

Federal Court



Cour fédérale

Date: 20111026

Docket: IMM-214-11

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Citation: 2011 FC 1185

Ottawa, Ontario, October 26, 2011

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

**Nelly Yuritz LABASTIDA GUERRERO
Uriel Arturo CERVANTES JIMENEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the panel), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, by Nelly Yuritz Labastida Guerrero and Uriel Arturo Cervantes Jimenez (the applicants). The panel determined that the

applicants were neither “refugees” nor “persons in need of protection” and thus dismissed their claim for refugee protection.

[2] The applicants are a young married couple and are citizens of Mexico. The male applicant is basing his claim on the female applicant’s narrative. She had worked as an analyst in the Federal Police administration since January 2008 and her functions gave her access to a database containing police officers’ personal information.

[3] One of the female applicant’s colleagues, Guadalupe, who worked in another department, was allegedly approached by individuals seeking personal information about police officers. Guadalupe purportedly reported these individuals to the Federal Police and was apparently transferred elsewhere. The following day, she and her husband were killed. This would have occurred eight months before the events in the present case.

[4] On February 17, 2009, the female applicant was allegedly threatened by a man who wanted information about certain police officers. He is purported to have told her that he was part of Los Zetas, a powerful Mexican cartel. She apparently remained silent and he left. The next day, the applicants claim they were followed. On February 25, the same man allegedly threatened the female applicant again, squeezing her arm very hard and telling her that if she and her husband did not cooperate, they would get themselves killed. The applicants claim that it was at that point that they decided to file a complaint with the Public Prosecutor.

[5] On February 26, the female applicant allegedly received a call on her cell phone mentioning the complaint and telling her and her husband that death awaited them. The applicants then decided to leave Mexico. They arrived in Canada on March 2, 2009, and claimed refugee protection on March 10.

* * * * *

[6] The panel determined that the female applicant lacked credibility. It found that she was unable to explain what kind of information the Zetas wanted her to provide. The panel did not believe that over the course of three incidents the Zetas would not have mentioned what kind of information they were looking for. As the documentary evidence shows, Los Zetas are “the most technologically advanced, sophisticated and dangerous cartel operating in Mexico”, the Zetas, according to the panel, would have been more specific about what they wanted from the female applicant.

[7] Moreover, the female applicant did not submit a copy of the complaint she purportedly filed with the Public Prosecutor. She claims that she thought she had a copy up until the date of the hearing was set; when sorting through her file she apparently remarked that the copy of the complaint was not in there. It then appears that she asked her mother (who is still in Mexico) to get a copy, but her mother apparently found out that after one year this was no longer possible. The panel found this explanation unsatisfactory, considering that it is up to every refugee claimant to adequately prepare his or her file. The panel found that it was justified in assigning significant weight to the documents that would have supported the applicants’ allegations.

[8] The major element affecting the female applicant's credibility is the fact that she never reported the threats she had received to her superior at the Federal Police. She claimed that she was afraid, especially given what had happened to Guadalupe. She further claimed that she was afraid of complicating matters and that the process was too lengthy, and that she would have been obliged to be reassigned at work; she did not feel she had the courage for all of that. The panel properly noted that filing a complaint with the Public Prosecutor is a lengthy process, but it also noted that filing a complaint with the Federal Police is the fastest way to get help. This omission on the part of the female applicant was deemed to be implausible and undermined her credibility.

[9] Lastly, the panel found that while the female applicant had filed a document about the deaths of Guadalupe and her husband, she was nonetheless unable to prove that Guadalupe had been killed by the Zetas.

* * * * *

[10] The only issue is whether the panel's decision was reasonable (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47). In my view, the panel in this case and in light of the evidence before it could reasonably conclude as it did. Its decision strikes me as being well supported by the evidence in the record, in particular the female applicant's own testimony, the immigration officer's notes (Exhibit A-2) and the National Documentation Package on Mexico (Exhibit A-1). Furthermore, the applicants have not convinced me that the panel based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. (1985), c. F-7).

* * * * *

[11] Consequently, the application for judicial review is dismissed. I agree with the parties that no question for certification arises in this case.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, which found that the applicants were neither “refugees” nor “persons in need of protection”, is dismissed.

“Yvon Pinard”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-214-11

STYLE OF CAUSE: Nelly Yuritz LABASTIDA GUERRERO, Uriel Arturo CERVANTES JIMENEZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 13, 2011

REASONS FOR JUDGMENT AND JUDGMENT: Pinard J.

DATED: October 26, 2011

APPEARANCES:

Claudette Menghile FOR THE APPLICANT

Catherine Brisebois FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile FOR THE APPLICANTS
Montréal, Quebec

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