

Federal Court



Cour fédérale

Date: 20120514

Docket: IMM-6539-11

Citation: 2012 FC 576

Vancouver, British Columbia, May 14, 2012

**PRESENT:** The Honourable Madam Justice Heneghan

**BETWEEN:**

**JONATHAN BENJAMIN HERNANDEZ  
MORENO, GABRIELA CRAVIOTO  
FERNANDEZ AND VALERIA HERNANDEZ  
CRAVIOTO**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Jonathan Benjamin Hernandez Moreno (the “Principal Applicant”), his common-law wife Gabriela Cravioto Fernandez and their minor child Valeria Hernandez Cravioto (collectively the “Applicants”) seek judicial review of the decision by the Immigration and Refugee Board, Refugee Protection Division (the “Board”) of August 26, 2011. In its decision the Board determined the Applicants to not be Convention refugees nor persons in need of protection within the meaning

of section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), respectively.

[2] The Applicants are citizens of Mexico. The claim of the wife and child are based upon the claim of the Principal Applicant who alleges that he is at risk in Mexico as a member of a particular social group, that is someone who is targeted by the Army, powerful individuals, and organized crime in Mexico. The narrative to the Personal Information Form (“PIF”) filed by the Principal Applicant sets out the history of events that led him to leave Mexico and seek protection in Canada, together with his wife and child.

[3] The Board rejected the Applicants’ claim because it did not believe the evidence of the Principal Applicant, noting in particular his failure to refer to the Army as an agent of persecution in his original PIF narrative. It made implausibility findings against the Principal Applicant, notably as to the receipt of threats by telephone: the Principal Applicant alleged that these threatening calls were only made on his cell phone while he was in Mexico, not while he was in Canada.

[4] The decision of the Board, involving an assessment of the evidence and the application of a legal standard raises questions of mixed fact and law and is reviewable on the standard of reasonableness; (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 51.)

[5] The Applicant argues that the Board’s credibility and implausibility findings are unreasonable and are based upon speculation by the Board, and not upon an assessment of the

evidence. For his part the Minister of Citizenship and Immigration (the “Respondent”) submits that the Board’s decision meets the reasonableness standard.

[6] It is trite to say that an applicant under the Act carries the burden of adducing the evidence to establish a claim for protection; see *Khan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1183 at para. 18.

[7] I have reviewed the evidence put forth by the Applicants, including the original and amended PIF narratives of the Principal Applicant and his oral testimony before the Board. On the basis of this evidence, I am not satisfied that the Board reached an unreasonable decision. According to the decision in *Dunsmuir*, above at para. 47, this Court can only intervene if the Board’s conclusions are unreasonable, falling outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law”. It is the role of the Board, not of the Court, to assess the evidence. In my opinion, the Board’s negative decision is supported by the evidence and the decision shows that the Board considered the evidence submitted.

[8] In the result, the application for judicial review is dismissed. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification arising.

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"E. Heneghan"

Judge

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

**DOCKET:** IMM-6539-11

**STYLE OF CAUSE:** JONATHAN BENJAMIN HERNANDEZ MORENO,  
GABRIELA CRAVIOTO FERNANDEZ AND  
VALERIA HERNANDEZ CRAVIOTO v. MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 8, 2012

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

**DATED:** May 14, 2012

**APPEARANCES:**

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Sophia Karantonis FOR THE RESPONDENT

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