Federal Court  Cour fédérale

Date: 20120316

Docket: IMM-6487-11

Citation: 2012 FC 315

Ottawa, Ontario, March 16, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JUAN CARLOS HERNANDEZ OLIVA
LETICIA ROSAS RODRIGUEZ
KARLA PAMELA HERNANDEZ ROSAS
(MINOR)
CARLOS IVAN HERNANDEZ ROSAS
(MINOR)
SAMANTHA NATALY HERNANDEZ ROSAS
(MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The question is whether it would have been unreasonable for the applicants, Mexican citizens all, to seek refuge in Guadalajara, rather than to claim refugee status in Canada. The Refugee Protection Division of the Immigration and Refugee Board of Canada found that Guadalajara would be a viable internal flight alternative (IFA). In my opinion, that decision was not unreasonable, and should not be overturned.

[2] The applicants were residents of Leon. They fear their former neighbour, an alleged criminal, one Mr. Sanchez Reynoso, nicknamed “El Cosmos”. In 2008, they realized that El Cosmos, who had recently moved into the neighbourhood, was selling drugs. They made an anonymous call to a police tip line. El Cosmos was arrested. Thereafter, they were intimidated by individuals who may have been members of the Federal Investigation authority and told they had to pay El Cosmos money.

[3] Mr. Hernandez Oliva informed his supervisor at work who identified someone with whom they could stay in Aguascalientis. They moved there, but were tracked down. They then fled to Mexico City, but were again tracked down.

[4] Although the Board expressed some concerns with respect to the applicants’ credibility, the decision turned on the IFA. I can assume that the applicants were credible and had a legitimate subjective fear of El Cosmos.

[5] As the family did not file change of official residence documents, did not send their children to school, and only worked for cash, the question arises as to how they were found out by El Cosmos. The only explanation is that Mr. Hernandez Oliva continued to communicate with his former boss by telephone landlines. Since El Cosmos tracked them down after their anonymous tip, it may well be that he was able to tap telephone lines in Leon. As to whether his influence extended beyond that city, a newspaper article was filed which indicated that there was a powerful drug

dealer with the nickname El Cosmos, based out of Cancun. However, there is no evidence whatsoever that the two “El Cosmos” are one and the same.

[6] As to a viable IFA, the Board noted that it had to be satisfied on the balance of probabilities that there was no serious possibility that the applicants would be persecuted, or in danger of torture or subjected to a risk to their life or cruel and unusual punishment or treatment in Guadalajara, and that the conditions there were such that it would be reasonable, in all the circumstances, for them to claim refuge there.

[7] As the panel was not satisfied that the influence of El Cosmos extended beyond Leon, and assuming that Mr. Hernandez Oliva would stop communicating with his former boss, the decision was not unreasonable.

[8] A refugee claim is in its very essence forward-looking. The applicants submit that the Board’s decision was outright speculation, rather than inference. However, the burden of proof is on the applicants and, if anything, they are the ones who are speculating.

[9] In cases such as these, all the facts cannot possibly be known, so that the burden of proof is an important element to take into consideration.

[10] The IFA is inherent in any determination as to whether a person is a refugee, the burden being on the applicant (*Rasaratnam v Canada (Minister of Employment and Immigration*), [1992] 1 FC 706, [1991] FCJ No 1256 (QL) (FCA), *Thirunavukkarasu v Canada (Minister of Employment*

and Immigration), [1994] 1 FC 589, [1993] FCJ No 1172 (QL) (FCA)). As Justice Devlin, as he then was, said in *Waddle v Wallsend Shipping Company, Ltd*, [1952] 2 Lloyd's Rep 105, at page 139:

> In a case where substantially all the facts have been brought to light, it is no doubt legitimate to argue that some cause must be found, and therefore the one that has most to be said for it should be selected. Where it can fairly be said that all possible causes have been canvassed, the strongest must be the winner. But in a case where all direct evidence is missing, there is no ground for saying that the most plausible conjecture must perforce be the true explanation. The answer that may well have to be given is that not enough is known about the circumstances of the loss to enable the inquirer to say how it happened. All that he can say is that no theory advanced has been able to collect enough support from the facts to make it more likely than not that it happened in that way and not in any other...

[11] Consequently, the application falls.

[12] The parties agree that there is no serious question of general importance to certify.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. This application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6478-11
STYLE OF CAUSE:	JUAN CARLOS HERNANDEZ OLIVA ET AL v MCI
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	MARCH 13, 2012
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	MARCH 16, 2012

APPEARANCES:

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