

Date: 20090227

Docket: IMM-434-08

Citation: 2009 FC 210

Ottawa, Ontario, February 27, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**JUAN JOSE CASTILLO GRANADOS
GUADALUPE BELINDA ESQUIVEL MERCADO
DAYANA MONSERRAT CASTILLO MERCADA
NORMA ALICIA MERCADO ENRIQUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This Mexican family requested judicial review of a decision by the Immigration and Refugee Board (IRB) rejecting their refugee claim on the grounds of lack of credibility, internal flight alternative (IFA), and state protection.

[2] The Applicants, in oral argument, raised for the first time the issue of whether the IRB had a duty to confront an applicant with each and every inconsistency upon which it ultimately based its credibility finding.

II. BACKGROUND

[3] The Applicants' claim was based on the harm they would suffer because they were caught up in a corrupt police ring. The alleged scheme was that police officers would sell cars, then other officers would arrest the new owner for auto theft and would demand a sizeable bribe for their release.

[4] The Applicants say that they were victims of this scam, that the principal Applicant was arrested, paid the bribe and released (and/or beaten unconscious), and subsequently threatened by police when he went to file a report of police misconduct.

[5] Without taking any further steps, the principal Applicant came to Canada in February 2006.

[6] The principal Applicant's wife and daughter came to Canada in July 2006 but returned to Mexico in August. The wife decided not to live in their home because a man allegedly came looking for her husband while they were in Canada.

[7] The daughter returned to Canada in September 2006 with her cousin. The mother stayed in Mexico until December because either she had no money or because she had a job and needed to take care of matters before leaving Mexico.

[8] The IRB found the principal Applicant not credible. The Board cited numerous inconsistencies or contradictions in his story, frequently between what was contained in his PIF and his oral evidence. The Board also found a number of instances of implausibility.

In the alternative, the Board found that if these events occurred, they were evidence of criminal acts and not of persecution on Convention grounds.

[9] The Board found that there were IFAs in other parts of Mexico because the local police showed very limited interest in them.

[10] Lastly, the Board, while recognizing that Mexico faced problems with police corruption, concluded that the Applicants should have done more to file a complaint and that they had failed to rebut the presumption of state protection with clear and convincing evidence.

III. ANALYSIS

A. *Standard of Review*

[11] Following *Dunsmuir v. New Brunswick*, 2008 SCC 9, the issues of credibility, IFA, and state protection are questions of fact or mixed law and fact for which the standard of review is

reasonableness. Given the highly factual basis for the decision, the Board is entitled to some degree of deference in light of its position to observe the witnesses and its institutional expertise.

On the issue of the duty to confront an applicant with inconsistencies, it is either an issue of law of general application or one of procedural fairness.

B. *Duty to Confront*

[12] As indicated earlier, this issue was not raised in the Applicants' Memorandum but was raised orally. The Respondent objected to this issue being argued at the hearing as it could not have been anticipated, it caught the Respondent by surprise and it is too complex an issue to be resolved extemporaneously.

[13] Having heard the parties' arguments, I am generally in agreement with the Respondent. It is improper to raise the issue at this time. It is also a complex issue which is deserving of more fulsome treatment.

[14] I have doubts that such a right exists *per se*. This is particularly so where the applicant knows or should know of the inconsistencies and contradictions but does not address the issue directly.

[15] Without deciding the issue, as a matter of procedural fairness I see nothing in the conduct of the hearing that indicates an unfairness in the Board not confronting the Applicants with the problems in their evidence. Had there been some basis for concern that the Applicants did not

receive a fair hearing, the Court could have adjourned the matter to permit the parties to file memoranda addressing this issue. However, that process should be rarely used. Parties are to put their full case in at the designated time and in the designated manner.

C. *IFA*

[16] The Applicants put in almost no real evidence that there was nowhere else in Mexico that they could live in relative safety.

[17] It was open to the Board, in the context of alleged local police corruption, to find that these officers were unlikely to continue to be interested in the Applicants once they moved to some other location in Mexico.

D. *State Protection*

[18] It is apparent that the Board was aware that the alleged agents of persecution were the police. That factor could lessen the degree of effort an applicant must expend to seek state protection. However, the Applicants' major problem is that they did not establish a credible basis for the allegation of police corruption.

[19] Further, as found in decisions such as *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 and *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 320, the Applicants were required to show why it was unreasonable for

them not to seek assistance from other state agencies. These Applicants made one attempt at the local station and then fled to Canada without ever approaching the offices of the Attorney-General, the federal police, NGOs, or human rights organizations.

[20] It was reasonable for the Board to conclude that the Applicants had not rebutted the presumption of state protection.

IV. CONCLUSION

[21] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-434-08

STYLE OF CAUSE: JUAN JOSE CASTILLO GRANADOS
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THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 29, 2009

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

DATED: February 27, 2009

APPEARANCES:

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Mr. Brad Gotkin FOR THE RESPONDENT

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