

Cour fédérale



Federal Court

**Date: 20090304**

**Docket: IMM-3383-08**

**Citation: 2009 FC 215**

**Montréal, Quebec, March 4, 2009**

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

**BETWEEN:**

**EDUARDO SANZON SERNA  
JUANA MAGANA MANRIQUE  
GUADALUPE ISABEL SANZON MAGANA  
JUANA ELIZABETH SANZON MAGANA  
MARCO EDUARDO SANZON MAGANA**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), the principal applicant, Eduardo Sanzon Serna (applicant), his wife, Juana Magana Manrique, and their three children Juana Élizabeth, Guadalupe Isabel and Marcos Eduardo Sanzon Magana, all Mexican citizens, are seeking judicial review of the decision

dated July 3, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (RPD), stating that they are not “refugees” or “persons in need of protection” under sections 96 and 97 of the Act. Consequently, their refugee claim was refused, primarily on the ground that they had an internal flight alternative in Mexico and failed to demonstrate that it would be unreasonable for them to re-establish their lives in that country. Nor did they meet their burden of demonstrating a serious risk of persecution on one of the Convention grounds.

## II. Facts

[2] Following a collision between a bus driven by the applicant and another vehicle driven by a motorist whose identity is uncertain (Juan N), the latter berated and threatened the applicant and demanded payment for the damage to his vehicle. Despite his reaction when the incident occurred, Juan N subsequently acknowledged his liability and paid the applicant’s employer for the damage caused to the bus during the incident.

[3] Two weeks after the accident, Juan N saw the applicant at a bus depot, jumped on him and tried to hit him but left in a rage after the applicant’s co-workers intervened.

[4] Some time later, while the applicant was visiting his in-laws in a neighbouring municipality, Juan N appeared behind the wheel of a red vehicle, threatening him and demanding compensation for the damage to his car in the accident. Two days after this new incident, on July 24, 2007, the applicant went to the Office of the Public Prosecutor to file a complaint and obtain some protection. He was told that an investigation would have to be conducted and that, in the meantime, no protection could be provided to him.

[5] Instead of seeking an internal flight alternative for himself and his family while awaiting the result of the Public Prosecutor's investigation, the applicant quickly took the necessary steps to obtain passports for his entire family. On August 9, 2007, the applicant and his family left Mexico by plane and came to Canada seeking refugee protection, which was denied by the RPD decision of July 3, 2008.

### III. Issue

#### *Standard of review*

[6] Since this dispute raises a question of mixed fact and law, the Court will apply a standard of reasonableness to its analysis, as the Supreme Court of Canada stated in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

#### *Existence of internal flight alternative*

[7] A careful analysis of the evidence shows that the applicant left Mexico barely two weeks after filing a complaint with the Public Prosecutor, without allowing the police to commence a serious investigation and despite the fact that no other incident had subsequently occurred that would justify such haste.

[8] The applicant did not seek an internal flight alternative for himself and his family, if only temporarily while awaiting the result of the inquiry by the authorities. He attempts to defend this by

claiming that he did not have the financial resources to move elsewhere in Mexico, yet he was able to pay the airfare for his entire family to come to Montréal to settle.

[9] In the applicant's view, his life and that of his family would be threatened everywhere in the vast country of Mexico and the authorities cannot provide them with the protection they seek. Nonetheless, to this date, the applicant cannot even confirm the identity of the assailant who threatened him, other than perhaps his first name, and has not taken any reasonable steps to obtain more information about the man or to assist the authorities in their investigation.

[10] Furthermore, the applicants disagree with the RPD's finding that an internal flight alternative is available to them in Mexico and state that [TRANSLATION] "there is no evidence in the record to demonstrate that Juan N does not have the necessary financial resources to pursue them." Since the applicants seem to have forgotten, they need to be reminded that the burden of proof does not lie on the RPD but on their shoulders. They have not taken any concrete or real steps to establish that there was a real and concrete risk to their life or safety elsewhere in Mexico. They did not even seek a temporary internal flight alternative while waiting for the authorities to conduct an investigation and respond to the applicant's complaint.

[11] Refugee claimants must demonstrate that a real risk to their life or a risk of cruel and unusual punishment exists throughout their country (*Olmos v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 809, paragraph 18). The applicants did not adduce any evidence upon which the RPD could have made such a finding.

[12] Moreover, the RPD gave appropriate weight to each piece of evidence that had to be assessed and properly concluded that an internal flight alternative existed and that the applicants should have considered it and made serious attempts to avail themselves of it before coming to Canada to seek refuge. The applicants were wrong to base their application on the prevailing general situation in Mexico, to make no effort to seek an internal flight alternative and to provide no evidence that they were personally and genuinely at risk throughout Mexico.

[13] The RPD's determination as to the existence of an internal flight alternative is supported by the evidence, which the RPD was responsible for assessing based on the law and its expertise; the determination is more than reasonable even if its effect on the applicants' application does not accord with their expectation.

[14] The validity in fact and in law of this finding by the RPD as to the existence of an internal flight alternative for the applicants is, in itself, sufficient to dismiss this proceeding without the Court having to deal with the applicants' other grievances concerning the RPD's decision (*Palacios v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 816, paragraph 28).

#### IV. Conclusion

[15] The RPD's decision that an internal flight alternative exists is justified by both the facts put in evidence and the related law; it is, accordingly, a reasonable decision that is, in itself, sufficient to dispose of this proceeding. The application will therefore be dismissed.

[16] 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  
Mary Jo Egan, LLB

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

**DOCKET:** IMM-3383-08

**STYLE OF CAUSE:** EDUARDO SANZON SERNA ET AL. v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 4, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** LAGACÉ D.J.

**DATED:** March 4, 2009

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