

Date: 20070730

Docket: IMM-4602-06

Citation: 2007 FC 793

Ottawa, Ontario, July 30, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**MARCO ANTONIO SALAZAR SANTOS,
GUADALUPE CLAUDIA MELENDEZ GODINEZ,
JORGE ADIRAN DE L AMORA GARZA,
CLAUDIA VANESSA SALAZAR MELENDEZ,
SANTIAGO ALESSANDRO DE LA MORA SALAZAR**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought by the principal Applicant, Marco Antonia Salazar Santos, and his family from a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) by which their respective claims to refugee protection were denied.

BACKGROUND

[2] The Applicants are citizens of Mexico. Their claims for protection are based on allegations of persecution directed at Mr. Salazar between 1995 and 2005.

[3] In 1995, Mr. Salazar claimed to have been arrested and detained by local police authorities on trumped-up charges of robbery, illegal confinement, threatening and illegal association. He speculated that this arrest was orchestrated by a senior police official who was looking for a scapegoat for an unsolved, high-profile crime. Why Mr. Salazar was the person victimized in this way was not explained.

[4] In the face of these legal difficulties, Mr. Salazar retained legal counsel who was able to effect his release from custody after only a few days. Mr. Salazar made a complaint to the Human Rights Commission which apparently led to retaliation in the form of a second apprehension order. This prompted Mr. Salazar to leave for Mexico City but not before he instructed his lawyer to challenge the outstanding apprehension order.

[5] Mr. Salazar testified to the Board that he was successful in obtaining protection from the Federal Court which ordered the state authorities to cease and desist in their attempts to prosecute him. This process unfolded over a year or so but nevertheless resulted in his complete vindication.

[6] Mr. Salazar returned to his home state in 1996 but claimed that he was subjected to continuous, low-level harassment in the form of being openly followed or watched by unknown

parties until 2005. The culminating incidents which he claimed caused him to flee Mexico were the receipt of two anonymous, extortionary letters. Again, he did nothing to report these events to the authorities before leaving for Canada in July 2005. His family followed and arrived here in October 2005.

THE BOARD DECISION

[7] Although the Board expressed a reservation about whether the conduct Mr. Salazar complained about amounted to persecution, it did not make a determinative ruling on that issue. Instead, the Board found that the Applicants had failed to rebut the presumption of available state protection in Mexico. It noted that, to the limited extent that Mr. Salazar had sought judicial protection, he obtained it.

[8] Although the Board noted the existence of corruption and inefficiency within the Mexican policing and judicial systems along with occurrence of human rights abuses, it also found that those problems were being confronted and that the protective apparatus of the state was not wholly dysfunctional. There was ample documentary evidence to support these findings.

[9] The Board concluded by finding that the Applicants had not made reasonable efforts to seek protection within Mexico. Its finding on that point was as follows:

“In these claims, the evidence does not show that the claimants made reasonable efforts or explored any options of being protected from criminality. They have not been refused protection, nor have they been given protection that was inadequate. For these reasons, I conclude that the claimants face no possibility of persecution in Mexico and they are not convention refugees”.

ISSUES

- [10] (a) What is the appropriate standard of review for the issues raised by the Applicants?
- (b) Does the Board decision contain any reviewable errors?

ANALYSIS

[11] It is unnecessary in this case to conduct a pragmatic and functional analysis because I can identify no error in the Board's decision.

[12] Beyond pointing out that the Board's state protection finding was unreasonable, the Applicants failed to identify any specific problem with its legal or evidentiary analysis. The Board's conclusion that state protection was available to the Applicants in the context of their alleged concerns was a reasonable conclusion to draw from the evidence before it. It is not the function of this Court on judicial review to reweigh the evidence; but, even if I was unfettered by any deference to this finding, I would not have reached a different conclusion on this record.

[13] The Board's further conclusion that the Applicants had failed to establish that they had taken reasonable steps to pursue available protection within Mexico was also reasonable. Indeed, any other conclusion would have been perverse.

[14] Even where the protective services of the home state have gaps or deficiencies, a refugee claimant who alleges a subjective fear based on criminality must, in the absence of a compelling justification, take reasonable steps to access those services.

[15] It was not open to Mr. Salazar to sit idly in the face of almost 10 years of alleged harassment at the hands of unknown parties and then excuse his failure to do anything in Mexico because he did not “trust” the local authorities. In 1996, he had successfully obtained protection through recourse to the federal judiciary and it was reasonable for him to approach the federal authorities again if protection was unavailable at the local level. Even at that, he only suspected that a local police official was somehow involved in this situation and he never took steps to determine if his difficulties could be addressed at that level. Suffice it to say that a localized failure of police protection will not necessarily lead to a conclusion that state protection is wholly unavailable: see *Dannett v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1701, 2006 FC 1363.

[16] The Board found Mr. Salazar’s conduct to be unreasonable and it was unreasonable. As stated by my colleague Justice Michael Phelan in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1381, 2005 FC 1126, a refugee claimant does not rebut the presumption of state protection in a functioning democracy by asserting only a “subjective reluctance to engage the state”.

[17] More recently in *Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584, 2007 FCA 171, the Federal Court of Appeal re-stated the importance of seeking protection within the home state before claiming refugee protection elsewhere. A failure to do so will usually be fatal to a refugee claim – at least where the home state is a functioning democracy with a willingness and the apparatus necessary to provide a measure of protection to its citizens. In *Hinzman*, the Court described the heavy burden facing a claimant in such circumstances in the following passage:

“*Kadenko* and *Satiacum* together teach that in the case of a developed democracy, the claimant is faced with the burden of proving that he exhausted all the possible protections available to him and will be exempted from his obligation to seek state protection only in the event of exceptional circumstances: *Kadenko* at page 534, *Satiacum* at page 176. Reading all these authorities together, a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have status. In view of the fact that the United States is a democracy that has adopted a comprehensive scheme to ensure those who object to military service are dealt with fairly, I conclude that the appellants have adduced insufficient support to satisfy this high threshold. Therefore, I find that it was objectively unreasonable for the appellants to have failed to take significant steps to attempt to obtain protection in the United States before claiming refugee status in Canada.”

[18] Having found the Board’s decision in this case to be legally correct and reasonable, this application for judicial review is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4602-06

STYLE OF CAUSE: MARCO ANTONIO SALAZAR SANTOS ET AL
v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BARNES, J.

DATED: July 30, 2007

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