

**Date: 20071115**

**Docket: IMM-1292-07**

**Citation: 2007 FC 1191**

**Ottawa, Ontario, November 15, 2007**

**Present: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**Hector Luis JIMENEZ RAMIREZ  
Olga HERNANDEZ FERRUSCA  
Hector Luis JIMENEZ HERNANDEZ  
Victor Daniel SANCHEZ HERNANDEZ**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The applicants are challenging the legality of a decision of the Immigration and Refugee Board of Canada's Refugee Protection Division (the tribunal), dated February 27, 2007, concluding that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, L.C. 2001, c. 27.

[2] The principal applicant, Hector Luis Jimenez Ramirez, is a citizen of Mexico and Cuba, while the other members of his family are Mexican citizens. The applicant has a diploma in physical education. In 2000, he left Cuba to become a coach in Querétaro, Mexico. In April 2005, following a change in government, a certain Mr. Martin became sports director for Querétaro. Mr. Martin, who had previously been municipal sports director (a rival of the Querétaro organization, for which the applicant worked), came into conflict with the applicant and other coaches of Cuban origin, to the point that the matter came before the Querétaro state human rights commission in 2005. The commission ruled in favour of the complainants. Subsequently, the applicant began to receive various threats and was even physically assaulted by Mr. Martin. Fearing for their safety, the applicants left Mexico for Canada.

[3] The tribunal rejected the applicants' application for refugee protection, being of the opinion that they had an internal flight alternative (IFA) and that the protection of the Mexican state was available to them.

[4] Reiterating before this Court that the applicant is credible and that [TRANSLATION] "it is not fair that he should have to leave everything because a senior official who has no integrity is furious with him and wants to prevent him from working with athletes, to promote his own company", the applicants today submit that the tribunal's conclusions are patently unreasonable. After all, as the principal applicant explained to the tribunal, Mr. Martin can find them anywhere in Mexico, and the Mexican police are not in a position to protect the applicants. Thus, the tribunal's decision is

reviewable – something which the respondent naturally contests, contending that the tribunal’s findings are not patently unreasonable.

[5] From the outset, I note that Member Houde’s analysis in the decision under review regarding the possibility of the applicants’ turning to the Mexican state consists solely of a few general statements and is deficient and incomplete in several regards. Moreover, in my view, this part of the tribunal’s decision cannot hold up to an in-depth analysis; if the decision to reject the application for refugee protection rested solely on this point, I would not hesitate to set aside the tribunal’s decision (*Chavez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, at paragraphs 9 to 11; *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, [2006] F.C.J. No. 439 (QL) at paragraphs 26, 27 and 32). However, in the case under review, the tribunal also dealt with the question of an internal flight alternative elsewhere in Mexico.

[6] In order for the application for asylum and protection to be granted, the applicants had to demonstrate the absence of an IFA, either because a risk of persecution existed everywhere in Mexico or because they would be subject to a risk to their lives or a risk of cruel and unusual treatment or punishment anywhere in the country: *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (F.C.A.).

[7] The test used to determine whether or not there is an IFA was set out by Mr. Justice Mahoney in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), at page 711, and in *Thirunavukkarasu, supra*, at paragraph 12:

In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in [place of IFA] and that, in all the circumstances including circumstances particular to him, conditions in [place of IFA] were such that it would not be unreasonable for the appellant to seek refuge there.

[8] Moreover, the abovementioned Federal Court of Appeal decision clearly states that it is not sufficient for a refugee applicant to allege that he/she has no friends or family in the more secure part of the country or that he/she risks not finding suitable employment (*Thirunavukkarasu*, supra, at paragraphs 13 and 14).

[9] The Federal Court of Appeal recently ruled in *Rujillo Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99, [2007] F.C.J. No. 336 (F.C.A.), at paragraph 16, that refugee applicants are expected to take reasonable action to try to put a stop to the persecution, hence the necessity of considering a move to another part of the country:

As noted by this Court in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.), at paragraph 12, “if there is a safe haven for applicants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.” Similarly, applicants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options.

[Emphasis added]

[10] As regards the applicants’ alleged fears, the tribunal stated in the decision under review:

The tribunal also considered the possibility of an internal flight alternative for the applicants. The applicant would have no difficulty moving to another place in Mexico. He claimed that he telephoned

all of the states in Mexico to find a job and was refused. The applicant, who has a diploma in physical education and whose discipline is taught, according to his testimony, in every school in Mexico, would have no problem finding work. He did not show evidence that he could not find work in Mexico.

The applicant claimed that he would not feel safe in Mexico and that Martin would look for him. The tribunal asked why he would do that. The applicant replied that he would do it out of personal vengeance. The tribunal asked how he would do this. The applicant simply stated that Martin had contacts in the police. That brief explanation, upon which the applicant was unable to elaborate, leads the tribunal to determine that there would be an internal flight alternative for the applicants.

[Emphasis added]

[11] Needless to say, the existence of an internal flight alternative is essentially a question of fact. The tribunal has exclusive jurisdiction to evaluate the applicants' personal situation in the light of the documentary evidence in the file, the nature of the risk and the identity of the agent of persecution. Although the tribunal's reasoning is brief, I cannot say that it is arbitrary or irrational. In my opinion, the tribunal's reasoning, according to which it is not unreasonable for the applicants to seek refuge in Mexico, is based on evidence in the file and complies with the requirements of the case law applicable in this case.

[12] Given the fact that the tribunal's conclusion as to an internal flight alternative is not reviewable in this case and that it has a determinative effect on the applicant's claim for refugee protection, the application for judicial review must be dismissed. No question of general importance was raised and none arises in the case at bar.

**ORDER**

**THE COURT ORDERS** that the application for judicial review be dismissed. There is no question to be certified.

“Luc Martineau”

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Judge

Certified true translation  
Magda Hentel

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1292-07

**STYLE OF CAUSE:** **Hector Luis JIMENEZ RAMIREZ  
Olga HERMANDEZ FERRUSCA  
Hector Luis JIMENEZ HERMANDEZ  
Victor Daniel SANCHEZ HERMANDEZ  
v. MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 6, 2007

**REASONS FOR ORDER  
AND ORDER BY:** **THE HONOURABLE MR. JUSTICE MARTINEAU**

**DATED:** November 15, 2007

**APPEARANCES:**

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