

Federal Court



Cour fédérale

Date: 20091119

Docket: IMM-1788-09

Citation: 2009 FC 1192

Montréal, Quebec, November 19, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JESUS FELIX VARGAS SANTIAGO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Some romantic relationships are also dangerous relationships. Mr. Santiago allegedly had a relationship with Ms. Hernandez Torrez between September and December 2006. Even though he knew that she was also in a relationship with someone else, he did not know that that someone else was José Alberto Garcia Vega, a federal roads and bridges police captain.

[2] Mr. Santiago, whose credibility has not been questioned, was threatened and assaulted on December 22 and 25, 2006, and on March 3, 2007.

[3] On December 22, 2006, in front of Ms. Hernandez Torres's house, two unknown individuals got out of a car and beat him while insulting him and threatening him with death because he was dating Ms. Hernandez Torres.

[4] On December 25, 2006, while leaving a store, he saw two men hitting his car. They shouted to him that the next time they would kill him like a dog. Mr. Santiago filed a complaint with police, but he apparently did not know the identity of his assailants. He claimed that friends purportedly told him that it was someone from the federal authority. A few days later, he discovered the identity of Captain Vega. At the hearing, he added that his friends in the police advised him to not get involved with Captain Vega.

[5] At the beginning of March 2007, he met Captain Vega and the same two people in a shopping centre. They threatened and insulted him. Captain Vega took out his weapon and pointed it towards Mr. Santiago.

[6] After this incident, on March 3, 2007, Mr. Santiago decided to seek refuge with his uncle in San Marcos, in the State of Acapulco de Guerrero. On March 8, 2007, his uncle phoned him to tell him that two people were waiting for him. According to his uncle, these two people were from the

federal police. Mr. Santiago went to his house in Pachuca, in Hidalgo State, to get a passport and buy a plane ticket for a destination outside of Mexico.

[7] He left Mexico for Canada on March 13, 2007, and filed a refugee claim on March 17, 2007.

[8] Mr. Santiago's refugee claim was rejected because he had not rebutted the presumption of state protection. The Refugee Protection Division of the Immigration and Refugee Board acknowledged that there are "problems with corruption in the [Mexican] police but note[d] that it is possible to lodge a complaint against a federal officer with the Procuraduría General de la República (PGR) [Federal Prosecutor's Office] Thus, for instance, 284 federal police commanders were relieved of their duties in June 2007."

[9] The panel found that the applicant had not taken all reasonable steps to seek protection from the Mexican authorities.

[10] The parties cited many decisions on Mexican state protection. In some of them, the presumption of state protection had been rebutted; in others, it had not.

[11] The state of the case law was aptly summarized by Justice Sexton of the Federal Court of Appeal in *Hinzman v. Canada (Citizenship and Immigration)*, 2007 FCA 171, 282 D.L.R. (4th) 413 where he stated, at paragraph 57:

Kadenko and *Satiacum* together teach that in the case of a developed democracy, the claimant is faced with the burden of proving that he exhausted all the possible protections available to him and will be exempted from his obligation to seek state protection only in the event of exceptional circumstances: *Kadenko* at page 534, *Satiacum* at page 176. Reading all these authorities together, a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status.

Kadenko refers to *Kadenko v. Canada (Minister of Citizenship and Immigration)* (1996), 143 D.L.R. (4th) 532; *Satiacum* refers to *Canada (Minister of Employment and Immigration) v. Satiacum* (1989), 99 N.R. 171 (F.C.A.).

[12] In my opinion, the decision falls within the range of possible, acceptable outcomes (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[13] Even though Mr. Santiago was not obligated to put himself in danger to demonstrate that state protection was not available, his inability to identify his assailant, followed by his refusal to return to the police with Captain Vega's name once he had obtained it, demonstrates that he did not take all reasonable steps.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is dismissed.
2. The matter does not raise any serious question of general importance.

“Sean Harrington”

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1788-09

STYLE OF CAUSE: JESUS FELIX VARGAS SANTIAGO v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 17, 2009

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: November 19, 2009

APPEARANCES:

William Aguilar FOR THE APPLICANT

Alain Langlois FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aguilar & Associés FOR THE APPLICANT
Montréal (QC)

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal (QC)