

Federal Court



Cour fédérale

Date: 20090508

Docket: IMM-3318-08

Citation: 2009 FC 480

Ottawa, Ontario, May 8, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

HECTOR TREJO HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision dated June 27, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (the panel) finding that the applicant is not a Convention refugee or a person in need of protection.

Issue

[2] Did the panel err in finding that the applicant had not reversed the presumption of Mexican state protection?

[3] For the following reasons, the application for judicial review will be dismissed.

Factual background

[4] The applicant, Hector Trejo Hernandez, is a 35-year-old Mexican citizen who was beaten and robbed by three men on February 7, 2005, in the neighbourhood of Colonia Lomas de Casablanca, in Querétaro, where he grew up. A bandit known as “El Piojo” was allegedly the head of the group.

[5] Following the incident, the applicant went to social security and the Mexican institute to file a complaint against his assailants for theft and bodily injuries. After filing his complaint, the applicant began to receive threats.

[6] In June 2005, the applicant decided to move with his family to Morelia, in the state of Michoacán, thinking that they would be safe. He lived there from June 2005 to May 2006 and he then returned to Querétaro because his wife’s attitude had changed greatly.

[7] On June 17, 2006, his wife left him, taking their daughter with her.

[8] On December 31, 2006, the applicant learned from a friend that his wife was seeing El Piojo and was living in Michoacán. Wanting custody of his daughter, he wished to submit El Piojo's criminal record in the divorce proceedings. However, he was threatened with death and discouraged from going ahead with the proceedings.

[9] The applicant filed a report on January 13, 2007, but, following a kidnapping attempt on January 15, 2007, by El Piojo and other bandits, the applicant decided to leave the country without awaiting the outcome of his report.

[10] On January 19, 2007, the applicant arrived in Canada and claimed refugee protection.

Impugned decision

[11] The panel's negative decision rests essentially on the availability of protection in the applicant's country.

[12] Here, the panel found that the applicant had not taken all reasonable steps to seek protection from the Mexican authorities with regard to an incident on January 15, 2007. The applicant knew the names of witnesses who could have corroborated his report, and he had already initiated a complaint on January 13, 2007, which identified El Piojo. Moreover, this person and his wife were to appear before the authorities to give their version of the facts regarding another complaint by the applicant, dated January 17, 2007.

[13] The panel found that the applicant's explanation of fear being the reason for not having pursued his complaint was insufficient. The applicant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to approach the state (*Judge v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1089, 133 A.C.W.S. (3d) 157; *Santiago v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 247, 165 A.C.W.S. (3d) 325). The panel reviewed its reasons in decision TA6-07453, dated November 26, 2007, and adopted the same reasoning regarding the issue of availability of state protection in Mexico.

Standard of review

[14] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the panel's conclusions on state protection are subject to review under the reasonableness standard (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 N.R. 1, at paragraph 38; *Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 A.C.W.S. (3d) 968, at paragraph 14; *Chagoza v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721, F.C.J. No. 908 (QL), at paragraph 3; *Dunsmuir*, above, at paragraphs 55, 57, 62 and 64).

[15] According to the Supreme Court, the factors to be considered are justification, transparency and intelligibility within the decision-making process. The outcome must be defensible in respect of the facts and the law (*Dunsmuir*, at paragraph 47).

Analysis

[16] The elements of the claim emerge from the answer to question 31 in the applicant's Personal Information Form (PIF) and from his testimony at the hearing. The panel found that the applicant could have taken further steps with the police authorities to meet the burden of proof that he had taken all reasonable steps, given his situation, to seek protection in his country.

[17] The applicant acknowledged that he left Mexico on January 19, 2007, even though he had lodged a complaint against El Piojo less than one week earlier, and the authorities had summoned El Piojo and the wife to a meeting scheduled on January 17, 2007. By leaving, the applicant dropped his complaint, making the efforts of the Mexican authorities to protect him pointless. Yet a number of witnesses saw the kidnapping attempt on January 15, 2007, and could have testified for the applicant.

[18] The panel's finding is entirely reasonable. Twice the applicant lodged complaints with the police and the Office of the Prosecutor, and both complaints were dealt with. Although the first complaint did not succeed, the fact remains that the authorities did what they felt they could do with the evidence they had.

[19] On the facts of this case, as admitted by the applicant, the Mexican authorities received and considered the applicant's complaints seriously and reacted adequately when the applicant filed a report. It was reasonable for the panel to find that the applicant had not established by clear and convincing evidence that Mexico was unable to protect him.

[20] The panel did not make a reviewable error. The decision is justified and intelligible and the outcome is defensible in respect of the facts and law.

[21] No question was proposed for certification and there is none in this case.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3318-08

STYLE OF CAUSE: HECTOR TREJO HERNANDEZ
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 6, 2009

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

DATED: May 8, 2009

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