

**Date: 20071130**

**Docket: IMM-209-06**

**Citation: 2007 FC 1265**

**Ottawa, Ontario, November 30, 2007**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**JUAN CARLOS PERALTA RAZO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application for judicial review is allowed because the decision of the Refugee Protection Division of the Immigration Refugee Board (Board) with respect to state protection was inadequate and unreasonable.

[2] Mr. Peralta Razo is a citizen of Mexico who claimed refugee protection on the basis of his perceived political opinion. He testified that, as a result of his effort to support the people of Chiapas, he came to the attention of the Federal Preventative Police (PFP). Members of the PFP

took him by force, beat, threatened, and interrogated him. After his release, the PFP continued to search for Mr. Peralta Razo throughout Mexico.

[3] The Board found Mr. Peralta Razo's testimony to be forthright and trustworthy. It found, however, that state protection existed for him in Mexico. The Board gave three reasons for this finding.

[4] First, the Board found that the Federal Attorney General's office (PGR) has broad powers and, if a complaint to the police is ignored, "one has recourse to the office of the internal controller of the PGR. According to the documentary evidence, the PGR was reorganized in 2001 in order to deal with internal corruption and to better cope with drug trafficking and organized crime and those found to be involved in internal corruption have been suspended, dismissed and, in some cases, imprisoned."

[5] Second, Mr. Peralta Razo had retained a lawyer in Mexico City. The Board wrote "I cannot understand why a lawyer in Mexico should not be able to assist this claimant in showing up for questioning by the police in respect to his previous involvement with two individuals [...] that were supposedly supportive of illegal Zapatista activities. Further, I believe if the claimant has a lawyer representing him in Mexico City, this lawyer should also be able to address the corrupt previous interrogation that this claimant had to endure".

[6] Finally, the Board found that there was no evidence of any outstanding arrest warrant for Mr. Peralta Razo in Mexico.

[7] Generally, the appropriate standard of review to be applied to the Board's analysis of state protection is reasonableness. See: *Hinzman v. Canada (Minister of Citizenship and Immigration)* (2007), 362 N.R. 1 (F.C.A.) at paragraph 38.

[8] A decision is reasonable if the reasons for the decision withstand a somewhat probing examination. See: *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at paragraph 56.

[9] In the present case, the Board's reasons do not withstand a somewhat probing examination for the following reasons.

[10] First, with respect to the PGR, the Board failed to consider whether effective protection existed. It is insufficient for a state to possess institutions designed to provide protection if those institutions do not provide actual and adequate protection. Such analysis was required in view of the documentary evidence before the Board that:

- Document 2.2, Amnesty International 2005 Report "Mexico": Arbitrary detention, torture, and ill-treatment by police remained widespread and authorities failed to combat these practices effectively or to ensure judicial remedy.
- Document 2.3, Human Rights Watch Report, January 2005 "Mexico": One of the pressing human rights issues in Mexico was torture and other ill-treatment by law

enforcement officials and the failure to investigate and prosecute those responsible for human rights violations.

- Document 10, Immigration and Refugee Board, May 2004, "Mexico: Police": Human rights reports continued to cite Mexican police forces as corrupt and abusive and continued to note that police forces operate with impunity. The police in Mexico are a long way from the point where a registered complaint of police abuse is carried out to a genuine conclusion.

[11] With respect to the Board's reliance upon the fact that Mr. Peralta Razo had a lawyer in Mexico City, a letter from the lawyer was filed in evidence. As well, a second letter was obtained at the Board's request. The Board apparently accepted the accuracy of information provided by the Mexican lawyer. Missing, however, from the Board's analysis was any explanation as to how a lawyer's involvement would protect Mr. Peralta Razo, or why the Board rejected the lawyer's evidence about the availability of state protection for Mr. Peralta Razo. This was necessary in view of the lawyer's advice that "my client, being involved with the Federal Preventative Police, does not have a margin for judicial procedure because the problem unfortunately is with the same authority" and "trying to act in a legal manner (by going to the same police) is like exposing himself".

[12] To clarify, the Board was not bound to accept the lawyer's opinion. It was, however, obliged to give a reason for rejecting it when the Board otherwise accepted the accuracy of information provided by the lawyer.

[13] Finally, the Board correctly noted the absence of an existing arrest warrant. However, Mr. Peralta Razo had been detained and beaten by the police previously, notwithstanding the absence of an arrest warrant. The United States Department of State Report for Mexico, published February 28, 2005 (Document 2.1), reported that police continue to detain citizens arbitrarily and that arbitrary arrest and detention continue to be among the most common human rights abuses. In light of that evidence, the Board was obliged to explain the relevance of the absence of an arrest warrant to the issue of state protection.

[14] To conclude, without expressing any opinion on the point, the Board's decision may have been reasonably open to it on the evidence. It was not, however, reasonable for the Board to dismiss the application for protection for the reasons that it gave.

[15] Counsel posed no question for certification, and I am satisfied that no question arises on this record.

### **JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is allowed, and the decision of the Refugee Protection Division dated December 22, 2005, is hereby set aside.
2. The matter is remitted for redetermination by a differently constituted panel of the Refugee Protection Division.

“Eleanor R. Dawson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-209-06

**STYLE OF CAUSE:** JUAN CARLOS PERALTA RAZO, Applicant

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 27, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DAWSON, J.

**DATED:** NOVEMBER 30, 2007

**APPEARANCES:**

MR. J. BYRON M. THOMAS	FOR THE APPLICANT
MS. DEBORAH DRUKARSH	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MR. J. BYRON M. THOMAS BARRISTER & SOLICITOR TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT