

Date: 20070831

Docket: IMM-494-07

Citation: 2007 FC 864

Ottawa, Ontario, August 31, 2007

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**JORGE VICTOR HUERTAS TORRES AND
GLIRIA JUANA LEON FLORES DE HUERTAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), which determined that the applicants were not persons in need of protection because they failed to establish that state protection was not available to them in Peru.

ISSUE

[2] Did the Board err in fact or in law by concluding that state protection was available to the applicants?

[3] For the reasons that follow, the response to this question is negative. Consequently, the present application for judicial review shall be dismissed.

BACKGROUND

[4] Jorge Victor Huertas Torres (the principal applicant) and his spouse, Gliria Juana Leon Flores de Huertas (female applicant) are both sixty years of age and citizens of Peru. They led a comfortable life in that country with their three children, as owner operators of two retail businesses in Lima.

[5] On January 16, 2005, the principal applicant was intercepted by two members of the Peruvian National Police (P.N.P.) who demanded that he pay them a monthly bribe of \$600 USD. When he protested, the officers physically abused him and warned him that officers of the P.N.P. had a right to supplement their income.

[6] The day after this first incident, the principal applicant received a telephone call at home from one of the two police officers reminding him of the sum he had to pay. If he did not comply with their demand, the caller warned him, he would live to regret it. The next day, on January 18, 2005, the principal applicant was abducted by three P.N.P. officers as he left one of his stores. They physically and verbally abused him and demanded the bribe under threats that they would kill him if he did not cooperate.

[7] As part of his documentary evidence, the principal applicant provided a medical report dated January 31, 2005, attesting to the treatment he received on January 18, 2005, for the injuries he suffered at the hands of the three P.N.P. agents.

[8] It was on January 24, 2006 that two men, including one of the police officers who had intercepted him on January 16, 2005, dressed in civilian clothes claimed the bribe from the applicant. He complied and gave them the sum of \$600 USD. Upon leaving, the two extortionists threatened to hurt the applicants' children if he denounced them.

[9] According to the applicant, the police used the same *modus operandi* and extorted \$600 USD each month up to and including June 2005. Things got worse, however, when on July 25, 2005, the applicant was stopped by a patroller who told him that since he had two stores, the monthly payments would double to \$1,200, which they collected on July 26, 2005. After the second payment in August, the applicants, fearing for their financial and personal security decided to leave the country.

[10] That is why they contacted relatives in Montreal, who formally invited them to visit Canada. The couple obtained visitors' visas on October 18, 2005. In late December, they made their last payment of \$1,200 to the officers of the P.N.P. On December 26, 2005, they filed a complaint against the police for extortion and physical abuse. Five days later, on December 31, 2005, the applicants left Peru for Canada with their visitors' visas, while their three children found refuge with

relatives and friends. The applicants arrived in Canada on New Year's Day, 2006 and claimed protection on January 10, 2006.

[11] The Board denied the applicants' claims for protection because the applicants failed to avail themselves of state protection in Peru, as a result of which, they have brought the present joint application for judicial review.

DECISION UNDER REVIEW

[12] The Board recognized that the principal applicant's accounts of extortion were plausible, as it is well documented in the evidence that the Peruvian police are noted for corruption in its ranks. However, the Board also recognized that contrary to the principal applicant's testimony, the government of Peru, following the departure of President Fujimori and the arrival of President Toledo, has pursued a rigorous campaign to clean up the police forces and end the P.N.P. history of extortion, intimidation, and corruption.

[13] Indeed, according to the documentary evidence, the Board was satisfied that several institutions have been put in place to encourage individuals to lodge complaints against the police without fear of reprisals. The Board was satisfied that under the present conditions state protection, while not perfect, was available to the principal applicant and he chose not to avail himself of this.

[14] Moreover, although the alleged incidents of extortion and abuse began in January 2005, almost twelve months prior to their departure, the principal applicant did not file a complaint until

five days before leaving for Canada with visitors' visas, which they had obtained two months earlier. The Board found that this could not be considered as serious steps to seek protection, and as a result the claims for protection were denied. In arriving at this conclusion, the Board relied on the jurisprudence established by the Federal Court of Appeal in *Kadenko et al. v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376, and *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (F.C.A.), according to which an applicant must have sought state protection at home prior to seeking asylum in another country.

ANALYSIS

Standard of Review

[15] It is necessary at the outset to establish the applicable standard of review in this matter that deals solely with the determination of the availability of state protection. Relying on this Court's decision in *Chaves v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 232, 2005 FC 193, the applicants submit that the question of state protection is one of mixed fact and law, which is reviewable on the standard of reasonableness *simpliciter*.

[16] I agree and rely on the long line of jurisprudence confirming that the standard of review in decisions pertaining to state protection is reasonableness (see *e.g. Chaves*, above; *Mendoza v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 772, 2005 FC 634 at paragraph 16; *B.R. v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 337, 2006 FC 269 at paragraph 17).

Was the decision of the Board reasonable?

[17] The applicants argue that the Board's decision was unreasonable because the police were the authors of the acts of extortion, threats and physical abuse against the applicants. Moreover, the documentary evidence clearly indicates that the police, as well as the judiciary and other security services in Peru are corrupt and ineffective in spite of efforts to clean up the system. Finally, the Board erred in placing an unreasonable burden on the applicants by listing several avenues to which the applicants had recourse to seek redress.

[18] It is noteworthy to cite the Board's words in the original language as follows:

[. . .] D'ailleurs, plusieurs institutions ont été mises en place pour permettre aux personnes lésées de déposer des plaintes.

En effet, bien que le tribunal reconnaît que le système n'est pas parfait, le demandeur principal avait la possibilité de se présenter non pas à son commissariat local d'où les supposés policiers véreux dépendaient, s'il n'y faisait pas confiance, mais à plusieurs autres endroits tous avec des bureaux à Lima, le siège du gouvernement.

Entre autre, à n'importe quel commissariat de police ou au bureau du procureur général, au bureau de l'inspection générale de la police nationale ou au bureau du Ministère public, chez le Protecteur du citoyen, au bureau de l'Ombudsman et enfin, au bureau du procureur chargé d'éliminer la corruption.

[19] In the present case, it was entirely open to the Board under the circumstances to conclude that the applicants had failed to exhaust all avenues to seek alternative avenues of redress sanctioned by the state. Moreover, it was reasonably open to the Board to find unsatisfactory the principal applicant's explanation as to why he waited until the eleventh hour to lodge a complaint knowing

full well that they would be leaving the country for Canada in a few days. The applicant did not give the state the opportunity to provide him with any protection.

[20] While the circumstances here may be distinguished from the facts in *Mendoza v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 772, 2005 FC 634, I believe that the principles are equally applicable. In *Mendoza*, the applicants were tortured by the Peruvian police and their claim for protection in Canada was refused because they did not avail themselves of state protection at all. In present matter, while the applicants did file a complaint, it was such a tardy gesture and made only days prior to their departure that it can reasonably be said that no genuine efforts were made to avail themselves of state protection.

[21] That is why I follow the reasoning of my colleague, Justice Yves de Montigny in *Mendoza*, above, who stated as follows at paragraphs 26-29:

26 In the present case, the Applicant testified that he did not ask the authorities for protection. The Board explained in its reasons that he was afraid to do so because he was robbed by a corrupted policeman. This is entirely consistent with the transcript of the Applicant's testimony in front of the Board, and it shows in my view that the Board did turn its mind to the possible application of s. 97 of IRPA.

27 Now, was the Board mistaken in concluding that the Applicant should have done more to obtain the protection of the state, given the circumstances and the fact that a policeman may well have been involved in the extortion? Bearing in mind that Peru has a government that is in effective control of its territory, and based on the documentary evidence showing that there is a certain degree of corruption in the police forces but that those responsible for such illegal actions are brought to court and face stiff penalties, it was definitely not unreasonable for the Board to conclude that the

Applicant had not made a reasonable effort to seek protection from the authorities of the state.

28 The Applicant could have talked to a police officer of a higher rank, he could have gone to another police station, he could have contacted a lawyer or a human rights group (*Kadenko v. Canada (M.C.I.)*, *supra*; *Obi c. Canada (M.C.I.)*, [2005] F.C.J. no. 400; *Barkai v. Canada (M.E.I.)*, [1994] F.C.J. No. 1417). It is not as if the police forces as a whole were involved in an extortion scheme, or if he had been warned by high ranking officials to refrain from going to the police or to talk about the incident.

29 Given the evidence, it was entirely reasonable for the Board to conclude that the Applicant did not rebut the presumption of a state's ability to protect him. He had the onus of establishing either that he was physically prevented from seeking his government's aid, or that the government was in some way unwilling or unable to give it. Instead, he chose not to do anything or to say anything.

[22] The applicants ask the Court to quash the Board's decision. I would agree if there were no rational basis to support it. That is clearly not the case here. The Court's intervention is not warranted.

[23] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed. No question is certified.

« Michel Beaudry »

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-494-07

STYLE OF CAUSE: **JORGE VICTOR HUERTAS TORRES and
GLIRIA JUANA LEON FLORES DE HUERTAS AND
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

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

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