evidence, that adequate state protection would not be available in Mexico



City. This conclusion was within the range of possible, acceptable outcomes which were defensible on the law and facts.

**d. Adequacy of Reasons**

[21] The adequacy of reasons must be evaluated in the light of the purposes for which they are written, and they must meet the standard of justification, transparency and intelligibility: *VIA Rail Canada Inc. v National Transportation Agency*, [2001] 2 FC 25 (FCA), 26 Admin LR (3d) 1 at para. 21. The applicant argues that the reasons of the RPD are inadequate because of the speculation as to what would happen if the applicant were to seek state protection in Mexico City, and the failure to refer to contradictory evidence.

[22] The argument before this Court, when distilled to its essence, was that the absence of state protection in Mexico City should be presumed from the applicant's experience in a local personal vendetta. The RPD necessarily addressed the applicant's concerns with the IFA hypothetically, as there was in fact no other basis on which the matter could be addressed. The applicant provided scant evidence which would suggest that any of the scenarios he proposed would move from the realm of the speculative to the actual. It is, therefore, difficult to criticize the reasons on this basis. Nonetheless, abstract reasoning on the part of RPD which theorizes that *should* the applicant be persecuted in Mexico City and *should* the police fail to assist, he could then rely on political support because he was a member of the governing party, does little to advance the analysis.

[23] The RPD's conclusion that Mexico City was a viable IFA because it was "far away" from his home province, would not, without more, constitute reasoning that met the requisite standard described in *VIA Rail*. Having said this, however, the reasons must be read as a whole, including

the finding that, to the extent the applicant's persecutors had influence on the apparatus of state, it was confined to the local area. I am therefore, satisfied that the RPD gave sufficient reasons to support its finding that the applicant had not established why Mexico City would be an untenable IFA, notwithstanding its unadvisable hypothetical theorizing.

[24] No question for certification has been advanced by counsel and none arises on the record.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. There is no question of general importance to be certified.

“Donald J. Rennie”

---

Judge

## ANNEX "A"

*Immigration and Refugee Protection Act (2001, c. 27)*

*Loi sur l'immigration et la protection des réfugiés (2001, ch. 27)*

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

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait 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

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au

of Article 1 of the  
Convention Against Torture;  
or

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

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

(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,

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

(iv) the risk is not caused  
by the inability of that  
country to provide  
adequate health or medical  
care.

sens de l'article premier de la  
Convention contre la torture;

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

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

(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) 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) la menace ou le risque  
ne résulte pas de  
l'incapacité du pays de  
fournir des soins  
médicaux ou de santé  
adéquats.

Person in need of protection

(2) A person in Canada who is a  
member of a class of persons  
prescribed by the regulations as  
being in need of protection is  
also a person in need of  
protection.

Personne à protéger

(2) A également qualifié de  
personne à protéger la personne  
qui se trouve au Canada et fait  
partie d'une catégorie de  
personnes auxquelles est  
reconnu par règlement le besoin  
de protection.

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

**DOCKET:** IMM-5911-09

**STYLE OF CAUSE:** FRANCISCO JOSÉ CADENA RAMIREZ v. MCI

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** November 30, 2010

**REASONS FOR JUDGMENT:** RENNIE J.

**DATED:** December 20, 2010

**APPEARANCES:**

Mr. J. Byron Thomas FOR THE APPLICANT

Ms. Mahan Keramati FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

J. Byron Thomas FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Myles J. Kirvan, FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario