

**Date: 20080626**

**Docket: IMM-5305-07**

**Citation: 2008 FC 809**

**Montréal, Quebec, June 26, 2008**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**JORGE CESAR GUTIERREZ OLMOS  
ELIZABETH BARRERA OCHOA  
BRANDON GUTIERREZ BARRERA  
BRENDA SOFIA GUTIERREZ BARRERA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Preliminary**

[1] As the trier of fact, the tribunal at first instance has the advantage of its experience. The more carefully and meticulously a specialized tribunal analyzes a reality based on the conditions in a particular country, the more clearly it can see through the narrative and match it with the reality of life in the given country without twisting it. In fact, it must examine, analyze and consider the dividing line between what is plausible and what is not.

[2] The Court understands that a specialized tribunal does not necessarily understand country conditions in the same way as the general public, which has no specialized in-depth knowledge. Nevertheless, the specialized tribunal must demonstrate clearly and precisely the logic of its own findings.

## II. Judicial procedure

[3] On November 22, 2007, the Immigration and Refugee Board (the Board) rejected the applicants' refugee claim on the grounds that an internal flight alternative existed for them in Mexico and that the allegations of Jorge Cesar Gutierrez Olmos lacked credibility. The applicants are challenging that decision by means of an application for leave filed under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). They are raising only questions of fact.

## III. Facts

### (a) The basis of the refugee claim

[4] The applicants, who are citizens of Mexico, all based their claim on the facts alleged by Jorge Cesar Gutierrez Olmos, who is claiming a fear of persecution by reason of his membership in a particular social group. They are also claiming to be "person[s] in need of protection" in that they would be personally subjected to a danger of torture and to a risk to their lives or to a risk of cruel and unusual treatment or punishment in Mexico.

[5] Mr. Gutierrez Olmos was also appointed representative for the minor children, Brandon and Brenda Sofia Gutierrez Barrera, for the purposes of their refugee protection claim.

[6] Elizabeth Barrera Ochoa is the spouse of Mr. Gutierrez Olmos and has based her refugee claim on his narrative.

[7] On October 21, 2004, Mr. Gutierrez Olmos's store was apparently robbed. The alleged value of the stolen goods was \$11,000.

[8] On October 21, 2004, Mr. Gutierrez Olmos allegedly reported the theft to the ministry of public affairs, but never heard back from it.

[9] In February 2006, Mr. Gutierrez Olmos apparently received five telephone calls threatening to kidnap his son, Brandon, unless he paid a ransom of 50,000 pesos.

[10] In March 2006, Mr. Gutierrez Olmos and his spouse allegedly transferred their children to a new school.

[11] In July 2006, the applicants apparently moved.

[12] On November 15, 2006, Mr. Gutierrez Olmos allegedly reported his aggressors, including one Rafael Arzate, his former employee, who was now a police officer. Mr. Gutierrez Olmos stated to the police authorities that he might have been the person responsible.

[13] Mr. Gutierrez Olmos is alleging that, after he had reported him, Mr. Arzate told him over the telephone that he would pay the consequences for having reported him.

[14] Fearing for their lives, the applicants left Mexico for Canada on January 10, 2007. They claimed refugee protection two days later.

(b) The Board's decision

[15] The Board rejected the refugee claim, finding that the applicants were not "Convention refugee[s]" or "person[s] in need of protection" on the grounds that an internal flight alternative existed for them elsewhere in Mexico and that Mr. Gutierrez Olmos's allegations lacked credibility.

[16] The Board's decision is based on the evidence adduced, draws reasonable inferences from it and respects the relevant legal principles.

IV. Issue

[17] Does the Board's decision contain an error of fact warranting this Court's intervention?

## V. Analysis

### (i) Internal flight alternative

[18] Concerning internal flight alternatives, in *Isufi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 880, 237 F.T.R. 161, at paragraph 23, the Court acknowledged that a refugee claimant had to demonstrate that the risk to his life or the risk of cruel and unusual punishment existed throughout the country.

[19] It is recognized in subparagraph 97(1)(b)(ii) of the IRPA that a person must be subjected to a risk to his or her life or to a risk of cruel and unusual treatment or punishment in every part of his or her country. Thus, the internal flight alternative is a component of the concept of “person in need of protection” set out in subparagraph 97(1)(b)(ii) of the IRPA.

[20] Subparagraph 97(1)(b)(ii) of the IRPA is worded as follows:

<p><b>97.</b> (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>...</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p>	<p><b>97.</b> (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>[...]</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p>
--	---

...	[...]
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
...	[...]

[21] In this case, the applicants did not exactly challenge the validity of the part of the decision that concerns the internal flight alternative, although it is a component of the refugee claim.

[22] Mr. Justice Yvon Pinard thus commented on this matter in *Fedonin v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1684 (QL):

[2] When she began her argument, counsel for the applicants stated that she was unable to invalidate the portion of the panel's decision finding that the applicants had an internal flight alternative in the north of Kazakhstan. As I told her at the hearing, she thereby eliminated any chance that the application for judicial review had of succeeding. ...

(See also *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 709, 295 F.T.R. 108 at para. 18.)

[23] The fact that the internal flight alternative is a component of refugee claims and that it is not being challenged in this case is sufficient to dismiss this application.

[24] Concerning the possibility of moving to another part of Mexico, Mr. Gutierrez Olmos told the Board that his first thought was to leave Mexico because of its insecurity. The problems that he has allegedly lived through caused by drugs and kidnappings of children are of great concern to him. Moreover, one of his aggressors, Mr. Arzate, is allegedly a police officer and hence could find him anywhere in Mexico. (Reasons at p. 4, last para.)

[25] Considering that the Board had doubts about the credibility of several of Mr. Gutierrez Olmos's allegations, that Mr. Gutierrez Olmos had not proved that Mr. Arzate was a police officer and that no evidence was submitted regarding the other people allegedly involved in the wrongful acts against the applicants, it was open to the Board to determine that the applicants had not established on a balance of probabilities that they were at risk throughout their country. (Reasons at p. 5, para. 4.)

[26] That finding is a finding of fact for which the Board is in the best position to assess the evidence and the facts of the case. (*Singh v. Canada (Secretary of State)*, [1995] F.C.J. No. 1673 (QL); *Gilgorri v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 559, [2006] F.C.J. No. 701 (QL).)

[27] Thus, the applicants did not demonstrate with actual and concrete evidence that there was a risk to their lives and safety in another part of Mexico. (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, 266 N.R. 380 at para. 15 (C.A.).)

(ii) Lack of credibility and corroboration

[28] The Board noted contradictions of important facts on which the applicants are basing their refugee claim.

[29] The applicants are claiming that they moved in July 2006 after telephone calls threatening to kidnap their son that they allegedly received in February 2006. However, in their Personal Information Form (PIF), they did not mention a different place of residence for that period. The Board did not find reasonable Mr. Gutierrez Olmos's explanation concerning that contradiction. The Board also did not find it credible that the applicants changed houses in June and July 2006 because of their fear. (Reasons at p. 2.)

[30] In addition, the fact that Mr. Gutierrez Olmos gave contradictory answers about when he found out that his employee, Mr. Arzate, was working for the federal police affected his credibility. (Reasons at p. 3, para. 1.)

[31] Mr. Gutierrez Olmos's credibility was also undermined by the fact that he had not provided any satisfactory explanation as to the contradiction between the pieces of evidence concerning whether Mr. Gutierrez Olmos knew Mr. Arzate and Mr. Arzate's work as a police officer. (Reasons at p. 3, para. 1.)

[32] In *Mostajelin v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 28 (QL) (C.A.), Mr. Justice Robert Décary of the Federal Court of Appeal reminded us that the issue of



credibility should be left to the Board to assess, especially where contradictions among the claimant's statements are concerned:

The Board's conclusion that the appellant's evidence was not credible or trustworthy is based upon the appellant's demeanour, the conflict between the Personal Information Form and his oral testimony and a series of inconsistencies and implausibilities in his oral testimony. Such credibility findings are beyond the review of this Court. (Emphasis added.)

[33] Therefore, the Board was justified in making a negative finding concerning Mr. Gutierrez Olmos's credibility.

[34] Since Mr. Gutierrez Olmos's credibility was undermined, it was open to the Board to take into consideration the fact that he had no documents respecting Mr. Arzate's being a police officer or being one of his kidnappers in November 2006. (Reasons at p. 3, para. 2; *Amarapala v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 12, [2004] F.C.J. No. 62 at para. 9 (QL).)

[35] Given that the decision is based on findings of fact, mere disagreement with the reasons or an inference that is different from that made by the Board would not be sufficient to question the merits of the decision rendered.

[36] Only the test set out in paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 would enable this Court to intervene. See also *Oduro v. Canada (Minister of Employment and Immigration)* (1993), 66 F.T.R. 106, 41 A.C.W.S. (3d) 384 (F.C.).

[37] Case law has clearly established that the Board has sole jurisdiction over the facts and that its findings on the facts, such as Mr. Gutierrez Olmos's lack of credibility, must stand unless they are entirely unreasonable, which is not the case here. (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315.)

[38] Considering the case law mentioned above and the evidence on the record, the Board was able to make the findings that it made, and they were certainly not unreasonable.

## VI. Conclusion

[39] For all of these reasons, the applicants failed to give substantial grounds warranting the Court's intervention.

[40] The application for judicial review is therefore dismissed.

**JUDGMENT**

**THE COURT ORDERS that**

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

---

Judge

Certified true translation  
Susan Deichert, Reviser

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

**DOCKET:** IMM-5305-07

**STYLE OF CAUSE:** JORGE CESAR GUTIERREZ OLMOS  
ELIZABETH BARRERA OCHOA  
BRANDON GUTIERREZ BARRERA  
BRENDA SOFIA GUTIERREZ BARRERA  
v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** June 25, 2008

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

**DATED:** June 26, 2008

**APPEARANCES:**

Luciano Mascaro FOR THE APPLICANTS

Steve Bell FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

ARPIN, MASCARO ET ASSOCIÉS FOR THE APPLICANTS  
Montréal, Quebec

JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada