

**Date: 20081202**

**Docket: IMM-1482-08**

**Citation: 2008 FC 1326**

**Toronto, Ontario, December 2, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**RONNIE ROMERO ORTIZ  
YAZMIN GONZALES REYES  
RONNIE ROMERO GONZALES**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The principal applicant, Ronnie Romero Ortiz, his wife and his son, all three of whom are Mexican citizens, seek judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision dated February 20, 2008, by the Refugee Protection Division of the Immigration and Refugee Board, which determined that they were neither “refugees” nor “persons in need of protection” within the meaning of sections 96 and 97 of the Act, and which rejected their refugee claim accordingly.

II. Facts

[2] Before coming to Canada, the principal applicant worked as a security systems installer for Construcciones Arellano y Asociados, and installed surveillance cameras for one Juan Hoyos.

[3] The applicant heard say that Hoyos was actually the head of the drug cartel that operates in the Gulf of Mexico region. He claims to have seen certain individuals come to Hoyos's office to pay for or purchase drugs that were subsequently resold in various places within the city or province of Veracruz.

[4] Despite his knowledge of such trade, the applicant continued to install security systems for Hoyos and to accept drugs from him, which he claims to have disposed of later.

[5] On December 5, 2006, an officer from the Agencia Federal de Investigación (AFI) approached the principal applicant and questioned him regarding Hoyos's illegal activities. However, doubting that the individual was genuinely an AFI officer, the applicant refrained from talking to him about this subject. This interview caused him to fear for his life and that of his family, so he decided, that evening, to leave Mexico with his family.

[6] Consequently, the principal applicant left Mexico with his family on December 24, 2006, and arrived in Canada, where they made a refugee claim the same day.

III. Impugned decision

[7] In its decision, the Board rejected the applicants' claim on the basis that their account was not credible. The Board made the alternative finding that, even if their account were credible, they never sought the protection of their country's authorities and did not show that the Mexican authorities were unable to protect them.

IV. Issue

[8] Did the Board make an unreasonable error in its negative assessment of the principal applicant's and his wife's credibility, its refusal to grant them refugee and protected person status, and its alternative finding that they "did not rebut the presumption of state protection"?

V. Analysis

*Standard of judicial review*

[9] Courts must show deference to the decisions of specialized administrative tribunals, which have expertise in matters within their jurisdiction (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[10] The *reasonableness* standard applies to this case; accordingly, in order to justify its intervention, the Court must inquire whether the impugned decision is reasonable, having regard to the *justification for the decision* and whether it *falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law* (*Dunsmuir, supra*, at paragraph 47).

[11] Within this standard of review and based on the evidence , can the Court find that the Board made an unreasonable error by deciding that the applicants were neither “refugees” nor “persons in need of protection” and by finding that they “did not rebut the presumption of state protection”?

*Lack of credibility*

[12] The principal applicant and his wife were found not to be credible, by reason of the significant inconsistencies between their testimony and their Personal Information Forms (PIFs). The Board also found that the principal applicant’s testimony was confused and that it lacked spontaneity.

[13] Although his fear purportedly stems from his employment by Hoyos and the fact that Hoyos was engaged in illegal activities, he did not mention these things at the point of entry; the first reference to them is in his PIF. The Board was not satisfied with the answers that he gave to explain this omission at the point of entry. Moreover, although the principal claimant asserted that Hoyos was the head of the drug cartel in the Gulf of Mexico, the documentary evidence conflicts with this and confirms that the cartel’s head is one Osiel Cardenas.

[14] Even more troubling is Ms. Reyes’s admission, before the Board, that upon arriving in Canada, she did not know that her life was in danger, nor did she know what had prompted her husband to move his family.

[15] In addition, the principal applicant claims that he began fearing for his life on November 31, 2006, but even though he knew that his home was under surveillance, he continued to live there, and to work for Hoyos, until he left for Canada. Moreover, even though he feared Hoyos, he did not even give information on him to the AFI officer who came to question him regarding Hoyos's illegal activities.

[16] The applicants do not dispute the contradictions and omissions that the Board attributes to them, nor do they show how and why its findings of fact regarding their credibility are arbitrary, unreasonable, or without regard to the evidence in the record.

[17] The Board was entitled to conclude that the applicants lacked credibility based on the improbabilities contained in their accounts and on common sense and reason (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 206).

[18] It is not the Court's role at this stage to assess the evidence anew or substitute its opinion for that of the Board, especially since the Board has the advantage of its expertise, and, above all, of having heard the applicants' account and their claims. The Board is certainly more qualified than this Court to assess their credibility.

[19] The Court must verify only whether the Board's decision was justified and reasonable in the sense stated in *Dunsmuir, supra*. Credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review. They cannot

be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State)*, [1997] 1 F.C. 608, 67 A.C.W.S. (3d) 978 (C.A.), at paragraph 24; *Dunsmuir, supra*).

[20] The Court must accord a great deal of deference to the Board's findings concerning the applicants' credibility, and this leaves a heavy burden on them to persuade this Court to set aside those findings.

[21] In short, the applicants have not succeeded in showing that the impugned decision is based on findings of fact made in a perverse or capricious manner, or that the Board made its decision without regard to the evidence before it. The Board was entitled to reject the applicants' claim solely because their conduct was inconsistent with their claims, and to find that, based on that fact, they were not credible. Consequently, the Board's decision concerning the applicants' credibility was reasonable and does not warrant this Court's intervention.

*State protection*

[22] The Board made the alternative finding that the applicants did not rebut the presumption of Mexican state protection. Since it did not believe the applicants' account, and therefore found that they were neither refugees nor persons in need for protection, it was superfluous and unnecessary for the Board to address the presumption of protection by their government, which they had not rebutted. However, the Board did not err simply by ruling on this point.

[23] For barring a complete collapse of the apparatus of the Mexican government, it must be presumed that Mexico can protect its citizens. Moreover, the protection that is offered need not be perfect. Consequently, the applicants had to provide clear and convincing evidence of their need for protection and of the inability or refusal of the Mexican government to protect them (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). Instead, they did not even satisfy the Court that they needed protection as they claimed.

[24] Despite the reported problems concerning the Mexican government, the onus was on the applicants to seek the assistance and protection available in their country first, before seeking Canada's protection. How can a determination be made today that the protection provided by the applicants' country was ineffective, when they never attempted to test that protection? In light of this, it was not unreasonable to find that the applicants did not discharge their burden of proof.

[25] For all these reasons, the Court does not see how the Board's finding with respect to the issue of available protection could be unreasonable, especially since the Board did not need to decide that issue.

## VI. Conclusion

[26] For all these reasons, the Court finds that the decision under review is justified having regard to the facts and the law — in short, that it was a reasonable decision which does not warrant this Court's intervention.

[27] Since no serious question of general importance was proposed, no question will be certified.



**JUDGMENT**

**FOR THESE REASONS, THE COURT:**

DISMISSES the application for judicial review.

“Maurice E. Lagacé”  
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Deputy Judge

Certified true translation  
Brian McCordick, Translator

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

**DOCKET:** IMM-1482-08

**STYLE OF CAUSE:** RONNIE ROMERO ORTIZ ET AL v. MINISTER OF  
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