

Federal Court



Cour fédérale

Date: 20140529

Docket: IMM-1938-13

Citation: 2014 FC 514

Ottawa, Ontario, May 29, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**CENTEOTL MAZADIEGO LOPEZ
AMBAR LIMON MAZADIEGO
SERGIO ALAN GONZALEZ MAZADIEGO
CRIST INA BAEZA AVENDANO
PAULINA GONZALES BAEZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

**REASONS FOR JUDGMENT AND JUDGMENT
(Reasons given orally in Toronto on April 17, 2014)**

[1] Centeotl Mazadiego Lopes [the Principal Applicant], her daughter, her son, her son's common-law spouse and their daughter, together [the Applicants] are Mexican citizens who have applied for judicial review of a decision of the Refugee Protection Division of the Immigration

and Refugee Board [the Board] made on a reconsideration and dated February 5, 2013 [the Decision].

I. **Background**

[2] In the spring of 2006, the Principal Applicant lent 600,000 pesos [the Debt] to a man named Bernardo Gonzales Shole [Shole] on his undertaking that he would double her money in a few months. However, the post-dated cheque she was given as repayment did not clear when presented. With her son, the Principal Applicant visited Shole to collect. He insulted them, kicked the son and threatened to shoot them if they did not leave. He said he would kill them if they made further collection attempts.

[3] The Principal Applicant filed a criminal complaint against Shole alleging fraud and threatening and used the NSF cheque as evidence. In January 2008, after an attempt to settle the debt with Shole's son failed, the Principal Applicant launched two civil suits and recovered judgment for approximately \$612,000 pesos. She also secured a lien and an auction order against a property Shole co-owned.

[4] In response to these actions, Shole called the Principal Applicant and threatened her. This was not reported to police. Shortly thereafter, a man in a van threatened the Principal Applicant's son with a gun. The police were nearby and the man fled when he saw them. The police investigated and took statements but it was later determined that there was nothing to be done because no crime had been committed. Later that month, Shole phoned the Principal Applicant

and said that her son had been lucky and that he would kill him the next time. This was not reported to police.

[5] Early in June, the Applicants applied for Canadian visas. On August 18, 2010, the family came to Canada by car spending four days in the U.S.A. en route. The Principal Applicant said that Shole was a person of influence who could block police protection for her family because:

1. He had been able to have her car registered as stolen in January 2007;
2. He had worked as lawyer in the office of the Public Ministry many years earlier;
3. He was the friend of a man who had been a presidential candidate in 1994;
4. He was able to get out of jail after being charged with murder; and lastly
5. He was able to have criminal complaint put on indefinite hold for lack of evidence.

II. **The Decision**

[6] For present purposes, the significant findings were as follows:

1. The evidence was not sufficient to establish that Shole had the power and influence that the Applicants alleged.
2. There was adequate state protection for the Applicants in Mexico.

III. **The Issues**

[7] The Issues are:

1. Was there a failure of natural justice?
2. Is the Board's conclusion about state protection unreasonable?

A. *Issue 1*

[8] The alleged failure of natural justice arose when the Board dealt with the issue of the Applicants' subjective fear. The Applicants say that they did not have notice that their trip to the US and their delay in leaving Mexico would be considered. While this may be true, it is immaterial because the Board's conclusions about the Applicants' subjective fear have no bearing on its analysis of state protection and it was that analysis that was determinative in this case.

B. *Issue 2*

[9] Although the Board made statements indicating that it had doubts about whether the threats and the incident with the gun actually happened, it accepted that those events occurred for the purpose of its state protection analysis. There is nothing wrong, in my view, in doubting the truth of certain facts but nevertheless treating them as true for the purpose of considering state protection. Accordingly, I reject the notion that the statements, which suggested credibility concerns, tainted the Board's assessment of state protection.

[10] The Board did err in concluding that the Principal Applicant's criminal complaint was resolved in her favour. In fact, it was a civil case that was successful. The criminal complaint was put on indefinite hold for lack of evidence. However, in my view, this error was not material as the Principal Applicant's success or otherwise in litigation has nothing to do with whether the police will respond effectively when called.

[11] The Principal Applicant also says that the state protection finding was unreasonable because the Board did not refer to the fact that they fled on their lawyer's advice. However, in my view, his opinion did not require mention because it did not contribute useful information about Shole's ability to subvert the police.

[12] The Applicants also submit that it was unreasonable to conclude that their criminal case was put on hold for lack of evidence when witnesses they proposed were not questioned. They suggest that the only sensible conclusion that it was put on hold because Shole influenced the prosecution to stay the case against him. However, given the lack of any evidence that Shole had any current friends or contacts in the police or prosecutor's office, I find that the Board's conclusion was reasonable.

IV. Certification

[13] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1938-13

STYLE OF CAUSE: CENTEOTL MAZADIEGO LOPEZ, AMBAR LIMON
MAZADIEGO, SERGIO ALAN GONZALEZ
MAZADIEGO, CRIST INA BAEZA AVENDANO,
PAULINA GONZALES BAEZA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 17, 2014

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

DATED: MAY 29, 2014

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