

Date: 20100223

Docket: IMM-2477-09

Citation: 2010 FC 197

Ottawa, Ontario, February 23, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**GUILLERMO MARQUEZ ALVAREZ
LAURA DIAZ GARCIA
MARIA SILVANA MARQUEZ GARCIA
(a.k.a. MARIA SILVANA MARQUEZ GARCIA)
CALEI KASANDRA MARQUEZ GARCIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated April 8, 2009, wherein the Board found the applicants were not refugees or persons in need of protection.

Factual Background

[2] Guillermo Marquez Alvarez (the principal applicant), his wife Laura Garcia Diaz and their two daughters, Calei Kasandra Marquez Garcia and Maria Silvana Marquez Garcia, are all citizens of Mexico seeking refugee protection.

[3] The applicants fear Los Zetas, drug traffickers who belong to the Cartel del Golfo, who operate throughout the country of Mexico.

[4] On May 1, 2007, the principal applicant was approached by members of Los Zetas who demanded he use his connection with his friend Juan Luis Calderon, the brother of the President of Mexico, Felipe Calderon, to act as a messenger between Los Zetas and the President. The principal applicant was told he would be well paid if he cooperated, but that he and his family would be harmed if he did not cooperate. One of the individuals identified the principal applicant's wife, the name of the clinic where she worked, the names of their daughters and the name of the school they attended.

[5] The principal applicant has known the President's brother, who is the Director of the Potable Water System of the city of Morelia, for 13 years. Juan Calderon was a client of the applicant, who used to sell products related to drinking water. The applicant was also a taxi driver.

[6] The principal applicant approached Juan Calderon and was told he did not get involved with matters related to his brother's position as President. The principal applicant decided it would be too

dangerous to approach the police because he believed individuals from the government are involved with Los Zetas, and when individuals involved with this group go to the police, they may be killed.

[7] The principal applicant saw Juan Calderon again on June 15, 2007, and on this occasion, another individual confronted him, demanding to know the answer to the request. The principal applicant agreed to obtain an answer in two weeks. Meanwhile, on June 18, 2007, the principal applicant came to his car to find his windshield broken and a threatening message from Los Zetas. Furthermore, on July 5, 2007, while accompanying his daughters to school, the principal applicant was handed an envelope with a video threat from Los Zetas.

[8] As a result, the applicants left Mexico and filed refugee claims on July 10, 2007 upon their arrival in Canada.

Impugned Decision

[9] The Board noted the principal applicant's fear is not linked to race, nationality, religion, real or imputed political opinion or membership in a particular social group. The Board concluded that the applicant was a victim of crime, and, while the conduct of the perpetrators is deplorable, it does not provide the applicant with a link to a Convention ground. Therefore, the Board found the principal applicant was not a Convention refugee.

[10] The Board accepted the fact that the principal applicant was a friend and business colleague of the brother of the President of Mexico. His testimony was forthright and did not contain any contradictions to information contained in his Personal Information Form (PIF).

[11] In considering whether the applicants availed themselves of state protection, the Board noted that the principal applicant did not approach the police because he believed he was dealing with a powerful drug cartel, indicating to him that such an approach could result in his death, due to reports of such deaths in the past.

[12] The Board concluded the individuals were seeking out a connection to the President of Mexico and they found it in the applicant through his dealings with the President's brother. The Board found this was plausible given the fact they found the principal applicant on one occasion outside the President's brother's office.

[13] The Board found the applicant had an obligation to seek redress, assistance or protection from a state authority but he failed to do this as he thought this would place him in danger because some people have been killed in the past for doing so. The Board found the applicant had not provided clear and convincing evidence of the state's inability to provide state protection.

Issue

[14] The only issue is whether the Board erred in its findings related to state protection?

Analysis

[15] The standard of review applicable to the Board's conclusions on state protection is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at par. 55, 57, 62 and 64; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 N.R. 1 at par. 38; *Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, 167 A.C.W.S. (3d) 968 at par. 14).

[16] There is a presumption that a state is both willing and able to protect its citizens and unless there has been a complete breakdown of the state apparatus, it is presumed there is adequate state protection for refugee claimants in their home country. Refugee protection is surrogate protection to be invoked only in situations in which a refugee claimant has been unsuccessful in seeking the protection of his or her own state (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 153 N.R. 321; *Hinzman*).

[17] To rebut the presumption of state protection, the applicants must put forward clear and convincing evidence of the state's inability to provide protection. The evidence must be relevant and reliable and be capable of convincing the trier of fact that state protection is inadequate (*Ward*; *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636).

[18] The applicants submit the Board's conclusion that it cannot fault the Mexican security forces when they do not receive a formal complaint is an error of law. They allege that in *Ward* at par. 49, it was found that only in situations in which state protection might reasonably have been

forthcoming will the applicant's failure to approach the state for protection defeat his refugee claim. If the applicant shows it is objectively unreasonable to seek the protection of his home authorities, he need not literally approach the state (*Vidhani v. Canada (Minister of Citizenship and Immigration)*, [1995] 3 F.C. 60, 96 F.T.R. 313 at par. 15; *Zhuravlev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, 187 F.T.R. 110 at par. 19; *Canada (Minister of Citizenship and Immigration) v. Elbarnes*, 2005 FC 70, 136 A.C.W.S. (3d) 929 at par. 14).

[19] State protection does not need to be perfect as no government can guarantee the protection of all its citizens at all times. It is sufficient for state protection to be adequate. The presumption is not rebutted merely because an applicant is able to demonstrate the state cannot provide perfect protection (*Canada (Minister of Employment and Immigration) v. Villafranca*, (1992), 150 N.R. 232, 37 A.C.W.S. (3d) 1259 (F.C.A.); *Ortiz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1365, 153 A.C.W.S. (3d) 191; *Blanco v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1487, 143 A.C.W.S. (3d) 904).

[20] The burden of proof that rests on the claimant is directly proportional to the level of democracy in the state in question. The more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her (*N.K. v. Canada (Minister of Citizenship and Immigration)*, (1996), 206 N.R. 272, 68 A.C.W.S. (3d) 334 (*Kadenko*), (F.C.A.); *Hinzman*). Decisions of this Court have held that Mexico is a democracy with the willingness and ability to protect its citizens, even if that protection is not always perfect (*Sosa v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 275, [2009] F.C.J. No. 343 (QL) at

par. 22; *Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 971, 169 A.C.W.S. (3d) 175 at par. 21-22; *Velazquez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 532, 148 A.C.W.S. (3d) 291 at par. 6).

[21] In the case at bar, the applicants failed to take any steps to seek state protection. The Court is of the view the applicants were obligated to make reasonable efforts to seek protection in Mexico before seeking refugee protection. Even where the protective services of the home state have gaps or deficiencies, a refugee claimant who alleges a subjective fear based on criminality must, in the absence of a compelling justification, take reasonable steps to access those services (*Santos v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 793, 159 A.C.W.S. (3d) 267).

[22] The applicants also argue the Board erred by finding they could have turned to various other agencies without analyzing these agencies' actual ability to protect the applicants. The Court finds it is not sufficient for a claimant who has failed to take any steps to seek state protection based on subjective fear to rely solely on documentary evidence of flaws in the justice system of his or her home state (*Zamorano; Cortes v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1487, 154 A.C.W.S. (3d) 450). On the facts of this case, the applicants had an obligation to seek state protection and to exhaust all avenues of redress. The principal applicant, by his own admission, did not inform Juan Calderon of the threats he had received, nor did he make a report to the police or to any other local or state authority. Thus, in failing to take measures to seek state protection prior to making a refugee claim, the principal applicant failed to provide clear and convincing evidence of

inadequate state protection and has not rebutted the presumption of state protection (*Cordova v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 309, [2009] F.C.J. No. 620 (QL)).

[23] The Board listed various options open to the citizens of Mexico who are concerned with their safety, including the Secretariat of Public Administration (SFP), the Federal Agency of Investigation (AFI) and the Deputy Attorney General's Office of Special Investigations into Organized Crime (SIEDO). This last organization works closely with the United States of America to control organized crimes. While it is true the evidence on record demonstrates to some extent that inefficiency, bribery and corruption remain issues in the Mexican security forces and within the public sector, the Board was in no position to fault the Mexican security forces given that the applicants failed to submit a formal complaint.

[24] The Board's decision was based on the applicant's testimony as well as on the documentary evidence on the record. The Board acknowledged there was evidence of failures on the part of the Mexican government in fighting the drug cartels and of corruption and delay in the Mexican police and judicial system. The Board weighed this evidence against other documentary evidence which indicated that Mexico is a democracy with a relatively independent and impartial judiciary and a functioning security force and came to the conclusion that there was nothing in the documentation to suggest that Mexico was in a state of complete breakdown.

[25] The Board considered the applicant's personal situation and the Court considers the Board's decision is reasonable because it is consistent with the jurisprudence.

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

[27] The application for judicial review is therefore dismissed. The parties have not proposed any questions for certification and none arise in this case.

JUDGMENT

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

“Richard Boivin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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