

Federal Court



Cour fédérale

**Date: 20111013**

**Docket: IMM-1550-11**

**Citation: 2011 FC 1160**

**Toronto, Ontario, October 13, 2011**

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

**BETWEEN:**

**GIOVANNI ORTEGA ARENAS,  
ARACELI SONI ORTEGA,  
AND ANDREA ORTEGA SONI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The principal Applicant Giovanni Ortega Arenas, his wife Araceli Soni Ortega, and their daughter Andrea Ortega Soni fled to Canada on March 12, 2009, and made a refugee claim that day. All three are citizens of Mexico and seek protection as perceived enemies of the Los Zetas Drug Cartel.

[2] On January 24, 2011, the Refugee Protection Division (RPD) rejected their claims under s. 96 and s. 97 of the *IRPA*. The Board based its decision on a determination of generalized risk and adequate state protection. The present Application is a review of that decision.

[3] The RPD found the Applicants credible with respect to the evidence offered in support of their claims. The Applicants were store owners in Veracruz. On March 8, 2009, after a threatening telephone call a few weeks earlier, a member of the Los Zetas drug cartel attempted to extort money from the Applicant and his wife. When they refused, the man threatened to kidnap their daughter. The Applicants reported this to the police but, because it was the weekend, no action was taken. The following day, two Los Zetas members arrived at the store owned by the Applicants, put a gun to the principal Applicant's head and pushed his wife to the ground. These men were aware that the Applicants had gone to the police the day before, and now expected more payment. The Applicants fled the following day.

[4] With respect to seeking state protection, the principal Applicant gave the following evidence at the RPD hearing of the claims:

PRESIDING MEMBER: Is it your belief that all of the police in Mexico are corrupt and none of them would help you?

PRINCIPLE CLAIMANT: Well I believe that you know the higher ups in the police, the superiors in the police they have the best intentions to fight criminality and you know these delinquents but I also believe that as the chain of command goes down and when you get to actually the ground, the grounds, the roots of the policemen who actually work you know in the front line with the common citizen like myself; the situation changes.

PRESIDING MEMBER: When you thought that the police had told, or a police officer at the public ministry had told the Zetas that you

had been there, did you go to any of the agencies that investigate corruption?

PRINCIPLE CLAIMANT: To do that would have been to put my life and the life of my family ... the lives of my family member at risk. In Mexico you cannot do that.

(Transcript, Certified Tribunal Record, Volume 2, p. 451)

COUNSEL FOR CLAIMANTS: Were the police called in response to the commotion in the shop?

PRINCIPLE CLAIMANT: No, I ask all those people not to call the police?

COUNSEL FOR CLAIMANTS: Why?

PRINCIPLE CLAIMANT: Well because if the police themselves told them that I had been there reporting them I would have been a lot more scared if the police ended up showing up.

COUNSEL FOR CLAIMANTS: All right. After this episode was over did you consider going back to the same police station to report the second visit?

PRINCIPLE CLAIMANT: No.

COUNSEL FOR CLAIMANTS: There are apparently other investigative agencies of the government in Mexico that deal with the drug cartels. Now were you aware of them?

PRINCIPLE CLAIMANT: Yes.

COUNSEL FOR CLAIMANTS: Did you consider going to those places?

PRINCIPLE CLAIMANT: No. I got the impression that the police was in cahoots with them.

COUNSEL FOR CLAIMANTS: But presumably not every policeman or investigator in Mexico is corrupt.

PRINCIPLE CLAIMANT: But at that point you know my life was at risk and the lives of my family members; my daughter's and my wife's. I could not just stand there and wait till someone was going to

come to protect me. And then taking the risk that these guys would come back to get me.

(Transcript, Certified Tribunal Record, Volume 2, p. 468)

[5] While the RPD accepted that the Applicants were targeted and extorted by the Zetas, nevertheless, with respect to seeking state protection, the RPD made the following findings:

The PC did not follow up with the Public Ministry to see what it was doing to investigate his case and the claimants fled the country on March 12, 2009. The PC admitted in his testimony that he did not give a lot of time for the police to act given that the claimants fled Mexico three to four days after making their police report. He said that he did not phone the Public Ministry to inquire about the investigation because he did not have their phone number and they told him that someone would come and see him.

The claimants made no other efforts to seek protection from the police in Mexico. They did not contact any of the specialized agencies that investigate organized crime or corruption.

[...]

In countries with functioning democracies and police forces, such as Mexico, the claimant must show that he has taken all reasonable steps in the circumstances to seek state protection, taking into account the context of the country of origin, the steps taken and the claimant's interactions with authorities. Local failures to provide effective policing do not amount to a lack of state protection unless they are part of a broader pattern of state inability or refusal to provide protection.

(Reasons for Decision, Application Record, pp. 13 – 14)

With respect to the Applicant's reasons for not continuing to seek state protection before leaving Mexico, as a matter of law, the RPD was required to make an evaluation as to whether it was objectively unreasonable to do so (see: *Hinzman v Canada (MCI)*, 2007 FCA 171, para. 56). Since no evaluation was conducted, I find that the decision under review is indefensible in law.

**ORDER**

**THIS COURT ORDERS that** the decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-1550-11

**STYLE OF CAUSE:** GIOVANNI ORTEGA ARENAS, ARACELI SONI  
ORTEGA, AND ANDREA ORTEGA SONI v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** October 13, 2011

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** October 13, 2011

**APPEARANCES:**

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