

Date: 20060727

Docket: IMM-7491-05

Citation: 2006 FC 928

Ottawa, Ontario, July 27, 2006

Present: The Honourable Mr. Justice Harrington

BETWEEN:

RAUL DANIEL MARTINEZ DORADO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

[1] Youngsters in love and disapproving parents is a universal theme. The youngster, Raul Daniel, 15 years old, was madly in love with his girlfriend, Ana. One day, when accompanying her home, he met Ana's father, who forbade Raul Daniel from seeing his daughter. The father warned Raul not to go near her, or he would regret it. To be sure that Raul Daniel understood the message, the father pulled his hair. Ana's father was not without influence. He was the head of investigations for the judicial police in the state of Querétaro, Mexico.

[2] This forbidden romance continued. One day, the young Raul Daniel was suddenly kidnapped by two unknown persons who threatened him and warned him to forget Ana. They also tried to convince him to sell marijuhana at school. When Raul Daniel refused, they burned his hands several times with a cigarette.

[3] Raul Daniel convinced his mother to send him to another school. However, he continued to see Ana. A few months later, when they were walking in a park, Ana and Raul saw her father with some other persons. A package exchanged hands and they saw one of the men open it to taste the content. Raul Daniel feared the worst.

[4] A few days later, two persons jumped out of an automobile and accosted Raul Daniel, who managed to flee to a friend's home.

[5] Luckily for Raul Daniel, his mother was planning a trip to Canada. Fearing for his life, he decided to accompany her. Having decided to stay with an uncle in Montréal, he did not go back to Mexico with his mother at the end of the trip.

[6] When he arrived, he did not immediately make a claim for refugee protection because he did not know he could have done so. He made his claim for refugee protection after having seen something about this in a Spanish newspaper in Montréal.

[7] The Refugee Protection Division of the Immigration and Refugee Board (IRB) determined that he was not a Convention refugee or a person in need of protection. In its reasons, the IRB

focused on the fact that Raul Daniel did not do everything he could have to claim protection from the state but did not question his credibility. This is an application for the judicial review of the decision.

STANDARD OF REVIEW

[8] Since the decision in *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232 (QL), in which Madam Justice Tremblay-Lamer used a very comprehensive pragmatic and functional approach, the current tendency of the Court concerning the standard of review applicable to matters of state protection is to apply the reasonableness *simpliciter* standard: *Codogan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 739 (Teitelbaum J.), [2006] F.C.J. No. 1032 (QL); *Moreno v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 833, [2006] F.C.J. No. 1046 (QL) (Blais J.); *Malik v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1189, [2005] F.C.J. No. 1453 (QL) (Von Finckenstein J.); *Muszynski v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1075, [2005] F.C.J. No. 1329 (QL) (Dawson J.). This stringent standard is more favourable to the applicant.

ANALYSIS

[9] Regardless of the standard of review, which may change according to the circumstances of each case (*Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056 (QL)), in my view, the conclusion reached by the Board to the effect that the applicant did not meet the burden of proving that no state protection was available is quite reasonable and should not be disturbed.

[10] It is trite law that, when state representatives themselves are the agents of persecution, the applicant may rebut the presumption of state protection without having to exhaust every conceivable recourse in the country: *Chaves, supra*, at paragraph 15; *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 944, [2004] F.C.J. No. 1152 (QL), at paragraphs 6 to 8. However, “it would be an overstatement to say that, as soon as a person alleges that the agent of persecution is the police, he is not required to seek protection from his country of origin”: *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 136, [2006] F.C.J. No. 153 (QL), at paragraphs 20 to 23. This case allegedly involves a corrupt police officer, which is far from the situation in which the state itself is the agent of persecution. I think it would be an overstatement to elevate Ana’s father to the same rank as that of a state.

[11] It is clearly mentioned in the file that, once the applicant’s parents were advised of the situation, they went to the human rights commission of the state of Querétaro. The commission explained to them that it did not have jurisdiction in this matter but told them about other steps to be taken. However, the applicant’s parents withdrew their proceeding before the human rights commission and did not contact any other higher state authorities.

[12] The IRB identified some information documents about the country, which explained how to bring criminal charges. The applicant or his parents on his behalf did not seem to be afraid, because they complained to another organization, the state human rights commission. The applicant took advantage of his stay at his uncle’s home to remain in Canada without having gone even once to the Mexican police or asking someone to go for him.

[13] In this case, the general principle that persecuted persons must request protection from their country of origin before the responsibility of other states is entailed must apply: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 18.

[14] The applicant submitted that the IRB rendered its decision on the basis of country information documents that were not up to date as far as Mexico was concerned. At the hearing before the IRB, the applicant submitted a document published by the IRB, “Mexico: State Protection (December 2003–March 2005)”, more specifically in section 4.3.2, “Corruption”. In my opinion and, I suppose, in the opinion of the IRB member who is presumed to have assessed and taken into consideration all the evidence on record (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (QL) (F.C.A.)), this document hardly adds anything to the other documents cited in the IRB decision. This document mentions that, although the Fox government took several measures to fight corruption, acts of public and private corruption still occurred regularly, and law enforcement officials in Mexico acknowledged having difficulty in prosecuting cases of corruption because of problems with detecting and investigating such matters. In this case, the authorities did not even have a chance to investigate the applicant’s allegations against Ana’s father because they had never been advised that there was a problem.

[15] For these reasons, the application for judicial review must be dismissed. The applicant will have until August 1, 2006 to propose a question to be certified, and the respondent will have until August 3, 2006 to answer.

“Sean Harrington”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7491-05

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MINISTER OF CITIZENSHIP AND
IMMIGRATION

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