

Federal Court



Cour fédérale

Date: 20120517

Docket: IMM-8771-11

Citation: 2012 FC 603

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, May 17, 2012

PRESENT: The Honourable Justice Lemieux

BETWEEN:

LUIS ALBERTO BAEZ BAEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant was born in 1983 and is a citizen of Mexico. On October 27, 2008, he fled his country of birth to claim refugee protection in Canada. On November 2, 2011, his claim was denied. The tribunal found his testimony was [TRANSLATION] "clear, direct, coherent, without contradictions; his answers were not exaggerated."

[2] The family's agent of persecution is the Gulf Cartel, a criminal organization that is active in drug trafficking, extortion and ransom demands.

[3] At the beginning of October 2007, the Cartel targeted the applicant's father, the owner of a jewellery store; he became the victim of extortions, in particular, monthly cash payment demands; if he did not comply, his children would suffer the consequences. His father was warned to not complain to the police.

[4] The father complained to the police, who responded that it could not control everything and that the Cartel members were unknown.

[5] The following events took place: refusal to pay, threats, vandalism to jewellery store, payment demands by the Cartel, more complaints to the police, kidnapping of the applicant's sister on March 23, 2008, and in April 2008, release after ransom payment, meeting between the applicant's father and many other targeted merchants and the Deputy Attorney General in Mexico D.F., confirmation that the police was unable to control all this violence and an alleged promise to speak about it with the director responsible for the State.

[6] On August 2, 2008, the applicant was allegedly the victim of a physical assault as a reminder to his father that he had not paid the \$1500 for August. After the applicant left for Canada, his brother, Victor, was kidnapped on November 5; his father paid the ransom for his release.

[7] The applicant's sister, who accompanied her brother to Canada and had claimed refugee status withdrew her claim and returned to Mexico in December 2009 to join her parents in Madero. The family left that city to live in Tampico to operate another jewellery store. The Cartel found them again, and the applicant's sister and parents moved to the state of Mexico to open a jewellery store and his brother moved to the capital where he ran a business.

II. The tribunal's decision

[8] The key points in the tribunal's decision are:

- The tribunal recognizes that the applicant and his father went to the police many times and the police admitted it could not control everything.
- It is highly likely that certain members of the Cartel were in contact with the police and it is likely that corrupt elements worked among the police.
- Following this admission that it could not control everything, private protection had to be found, personal security measures taken, and there was even the suggestion that the amounts demanded be paid to buy peace until things calmed down.

[9] Notwithstanding the tribunal's observations on the weakness of state protection, the tribunal wrote:

[TRANSLATION]

1. It remains that Mexico is not a bankrupt state. It is a democratic country that functions and is operational. The police and the army are operational and they compensate for the weaknesses of the institutions. Today, drug cartels spread terror by kidnapping, extorting, and creating widespread violence in certain municipalities and certain states. It remains that, in many Mexican states and cities, the police and the army take measures to protect the community.

2. This situation of widespread violence caused by drug dealers is experienced by the entire Mexican population, to varying levels and degrees.
3. It is clear that the Mexican state is struggling with an all-out war with drug dealers. The state takes actions and the results seem more or less successful. First, because the cartels are at war amongst themselves for territories, and the state employed a dual attack with its army and its police on one hand, and also by removing corrupt elements from the police force, or removing police officers working for the drug dealers. The documentary evidence describes the legislative measures the Mexican government took to fight kidnappings for ransom, including the types of kidnapping, protection available to victims, the effectiveness of anti-kidnapping measures, and the complicity of some police officers (2007-April 2009).
4. The evidence shows that the applicant's parents were targeted by the kidnappers and extorted; they have moved twice since June 2011, while maintaining their livelihood. They are now in Mexico D.F. to try and open the jewellery store again.
5. The tribunal feels that the applicant's parents, also targeted, considered Mexico D.F. to be an internal flight alternative. It would therefore not be unreasonable or unduly harsh for the applicant to go or move to Mexico D.F.
6. The applicant who faces generalized violence could go back to live with his parents in Mexico D.F. and work with his parents in the jewellery store. And if the applicant felt it would be dangerous to work in the jewellery store because this type of activity would draw the attention of extortionists, he could find another job. The applicant is an electrical engineer, with a specialty in operations. He could find another job in the industry he is skilled in to work in Mexico D.F., among others.
7. Considering all the evidence, the panel considers that the applicant faces generalized violence caused by drug dealers and he did not meet his burden of proof to justify the exception required at sub-paragraph 97(1)(b)(ii) of the Act. [reproduced in whole]

Conclusion

[10] Although in this case, the tribunal has serious doubts as to the validity of the panel's decision in its finding that the violence the applicant experienced was generalized violence within the meaning of section 97 and despite the authorities' admission that in this specific case they could not protect the applicant and his family, the panel's finding that the applicant had an internal flight alternative possibility is decisive.

[11] In *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, Linden J.A., on behalf of the Federal Court of Appeal, explained that the internal flight alternative is simply a convenient way of describing a fact situation in which a person may be in danger of persecution in one part of the country but not another. The refugee claimant must seek refuge in another part of the same country, if it is not unreasonable to do so, in the circumstances of the individual claimant. This is an objective criterion and the burden of proof is on the applicant.

JUDGMENT

THE COURT ORDERS that this application for judicial review is dismissed. There is no matter for certification.

"François Lemieux"

Judge

Certified true translation

Elizabeth Tan, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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