

**Date: 20080604**

**Docket: IMM-4089-07**

**Citation: 2008 FC 702**

**Vancouver, British Columbia, June 4, 2008**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**GASTON CHAVEZ SOLIS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application for judicial review is dismissed because I find no reviewable error in the conclusion of the Refugee Protection Division of the Immigration and Refugee Board (RPD) that adequate state protection exists for Mr. Chavez Solis in the Federal District of Mexico.

**FACTS**

[2] Gaston Chavez Solis is a citizen of Mexico. He claims to have a well-founded fear of persecution on the basis of threats received from a corrupt official within the Ministry of Defence.

Specifically, Mr. Chavez Solis says that, while working as an accountant with a company that provided medical supplies to the military, he became aware of corrupt bidding practices used by the company to secure contracts. When Mr. Chavez Solis expressed his intention to leave the company, he says that he was threatened by a “high level” military officer within the Ministry of Defence and began receiving threats against his life.

[3] On May 1, 2006, Mr. Chavez Solis arrived in Canada. He filed a claim for refugee protection on May 31, 2006.

### **DECISION OF THE RPD**

[4] The reasons of the RPD are confusing about the credibility of Mr. Chavez Solis' evidence. The RPD spoke of "credibility concerns in core events of the claim" and found that a letter filed in support of Mr. Chavez Solis' claim defied logic. However, I agree with the submissions of both counsel that the RPD's credibility concerns appear to have been *obiter* and that the RPD accepted that Mr. Chavez Solis has a well-founded fear of persecution in Mexico. This is the only rational conclusion that can be reached in view of the RPD's expression of sympathy for Mr. Chavez Solis' “fear of being the test case so to speak” on the adequacy of state protection.

[5] With respect to state protection, after reviewing the documentary evidence, the RPD concluded that, if Mr. Chavez Solis had approached the authorities, “meaningful protection would have been provided.” The RPD distinguished the documentary evidence relied upon by Mr. Chavez Solis, noting that it did not relate to “military officers accused of corruption and bid

rigging,” but rather to officers “who exceeded their authority [...] and in so doing violated suspects’ human rights.”

### **ALLEGED ERRORS**

[6] Mr. Chavez Solis asserts that the RPD’s finding of adequate state protection is flawed in two respects. First, he argues that the RPD failed to consider the effectiveness of Mexico’s efforts to respond to corruption and criminal activity. Second, he argues that the RPD:

- ignored, or wrongly distinguished, evidence that any complaint made about a military officer would be referred to military authorities for investigation;
- ignored, or wrongly distinguished, evidence that internal military investigations are wholly inadequate and that a high level of impunity exists for those who are accused of abusing civilians; and
- erred by rejecting reports of Amnesty International and Human Rights Watch because they dealt with human rights abuses and not matters of corruption.

### **STANDARD OF REVIEW**

[7] Decisions of the RPD about the adequacy of state protection have been found to be reviewable against the standard of reasonableness *simpliciter*. See: *Hinzman v. Canada (Minister of Citizenship and Immigration)* (2007), 362 N.R. 1 at paragraph 38 (F.C.A.). I am satisfied that such jurisprudence satisfactorily determined the degree of deference to be given to the RPD’s finding of state protection. See: *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 (QL) at paragraphs 57, 62,

and 64. The RPD's finding of the existence of state protection should be reviewed against the standard of reasonableness.

### **GENERAL PRINCIPLES OF LAW**

[8] Mr. Chavez Solis did not seek protection in Mexico. As a matter of law, Mr. Chavez Solis was therefore required to provide clear and convincing confirmation of Mexico's inability to protect him. See: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at pages 724 and 725. Without such evidence, Mr. Chavez Solis' claim for protection must fail because it is presumed that a country is capable of protecting its citizens. A claimant who seeks to rebut the presumption of state protection faces a heavy evidentiary burden. A claimant must adduce relevant, reliable, and convincing evidence to establish, on a balance of probabilities, that state protection is inadequate. See: *Carillo v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 399 (QL) at paragraph 30.

### **APPLICATION OF THE STANDARD OF REVIEW TO THE DECISION OF THE RPD**

[9] In my view, contrary to Mr. Chavez Solis' submissions, the RPD did consider whether Mexico's corruption reforms were effective. I say this because after reviewing the "documentary evidence as it applies to efforts to provide adequate protection for [a] person such as a claimant," the RPD concluded that "if the claimant had approached the authorities, meaningful assistance would have been provided." The reasons of the RPD show that it was mindful of the fact that no country can guarantee the protection of all of its citizens. The evidence before the RPD fell short of

establishing that in the Federal District of Mexico there was a broad-based ineffectiveness in the quality of protection available to victims of corruption.

[10] Turning to the second asserted error, Mr. Chavez Solis argues that the RPD ignored the following evidence:

- An Amnesty International report that referred to a 2005 National Supreme Court decision, which confirmed the judicial precedent of granting the military wide jurisdiction when determining the criminal responsibility of military officials. This was so even if the official was not on active duty or carrying out military activities. The report highlighted the ongoing impunity that this generated for military officials.
- A Human Rights Watch report which stated that a "major shortcoming of the Mexican justice system is that it leaves the task of investigating and prosecuting army abuses to military authorities. The military justice system is ill-equipped for such tasks. It lacks the independence necessary to carry out reliable investigations and its operations suffer from a general absence of transparency."

[11] The RPD did not ignore this evidence. It found that the Amnesty International document did not relate to corruption and the cover-up of corruption, but rather to human rights violations, such as rape, and the involvement of military officials in carrying out civilian policing (such as policing operations to combat drugs). The Human Rights Watch document was found not to apply to officers

accused of corruption or bid rigging, but rather to apply to officers who violated suspects' human rights while investigating or controlling civil disruption.

[12] I have read both articles carefully. In my view, the interpretation given to the evidence by the RPD was reasonable and open to it on the evidence.

[13] Reading the reasons of the RPD with respect to state protection as a whole, the RPD pointed to evidence that was sufficient to support its finding that serious efforts were being made to provide adequate protection in the Federal District of Mexico and that meaningful assistance would have been available to Mr. Chavez Solis had he approached the authorities. A rational basis existed in the evidence for the RPD's treatment of the Amnesty International and Human Rights Watch reports. It was Mr. Chavez Solis who faced the heavy onus of refuting the presumption of state protection.

[14] In my view, the reasons of the RPD on state protection were transparent, intelligible, and justified. The RPD's conclusion on state protection was also within the range of possible, acceptable outcomes which were defensible on the basis of the facts and law. The RPD's decision was, therefore, reasonable.

[15] Accordingly, the application for judicial review is dismissed.

[16] 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 dismissed.

“Eleanor R. Dawson”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-4089-07

**STYLE OF CAUSE:** GASTON CHAVEZ SOLIS v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 6, 2008

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

**DATED:** June 4, 2008

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