

Federal Court



Cour fédérale

**Date: 20140401**

**Docket: IMM-11408-12**

**Citation: 2014 FC 312**

**Ottawa, Ontario, April 1, 2014**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**JOSE DE JESUS AVILES JAIMES, ERIKA  
GONZALES PEREZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants are citizens of Mexico who claim they fled that country due to fear of harm at the hands of a criminal gang, La Familia Michoacána. In a decision dated October 2, 2012, the Refugee Protection Division of the Immigration and Refugee Protection Board [the RPD or the Board] dismissed their claim. In this application for judicial review the applicants seek to have the RPD's decision set aside. While they raised several arguments in their written materials, at the hearing their counsel advised they were pursuing only two of them, namely that the Board

committed reviewable errors in its analysis of the availability of state protection for the applicants and in its analysis of the applicants' claims under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] For the reasons set out below, I have determined that this application should be dismissed as the Board's section 97 analysis is reasonable.

### **The RPD's Decision**

[3] Counsel for the respondent noted, correctly in my view, that the Board's reasons are not a model of clarity. However, this is not determinative as it is firmly established that a tribunal's reasons need not be perfect and are sufficient if they allow the parties and the reviewing court to understand why the decision was made (see e.g. *NLNU v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Lebon v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FCA 132 at para 18; *Canada (Minister of Public Safety and Emergency Preparedness) v El Attar*, 2013 FC 1012 at para 11; *Andrade v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1490 at para 12). The reasons in this case do allow such an understanding.

[4] Insofar as concerns its section 97 analysis, the RPD premised its determination on a negative credibility finding.

[5] In this regard, the principal applicant, Mr. Aviles Jaimes, operated a liquor store and party rental businesses in Mexico. He claimed that La Familia stole three of his automobiles and that during one theft his wallet, keys and the co-applicant's purse were likewise stolen. He also alleged

that La Familia members held up his liquor store, took him and a customer hostage and demanded money. The principal applicant says he paid his aggressors 25,000 pesos to secure the release of himself and the other hostage. He also claims that he and other business owners in his area were victims of increasing extortion demands, that he received threats from members of La Familia and that they followed the co-applicant when she was returning from work. The two applicants obtained visas to come to Canada in September 2010 but did not leave the country until February 2011, shortly following the murder of another business owner in their community by La Familia.

[6] The RPD did not believe that the applicants had experienced the threats and extortion they claimed to have encountered and, rather, found that all that had occurred was that three of the principal applicant's vehicles were stolen. The Board premised its negative credibility determination on several factors, including:

- the principal applicant's inability to recall when he began and ceased making extortion payments and the number of payments made;
- the fact that the applicants reported only the car thefts to the police but did not report the more serious instances of the alleged threats, extortion or hostage-taking until just before they left Mexico;
- the applicants' delay in fleeing Mexico after they had obtained visas to allow them to come to Canada; and
- the lack of credible explanation for not reporting the most serious incidents to the police and for the delay in leaving Mexico.

[7] As the RPD found that the applicants had only been victims of theft, it reasoned that any future threat they might face if they returned to Mexico was shared by a large portion of the population, due to the prevalence of theft and crime in that country. Its reasoning in this regard centred on the fact that the risk the applicants faced was the same risk of theft or crime that all those with means in Mexico face, and would be even less if the applicants were to return to Mexico as they would no longer own a business. In so holding, however, the Board made statements about the purview of the generalised risk exception in paragraph 97(1)(b)(ii) of the IRPA that contradict much of the recent jurisprudence of this Court. For example, at paragraph 34 of her reasons, the Board member wrote:

As the Board's documentation indicates it is part of the *modus operandi* of the organized criminals to eliminate or take revenge on their enemies. Every person who becomes an enemy of the criminals in Mexico for whatever reason including a failure to submit to extortion demands, reporting to the police, the politicians who try to combat the cartels in Mexico, the police officers who investigate them, all face the risk of being targeted and harmed. Therefore even if the principal claimant were pursued if he returns to Mexico his risk is still one that is faced by the general population in Mexico.

### Analysis

[8] The applicants argue that the foregoing statement and others like it in the decision indicate that the Board applied the incorrect test to assess whether the applicants' risk was generalised and therefore that this application for judicial review should be granted.

[9] I concur with the applicants that the foregoing passage does not incorporate the correct approach to the interpretation of generalised risk in section 97 of the IRPA. Rather, I believe the required approach is that which I detailed in *Portillo v Canada (Minister of Citizenship &*

*Immigration*), 2012 FC 678 and *Ortega Arenas v Canada (Minister of Citizenship & Immigration)*, 2013 FC 344 [Arenas] (see also *Cherednyk v Canada (Citizenship and Immigration)*, 2014 FC 282; *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252; *Lopez v Canada (Citizenship and Immigration)*, 2014 FC 102; *Neri v Canada (Citizenship and Immigration)*, 2013 FC 1087; *De La Cruz v Canada (Citizenship and Immigration)*, 2013 FC 1068; *Gil Aguilar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 843; *De Jesus Aleman Aguilar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 809; *Hernandez Lopez v Canada (Citizenship and Immigration)*, 2013 FC 592; *Loyo de Xicara v Canada (Citizenship and Immigration)*, 2013 FC 593; *Coreas Contreras v Canada (Citizenship and Immigration)*, 2013 FC 510; *Roberts v Canada (Minister of Citizenship and Immigration)*, 2013 FC 298; *Rodriguez Ramirez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 261; *Zablon v Canada (Citizenship and Immigration)*, 2013 FC 58; *Malvaez v Canada (Citizenship and Immigration)*, 2012 FC 1476; *Kaaker v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1401; *Tomlinson v Canada (Citizenship and Immigration)*, 2012 FC 822; *Balcotra Olvera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1048; *Escamilla Marroquin v Canada (Citizenship and Immigration)*, 2012 FC 1114). The approach for determination of generalised risk under section 97 of the IRPA is as follows, as outlined in paras 9 and 14 of *Arenas*:

First, the RPD must correctly characterize the nature of the risk faced by the claimant. This requires the Board to consider whether there is an ongoing future risk, and if so, whether the risk is one of cruel or unusual treatment or punishment. Most importantly, the Board must determine what precisely the risk is. Once this is done, the RPD must next compare the risk faced by the claimant to that faced by a significant group in the country to determine whether the risks are of the same nature and degree.

[...]

The focus of the second step in the inquiry is to compare the nature and degree of the risk faced by the claimant to that faced by all or a significant part of the population in the country to determine if they are the same. This is a forward-looking inquiry and is concerned not so much with the cause of the risk but rather with the likelihood of what will happen to the claimant in the future as compared to all or a significant segment of the general population. It is in this sense that in *Portillo* I held that one cannot term a “personalized” risk of death “general” because the entire country is not personally targeted for death or torture in any of these cases. There is in this regard a fundamental difference between being targeted for death and the risk of perhaps being potentially so targeted at some point in the future. Justice Shore provides a useful analogy to explain this difference in *Olvera*, where he wrote at para 41, “The risks of those standing in the same vicinity as the gunman cannot be considered the same as the risks of those standing directly in front of him”.

[10] Even though some passages in the Board’s decision describe a different approach to the interpretation of section 97 of the IRPA, I nonetheless believe its decision must be maintained in this case because the passages that set out the erroneous approach to section 97 of the IRPA are not central to the Board’s reasoning. Rather, the RPD based its decision on comparing the risk faced by the applicants – that of theft or extortion – to the risk faced by others with some means in Mexico and found them to be of the same nature and degree. This is made clear by several passages in the decision that are central to its reasoning, the most important of which is contained in paragraph 29, where the RPD wrote:

I find that the claimant was a member of a sub-group of persons with wealth and as a successful businessman. The finding that the risk was faced generally by business owners is corroborated by the claimant’s statement in the PIF that he heard rumors that all businessman [*sic*] were being extorted for protection money by La Familia. The claimant is therefore, found to be part of a subset of the population that faces a generalized risk in Mexico of violence at the hands of organized criminals who extort business owners.

[11] Thus, although there are portions of the Board's reasoning which appear to suggest that anyone who faces any type of risk from criminal elements in Mexico faces a generalized risk within the meaning of section 97 of the IRPA, its decision does not turn on this assertion. When its reasons are read carefully, it is clear that the Board actually applied the two-step analysis set out above.

[12] Moreover, there was ample basis for the RPD to have drawn its negative credibility determinations, as each of the factors it relied on finds support in the evidence that was before the Board. Thus, there was nothing that distinguished the applicants' risk from that of others with means in Mexico as they did not establish that they had been or were likely to be singled out or specifically targeted if returned to Mexico. In the face of these facts, the Board's determination that the risk the applicants faced was shared by a large group in Mexico is reasonable in light of the objective documentation before the Board regarding the prevalence of extortion and theft in Mexico.

[13] This determination is sufficient to result in the dismissal of this application, and I accordingly need not address the applicant's arguments regarding state protection. Thus, this application will be dismissed. Neither party suggested a question for certification under section 74 of the IRPA and none arises in this case.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed;
2. No question of general importance is certified; and
3. There is no order as to costs.

"Mary J.L. Gleason"

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Judge



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

**DOCKET:** IMM-11408-12

**STYLE OF CAUSE:** JOSE JESUS AVILES JAIMES, ERIKA GONZALES  
PEREZ v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 13, 2014

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

**DATED:** APRIL 1, 2014

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