

Date: 20080516

Docket: IMM-4323-07

Citation: 2008 FC 602

BETWEEN:

Jose Oswaldo RAMIREZ RAMIREZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision by the Refugee Protection Division (hereinafter “RPD”) of the Immigration and Refugee Board that the applicant is neither a Convention “refugee” nor a “person in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (the Act).

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[2] The applicant is a Mexican who alleges a fear of the drug dealers in his neighbourhood, because he twice reported them to the police. He made his first complaint by telephone on

January 5, 2005, which led to the arrest and imprisonment of the drug dealers. However, after his second complaint, made after they had been released from prison, they or persons connected with them broke the windows of the applicant's house and car and attacked him, threatening him with death.

[3] The applicant hid, but his family feared that the drug dealers would find him and kill him. Therefore, the applicant left his country and sought refuge in Canada.

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[4] The applicant received a notice dated July 6, 2007, to the effect that the tribunal would be composed of three commissioners for training purposes. The hearing was held on July 31, 2007, before three commissioners.

[5] The RPD made no adverse finding as to the applicant's credibility. However, it relied on the existence of state protection in finding that the applicant was neither a refugee nor a person in need of protection. According to the RPD, the police response to his first complaint demonstrated the effectiveness of the protection of the state. However, the applicant did not contact the authorities after the subsequent event that took place on January 12, 2007.

[6] The RPD also noted the existence of an internal flight alternative (hereinafter "IFA"). Despite the applicant's testimony that he feared being located through the national telephone network, the RPD preferred the documentary evidence showing that it was [TRANSLATION] "almost

impossible for people such as drug dealers to find the refugee claimant in another large city within the country.”

* * * * *

[7] The RPD may consist of a panel of three members pursuant to section 163 of the Act, which reads as follows:

163. Matters before a division shall be conducted before a single member unless, except for matters before the Immigration Division, the Chairperson is of the opinion that a panel of three members should be constituted.

163. Les affaires sont tenues devant un seul commissaire sauf si, exception faite de la Section de l’immigration, le président estime nécessaire de constituer un tribunal de trois commissaires.

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[8] This case raises the following two issues:

- (1) Was the RPD validly constituted?
- (2) Did the RPD err in basing its finding on the existence of state protection and an IFA?

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- (1) Was the RPD validly constituted?

[9] According to the applicant, the constitution of the RPD was unfair because two of the members were in training and because claimants could be intimidated by the fact that the message

they were being sent was that [TRANSLATION] “ three of us will gang up to find reasons to refuse the claim.” The applicant argues that the policy of the Immigration and Refugee Board (hereinafter “IRB”) regarding the training of members is that new members may act only as observers of experienced members for the first six months of their mandates. I disagree.

[10] In fact, the arguments of the applicant, whose counsel did not object during the hearing before the RPD, regarding the training of members, are based on the following comments made by the IRB Chairperson (applicant’s record, at page 24):

. . . A team, comprising a trainer from the Professional Development Branch, a legal advisor, and an experienced CRDD member who is designated to serve as the new member's mentor, is assigned to work closely with the new member for the first six months of the new member's mandate. . . . Each new member is initially assigned to sit with his or her mentor. They are then paired with other experienced members to widen their exposure and experience.

[11] I am of the opinion that the applicant misunderstood these comments in arguing that the IRB Chairperson indicated that new members could only observe hearings for the first six months. The IRB’s policy regarding the constitution of three-member panels is clear. According to the document entitled “Designation of Three-Member Panels—RPD Approach” (Exhibit A to the affidavit of Hélène Jarry, respondent’s record):

Of the cases which are designated to be heard by three-member panels, most will be for the purpose of permitting newer members to enhance their presiding skills. . . .
. . . For example, those members newly appointed to the Division, may have the benefit of sitting with an experienced member if they are assigned to three member panels. This will enable them to enhance their presiding skills before beginning to hear cases as a single member.

[12] There is no evidence to indicate that this policy is contrary to section 163 of the Act that enables the IRB Chairperson to constitute a three-member panel. Nor is there any evidence that the applicant suffered real prejudice in the circumstances.

(2) Did the RPD err in basing its finding on the existence of state protection and an IFA?

[13] The applicant argues that the documentary evidence shows the serious problems in Mexico related to drug trafficking and that the RPD's finding that there existed an IFA was unreasonable because [TRANSLATION] "all over the world, people can be traced with the Internet, through their phone numbers or just by typing their names."

[14] It is up to the refugee claimant to show that he cannot seek the protection of his state and that no IFA exists (see, *inter alia*, *Villasenor v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1080, [2006] F.C.J. No. 1359 (F.C.T.D.) (QL), *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at paragraph 52 and *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)). As a specialized tribunal, the RPD should be afforded considerable deference regarding its decisions, which should be reviewed according to the standard of reasonableness. The Supreme Court of Canada wrote the following in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL), at paragraph 47:

. . . In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[15] In my opinion, the documentary evidence cited by the applicant does not show that the RPD's findings regarding the existence of state protection and an IFA were unreasonable. The RPD did indeed consider the particular facts concerning the applicant and all of the documentary evidence (particularly the evidence at pages 16, 20, 21 and 22 of the tribunal record) and reasonably concluded that he had not shown that state protection was not available to him.

[16] Moreover, as submitted by the respondent, the applicant's allegations regarding the existence of an IFA were general in nature and did not address his personal situation, which was duly considered by the RPD.

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[17] For all these reasons, the application for judicial review is dismissed.

“Yvon Pinard”

Judge

Ottawa, Ontario
May 16, 2008

Certified true translation

Francie Gow, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4323-07

STYLE OF CAUSE: Jose Oswaldo RAMIREZ RAMIREZ v. MINISTER OF
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 9, 2008

REASONS FOR JUDGMENT: The Honourable Mr. Justice Pinard

DATED: May 16, 2008

APPEARANCES:

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Date: 20080516

Docket: IMM-4323-07

Ottawa, Ontario, the 16th day of May 2008

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Jose Oswaldo RAMIREZ RAMIREZ

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT

The application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board that the applicant is neither a Convention “refugee” nor a “person in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, is dismissed.

“Yvon Pinard”

Judge

Certified true translation

Francie Gow, BCL, LLB