

Federal Court



Cour fédérale

Date: 20110525

Docket: IMM-4226-10

Citation: 2011 FC 587

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 25, 2011

Present: The Honourable Mr. Justice Pinard

BETWEEN:

**German HERNANDEZ RODRIGUEZ
Irma Gabriela ORTIZ BLANCA
German HERNANDEZ ORTIZ**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a member of the Immigration and Refugee Board's Refugee Protection Division (the panel) filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, by German Hernandez Rodriguez, Irma Gabriela Ortiz Blanca and German Hernandez Ortiz (the applicants). The panel found that

the applicants were not Convention refugees or persons in need of protection, and therefore dismissed their refugee protection claim.

[2] The applicants are citizens of Mexico. Their claim for refugee protection was made on the basis of the narrative of Irma Gabriela Ortiz Blanca (the female applicant), the spouse of German Hernandez Rodriguez. German Hernandez Ortiz is their son.

[3] On December 10, 1999, the business Distribution IGOB was established in Puebla. The business sold and distributed prepaid telephone cards. The female applicant was the legal representative of this business. The business established commercial ties with the company Jospier Communication, represented by Rafael Pellegrin Breton. The female applicant submits that this person was friends with the state's corrupt governor, Mario Marin Torres, and affiliated with Carlos Slim, the extremely wealthy owner of the Telcel communications company.

[4] Mr. Pellegrin Breton instituted an action against the female applicant, calling her a fraudster. She states that he wanted to implicate her in a fraud for which he was responsible. The female applicant was informed of the action on May 2, 2007, when three federal police officers entered her home without an arrest warrant and then detained her in their vehicle. She states that she managed to escape. The female applicant contacted a lawyer, who, she states, advised her to leave Puebla. The applicants went to Phoenix, Arizona, for 25 days and then stayed in the state of Chiapas for four months until the action was decided. The female applicant was exonerated of any wrongdoing.

[5] Afterwards, the applicants began receiving death threats by telephone. The female applicant submits that she tried to make a report to the authorities, but that her complaint was not followed up on because of a lack of evidence.

[6] The female applicant states that, on February 19, 2008, Mr. Pellegrin Breton intercepted the applicants, telling them that they would pay. The applicants reported him to the public prosecutor. Mr. Pellegrin Breton was allegedly made aware of this report because he and his friends intercepted and beat up the male applicant. Mr. Pellegrin Breton threatened them once more, and then, because of the female applicant's delicate psychological state, the applicants decided to come to Canada. They arrived here on June 9, 2008, and claimed refugee protection that very day.

* * * * *

[7] The panel found that the determinative issue in this case was the existence of state protection. The panel essentially found that the applicants had not done enough to claim state protection. The panel found that if the applicants did not trust the local authorities, they should have gone to the Federal District or to Cancun to complain to the authorities there. They could have taken their complaint to non-government organizations or taken their lawyer up on his offer to help them in the future. The panel was also of the opinion that the applicants' credibility was undermined because they had not claimed refugee protection when they were in the United States and because the proceedings Mr. Pellegrin Breton had instituted against the female applicant in 2007 were dismissed by the court.

[8] The panel noted that the applicants stated that there were informants within the police who had informed their persecutor of the complaint they had made against him. The panel found that the documentary evidence shows that there is a tremendous amount of corruption in Mexico and that, in general, citizens do not dare make complaints because they fear retaliation or abduction. The panel noted having taken into account the female applicant's testimony, the positive and negative documentary evidence, the persuasive decision by the Immigration and Refugee Board concerning state protection in Mexico (TA6-07453, November 2007), the situation of the applicants, who were twice able to leave their country, and the case law of this Court, which ruled that despite the high level of corruption of public authorities, including the police, state protection is still available in Mexico. The panel found that the applicants had failed to satisfy it that state protection was inadequate or non-existent or that it would have been futile, aggravating or dangerous if they had gone to another city to inform the authorities there. The panel's view was that it was not unreasonable to expect the applicants to take further steps.

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[9] After reviewing the evidence and hearing the submissions of counsel for the parties, the contested ruling seems unreasonable to me, for the reasons that follow.

[10] First, the panel was incorrect in finding that the applicants' failure to claim refugee protection while they were in Phoenix undermined their credibility. Their stay in Phoenix took place before several important events: the court's dismissal of Mr. Pellegrin Breton's action

(which allegedly irritated him), the death threats by telephone and the attack on the male applicant. I find it illogical to conclude that the applicants' credibility is diminished because they did not claim refugee protection at a time when they believed they did not need it.

[11] Furthermore, the panel found that Mr. Pellegrin Breton did not have the influence the female applicant attributed to him because the court dismissed his action in 2007. The applicants point out that even a corrupt system may sometimes work and submit that the fact that Mr. Pellegrin Breton was unable to influence that result should not have affected their credibility on the matter of his influence. I agree, especially since the applicants were unable to obtain police protection after the judgment.

[12] Second—and this is even more serious, since the matter of state protection was the determinative issue for the panel—the panel did not give sufficient consideration to the specific situation of the applicants with regard to all of the evidence. In this respect, the applicants submit that the panel erred in selecting from the evidence only the excerpts favourable to its opinion, while ignoring the unfavourable elements. In this regard, the applicants note that at page 7 of its decision, the panel refers to the report entitled “2009 Human Rights Report: Mexico” of the U.S. Department of State (USDOS) in support of its finding that state protection exists in Mexico. The applicants quoted this excerpt from the report used by the panel:

The government generally respected and promoted human rights; however, the following problems were reported during the year by the country's National Human Rights Commission (CNDH) and other sources: unlawful killings by security forces; kidnappings; physical abuse; poor and overcrowded prison conditions; arbitrary arrests and detention; corruption; inefficiency, and lack of transparency that engendered impunity within the judicial system; confessions coerced through torture; violence and threats against

journalists leading to self-censorship. Societal problems included domestic violence, including killings of women, trafficking in persons; social and economic discrimination against some members of the indigenous population; and child labor.

[13] With regard to the panel's statement that Mexico apprehends corrupt police officers and public servants, the applicants also note that the same USDOS report states that only one soldier was found guilty under Felipe Calderon's presidency. The report states as follows:

President Calderon remarked in speeches in March and October that corruption was a serious problem in the police forces and a primary reason for the use of the military in the domestic counter narcotics fight. The CNDH reported that police, especially at the state and local level, were involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers. Local forces in particular tended to be poorly compensated and directly pressured by criminal groups, leaving them most vulnerable to infiltration. According to a 2009 HRW report in impunity in the country, impunity was pervasive; this lack of accountability contributed to the continued reluctance of many victims to file complaints. . . .

[14] Taking into account the excerpts quoted in the contested decision and the excerpts above quoted by the applicants, I am of the opinion, in the context, that the panel's finding on the existence of state protection is incorrect, considering the particular situation of the applicants established by the evidence. It is important here to reproduce the following relevant excerpt from *Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, [2009] 1 F.C.R. 237, a decision by my colleague Madam Justice Danièle Tremblay-Lamer:

[20] . . . While Mexico is a democracy and generally willing to protect its citizens, its governance and corruption problems are well documented. Accordingly, decision makers must engage in a full assessment of the evidence placed before them suggesting that Mexico, while willing to protect, may be unable to do so. This assessment should include the context of the country of origin in

general, all the steps that the applicants did in fact take, and their interaction with the authorities (*Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1211, at paragraph 21; *G.D.C.P. v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 989, at paragraph 18).

[15] Furthermore, I do not agree with the respondent's criticism that this is a situation in which the applicants filed but one complaint and interacted with the authorities only once, unsuccessfully, before giving up their efforts. The panel itself quoted portions of the documentary evidence showing that when faced with corruption, Mexican citizens are often too afraid to file additional complaints. In this case, the female applicant had already been intercepted by police with no arrest warrant because of Mr. Pellegrin Breton's influence. The complaint regarding the death threats made by telephone was not accepted. Later on, when the applicants filed a complaint regarding Mr. Pellegrin Breton's threats, the male applicant was attacked and injured. I do not find it at all unreasonable that the applicants made no further attempts to claim protection from institutions that clearly had their antagonist's interests at heart, rather than their own. I find that the panel erred in accepting that corruption exists while ignoring that the applicants suffered from this fact and in finding that the applicants should have sought assistance from the institutions that had breached their duties towards them.

[16] For all of these reasons, despite the assiduous presentation made by counsel for the respondent, the application for judicial review is allowed. The matter is therefore referred back to a differently constituted panel of the Immigration and Refugee Board for redetermination.

[17] I agree with counsel for the respondent that the questions for certification proposed by the applicants do not merit being certified in light of the tests set out in the case law, particularly in *Liyaganamage v. Canada (M.C.I.)* (1994), 176 N.R. 4 (F.C.A.) and *Huynh v. Canada*, [1995] 1 F.C. 633 (T.D.), affirmed in [1996] 2 F.C. 976 (C.A.).

JUDGMENT

The application for judicial review is allowed. The decision by a member of the Immigration and Refugee Board's Refugee Protection Division, dated June 28, 2010, is set aside, and the matter is referred back to a differently constituted panel of the Board for redetermination.

“Yvon Pinard”

Judge

Certified true translation
Sarah Burns

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4226-10

STYLE OF CAUSE: German HERNANDEZ RODRIGUEZ, Irma Gabriela
ORTIZ BLANCA, German HERNANDEZ ORTIZ v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

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

DATED: May 25, 2011

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANTS

Michèle Joubert FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Istvanffy FOR THE APPLICANTS
Montréal, Quebec

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