

**Date: 20080806**

**Docket: IMM-301-08**

**Citation: 2008 FC 933**

**Ottawa, Ontario, August 6, 2008**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**JAIME ALEJANDRO TELLEZ ALVAREZ  
CITLALLI HERNANDEZ RINCON  
ITZY JASMIN TELLEZ HERNANDEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants are a family of Mexican citizens, whose refugee claims were rejected by the Refugee Protection Division of the Immigration and Refugee Board on the grounds that adequate state protection was available to the family in Mexico.

[2] The applicants now seek judicial review of the Board's decision, asserting that the Board erred in law in imposing too heavy a burden on them to rebut the presumption that a state will be able to protect its citizens.

[3] The Board further erred, the applicants say, in failing to properly consider that the agents of persecution in this case were agents of the state, or were acting with the complicity of the state. In addition, the applicants assert that the Board also erred in treating Mexico as a fully developed democracy, and in ignoring relevant evidence, thus rendering the Board's decision unreasonable.

[4] For the reasons that follow, I am not persuaded that the Board erred as alleged. As a consequence, the application for judicial review will be dismissed.

### **Background**

[5] The applicants claimed to have a well-founded fear of persecution in Mexico based upon the political opinion of the adult claimants, namely Mr. Tellez and Ms. Hernandez.

[6] While in university, Mr. Tellez and Ms. Hernandez were student activists, supporting the Zapatista movement. They were also members of, and activists within, the Partido de la Revolution Democratica. The applicants say that these activities led to them being targeted for persecution by the governing party in Mexico.

[7] The applicants also say that the fact that Ms. Hernandez' father was a prominent figure within the PRD also contributed to their having been targeted for persecution.

[8] The Board accepted as credible the applicants' claim that between 1999 and 2004 they were subjected to a variety of threats, police harassment and attacks. The Board also accepted that Mr.

Tellez had been kidnapped by anti-leftists in 2004, who also stole the van that Mr. Tellez had been driving at the time of the kidnapping.

[9] The applicants themselves never sought state protection. Although the police were evidently called in by a third party after the kidnapping, Mr. Tellez did not tell the police that he had been kidnapped, because he was fearful of losing his job, and because he did not want his employer to become aware of his political activities.

[10] One of the kidnapers evidently got away. However, the other kidnapper was arrested and was subsequently convicted of stealing the van that Mr. Tellez had been driving at the time of the kidnapping, and was sent to prison. No further threats have been received by the applicants or their families since 2004.

[11] In 2006, the applicants' home was expropriated so as to allow for the construction of a new airport. Realizing that nothing could be done to prevent this, the applicants then decided to leave Mexico and come to Canada.

[12] The Board found the issue of state protection to be determinative of the applicants' claim. Having found that such protection was available to the applicants in Mexico, their claim for refugee protection was accordingly dismissed.

**Did the Board Err in its Application of the Law in Relation to the Issue of State Protection?**

[13] The applicants say that the Board erred in law in its analysis of the state protection issue, by imposing too high a standard of proof on them to rebut the presumption that state protection would be available to them in Mexico.

[14] That is, the applicants say that the Board erred in relying on the decision of the Federal Court of Appeal in *Villafranca v. Canada (Minister of Citizenship and Immigration)*, [1992] FCJ No. 1189, with respect to the nature and quality of the evidence that an applicant must adduce to rebut the presumption of state protection. This, the applicants say, amounts to an error of law, as the Supreme Court of Canada changed the law in this regard in *Canada (Attorney General) v. Ward*, 2 S.C.R. 689.

[15] In support of this contention, the applicants rely on the decision of Justice Campbell in *Garcia v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 79.

[16] I do not agree that the Board erred as alleged by the applicants. Although the decision in *Villafranca* is mentioned in the Board's analysis, a review of the Board's analysis as a whole makes it clear that the Board assessed the applicants' claim in light of the standard prescribed by the Supreme Court in *Ward*.

[17] That is, the Board considered whether the applicants had adduced "clear and convincing evidence" of Mexico's inability to protect them.

[18] As a consequence, I am satisfied that the Board did not err in law in this regard, and indeed applied the correct test in assessing the applicants' claim.

### **Was the Board's State Protection Finding Unreasonable?**

[19] The applicants have several arguments as to why the Board's finding that state protection was available to them in Mexico was unreasonable.

[20] Firstly, they say that the Board erred in failing to consider that the agents of persecution feared by the applicants in this case were either agents of the state, or those acting with the complicity of the state. Citing cases such as this Court's decision in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 320 (rev'd 2008 FCA 94), the applicants say that given that the agents of persecution were agents of the state, the burden on them to rebut the presumption of state protection was lower.

[21] A review of the Board's decision discloses that the Board was well aware of the fact that the agents of persecution feared by the applicants in this case were agents of the state. It was with this in mind that the Board went on to consider the avenues of recourse that would have been available to the applicants, had they attempted to seek state protection while in Mexico.

[22] The Board also observed that even though Mr. Tellez did not tell the police the whole story behind his kidnapping, the police appeared to have been willing and able to do their job in bringing at least one of the kidnappers to justice for the only crime of which the police were made aware.

[23] The applicants also say that the Board erred in treating Mexico as a fully developed democracy, without also acknowledging the well-documented problems of corruption and human rights abuses within that country.

[24] Here once again, this argument is not borne out by a review of the Board's reasons. Indeed, in observing that the public in Mexico are often distrustful of public institutions, including the police, the Board expressly recognized the problems of widespread corruption and human rights violations within that country.

[25] Finally, the applicants say that the Board erred in ignoring documentary evidence when it found that the most recent documentary evidence did not describe any politically-motivated violations of the human rights of leftist activists.

[26] The Board is presumed to have considered all of the evidence: see *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102. There is no obligation on the Board to mention every document entered into evidence, and that the failure of the Board to mention a particular document does not mean that it did not take the document into account: *Hassan v. Canada (Minister of Employment and Immigration)*, (1992) 147 N.R. 317.

[27] Given that refugee claims involve a forward-looking analysis, it was not unreasonable for the Board to have focussed its analysis on the most recent documentary evidence available.

[28] Moreover, the documentary evidence that was allegedly overlooked by the Board related to a teachers' strike in a different part of Mexico than that where the applicants lived. As a consequence, the probative value of the evidence that was allegedly overlooked by the Board is not so compelling as to lead to the inference that the evidence must have been overlooked by the Board: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1425, 157 F.T.R. 35 at paragraphs 14 to 17.

[29] As a result, the applicants have not persuaded me that the Board's state protection finding was unreasonable.

### **Conclusion**

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

### **Certification**

[31] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

---

Judge



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

**DOCKET:** IMM-301-08

**STYLE OF CAUSE:** JAIME ALEJANDRO TELLEZ ALVAREZ, ET AL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Vancouver, B.C.

**DATE OF HEARING:** July 16, 2008

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

**DATED:** August 6, 2008

**APPEARANCES:**

Mr. Warren Puddicombe FOR THE APPLICANTS

Ms. Kimberely Shane FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Elgin, Cannon & Associates FOR THE APPLICANTS  
Vancouver, B.C.

John H. Sims, QC FOR THE RESPONDENT  
Deputy Attorney General of Canada