

**Date: 20090507**

**Docket: IMM-4568-08**

**Citation: 2009 FC 460**

**Ottawa, Ontario, May 7, 2009**

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

**BETWEEN:**

**BRAVO TAMAYO Gloria  
DELGADO BRAVO Fabiola  
DELGADO BRAVO Angela Yosdel**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

- [1] [27] In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the particular reasons why the protection claimant submits that he is “unable or, because of that risk, unwilling to avail [himself] of the protection” of his country of nationality or habitual residence (paragraphs 96(a) and (b) and subparagraph 97(1)(b)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice ...

As specified by Justice Luc Martineau in *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 F.T.R. 35.

## II. Judicial proceeding

[2] This is an application for judicial review of a decision made on September 22, 2008 by the Refugee Protection Division of the Immigration and Refugee Board (Board) that the applicants did not qualify as “Convention refugees” or “persons in need of protection” within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

[3] This decision is based on the lack of credibility of the applicants and the existence of state protection.

## III. Introduction

[4] The applicants claim that they fear, with good reason, being persecuted in their country because they belong to a particular social group, specifically women who are victims of domestic violence.

[5] Specifically, they fear the husband of the principal applicant, who allegedly attempted to rape his daughter in 1999, threatened to kill her and tried to kill her in 2007.

IV. Facts

[6] The principal applicant, Gloria Bravo Tamayo, her daughter Fabiola Delgado Bravo, and the minor child Angela Yosdel Delgado Bravo, citizens of Mexico, arrived in Canada on August 13, 2007. They sought protection from Canada that same day.

[7] The principal applicant and her daughter, Fabiola, left their country because of death threats, family violence and attempted rape by the father.

[8] In 1999, when the father found out that his daughter was pregnant, he basely hit her, threatened her and insulted her.

[9] When the principal applicant tried to protect her daughter, she too was struck.

[10] When the father tried to rape his daughter, the principal applicant knocked him out with a stick and fled the house with the daughter.

[11] They sought refuge with their neighbour, Emilio, and refused to return home when the father came to get them.

[12] The father left after a while, hurling insults and threats at the neighbour and his family.

[13] Emilio then took them to the hospital, where they arrived at around three o'clock in the morning on July 26, 1999.

[14] On July 27 and 28, 1999, the principal applicant's daughter remained under observation at the hospital.

[15] The principal applicant's daughter was released from the hospital on July 29, 1999 on condition that she rested and remained under medical supervision.

[16] Because the applicants had nowhere else to go, they returned home.

[17] The neighbour was waiting and told them that the father had not been back since the day of the assault.

[18] Once the principal applicant's daughter felt a little better, she and her mother filed a complaint against her father.

[19] After taking their statement, the officer of the Public Ministry examined them and took down their information. He then told them that they would receive a summons and a document informing them of the request, but that it would take time, and that the preliminary investigation would proceed.

[20] The principal applicant's daughter earned a little money babysitting and washing clothes for neighbours, so they were able to survive without help from the father, who had still not returned home.

[21] On August 18, 1999, the principal applicant and her daughter went to inquire where things stood with the complaint. The officers made them wait from 9 p.m. to midnight, only to tell them that the complaint could not be filed for lack of evidence.

[22] In their opinion, since no rape had occurred, there was no tangible evidence despite the photos of the bruises.

[23] The father knew officials at the Public Ministry. At that point the applicants realized that they could not expect anything from them.

[24] The principal applicant and her daughter were very frightened because they no longer had any work or money with which to rent an apartment. They lived this way for six months.

[25] On February 22, 2000, the principal applicant took her daughter to the hospital so she could deliver. An hour after the granddaughter was born, the father arrived.

[26] The father told them that he had had them watched the whole time by two men, and that he knew everything about their daily lives.

[27] He congratulated his daughter and told her to watch out for accidents, because these days children often disappeared.

[28] He told her that he was not interested in his granddaughter, and that she was the one he wanted. She started screaming, and when the nurse came, he left the premises.

[29] After spending the night at the hospital, the applicants decided to return home to collect a few personal effects and sell what they could so that they could move somewhere else.

[30] The father, who was in the house, surprised them after they had collected personal documents and effects. The principal applicant left the house with her grandchild to get help.

[31] A few minutes later, the principal applicant returned with their neighbour Emilio, who had a stick. He told the father to let go of his daughter. The father left, hurling insults and threats.

[32] The applicants sought help at city hall, where they finally got some support. An agreement was reached between them and the father through city hall.

[33] They were to receive money for rent. The father was no longer allowed to approach them or to have them watched. They were able to live in peace this way for four years, until 2004.

[34] They saved their money so they could move away because the father often hung around near the house in the company of two men.

[35] They moved twice, but both times he found them. The principal claimant's daughter lost her job, and her daughter lost her spot at school.

[36] They lived in Loma Bonita for a year and a half, and when the little girl's teacher told them that a stranger had taken photos of the little girl, they moved to Navarra on June 15, 2006. But here again the principal applicant's daughter lost her job.

[37] A customer at the stationery store where the principal applicant's daughter worked, Martha Cobarrubias, invited them to move in with her in San Miguel Allende, Guanajuato.

[38] They lived there for two months, but left when the father got into the house during the night.

[39] He tried to smother the principal applicant with a pillow over her face. Their host came to her rescue. They tried to hit her. The neighbours came running and he fled like a thief.

[40] The next day, exhausted, she talked to a friend who suggested that she leave the country. She told her what she had to do to obtain a passport and the necessary documents.

[41] The applicants sold everything they had and asked for money so they could leave. They arrived in Montreal on August 13, 2007.

[42] The Board raised the issue of state protection and then denied the applicants' claims.

[43] After the birth of her child, the principal applicant's daughter did not want to risk moving, so she fled before she could be abused again.

[44] She fears for her life and the lives of her daughter and her mother if ever they return to Mexico.

#### V. Issue

[45] Did the Board make a decision based on erroneous findings of fact and/or interpretations of the law, without regard to the evidence before it?

#### VI. Analysis

[46] The applicants allege that the Board erred in law because the reasons given by the Board are unreasonable and not based on the evidence.

[47] In *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, 1 A.C.W.S. (3d) 167, the Federal Court of Appeal found that when an applicant swears to the truth of



certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.

[48] In its analysis, the Board raised the issue of state protection and told the applicants that they had not rebutted the presumption of protection under the circumstances of this case.

[49] *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 F.T.R. 35, summarizes the main legal principles on the issue of state protection:

[27] In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the country and the particular reasons why the protection claimant submits that he is “unable or, because of that risk, unwilling to avail [himself] of the protection” of his country of nationality or habitual residence (paragraphs 96(a) and (b) and subparagraph 97(1)(b)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice: see *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1081, [2003] 2 F.C. 339 (F.C.T.D.); *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 429, [2003] 4 F.C. 771 (F.C.T.D.).

[50] *Monroy v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 588, 154 A.C.W.S. (3d) 686, addressed the protection afforded citizens and reviewed the documents on conditions in the country that should at least be taken into consideration:

[18] The Board rendered its decision solely on the basis of facts that would allow it to reject the applicants’ claim and did not analyze the rest of the evidence.

[19] Relevant evidence was not considered, and this evidence was clear and convincing. (*Fok v. Canada (Minister of Employment and Immigration)*, A-881-90, [1993] F.C.J. No. 800 (F.C.A.) (QL))

[51] In its decision, the Board did not demonstrate that the crux of the claim had been contradicted. The fact that municipal authorities protected the applicants for more than four years lent credibility to the claim. The fact that this protection did not extend beyond that time shows, under the circumstances, that the individuals concerned were at risk.

## VII. Conclusion

[52] The Board did not take into consideration the evidence before it.

[53] For these reasons, the application for judicial review is allowed and the matter is referred back for redetermination by a differently-constituted panel.

**JUDGMENT**

**THE COURT ORDERS** that the application for judicial review be allowed and the matter be referred back for a new hearing before a differently-constituted panel.

“Michel M.J. Shore”

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Judge

Certified true translation  
Brian McCordick, Translator

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

**DOCKET:** IMM-4568-08

**STYLE OF CAUSE:** BRAVO TAMAYO Gloria  
DELGADO BRAVO Fabiola  
DELGADO BRAVO Angela Yosdel  
v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** April 21, 2009

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

**DATED:** May 7, 2009

**APPEARANCES:**

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