

Federal Court



Cour fédérale

Date: 20100122

Docket: IMM-2051-09

Citation: 2010 FC 76

Toronto, Ontario, January 22, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**JULIO FERNANDO, GUTIERREZ MURILLO
OLIVIA URZUA SALAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The principal Applicant is a Mexican citizen who for the past fifteen years has served as a police officer in that country. The other Applicant is his wife.

[2] The Applicants made a claim for refugee protection in Canada on the basis that, as a police officer who would not comply with demands made by organized criminals, the principal Applicant

would be killed by these criminals or those retained to do their bidding. That claim was rejected by the Immigration and Refugee Board by a decision dated March 25, 2009. It is that decision that is under review here. I have determined that the decision must be set aside and re-determined by a different Board Member.

[3] The Board Member based his decision on two grounds; credibility and state protection. Usually, a finding of a Member as to credibility is given considerable deference. However, in this case, after a careful review of the evidence, the bases upon which lack of credibility was found are weak or non-existent. It was not reasonable for the Member to have found lack of credibility as he did. To cite some examples:

- Zetas: The Applicant stated that he feared organized criminals. When pressed to give a name, he said, "Zetas", a group which is retained by organized crime to do enforcement work. This is well established in the evidence. The Member seems to have found in some documentary evidence material that led him to conclude that Zetas were not active in the Applicant's area. The documents do not say that, they say that Zetas are actively expanding in many areas of Mexico and that maps illustrate some of these areas, but they are not to be taken as accurate.
- So-called contradiction in dates: The Applicant could not remember, for instance, if an event happened in November or December. The Member seems to have proceeded on the basis that the date would have been indelibly impressed in the

Applicant's mind. This was unreasonable. The Applicant gave a reasonable explanation as to why such dates could not be accurately remembered at the hearing.

- Failure to produce documentary evidence of the Applicant's complaint made to the police authorities: The Applicant gave a reasonable explanation as to why the document was unavailable.
- Failure to make further complaints to other police authorities: The Applicant, a fifteen-year veteran of the police force, gave a reasonable answer in saying that further complaints would be futile.
- Delay in leaving Mexico: Two months to leave Mexico is not an unreasonable time in these circumstances. The Applicant explained that he kept himself sequestered.
- Delay in applying for refugee status: In the circumstances a four-month delay was not unreasonable and was adequately explained.

[4] I find that the Member's conclusions as to credibility were not reasonable. He focused on trivial matters and lost sight of the main basis of the claim, a threat to the principal Applicant's life for refusing to co-operate with criminals.

[5] As to state protection, the Member looked only at what he described as efforts that Mexico was making to improve. He did not give consideration to present circumstances, and the threat to the lives of policemen who refuse to collaborate with criminals.

[6] This matter should be revisited by a different Member who will give full consideration to all the evidence presented by each of the parties.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is to be reconsidered by a different Member;
3. No party asked for certification, and none is given; and
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2051-09

STYLE OF CAUSE: JULIO FERNANDO, GUTIERREZ MURILLO
OLIVIA URZUA SALAS v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 20, 2010

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

DATED: January 22, 2010

APPEARANCES:

Ms. Alesha Green FOR THE APPLICANTS

Ms. Leena Jaakkimanen FOR THE RESPONDENT

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