

Federal Court



Cour fédérale

Date: 20100412

Docket: IMM-3481-09

Citation: 2010 FC 382

Ottawa, Ontario, April 12, 2010

**PRESENT:** The Honourable Mr. Justice O'Reilly

**BETWEEN:**

**MA ESTHER HERNANDEZ GARCIA**

**Applicant**

and

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms. Ma Esther Hernandez Garcia maintains that she fled Mexico and sought refugee protection in Canada to escape her abusive ex-partner. A panel of the Immigration and Refugee Board concluded that her account of events, which included incidents of physical, sexual and psychological abuse, was true. In addition, the Board accepted that Ms. Hernandez Garcia had gone to police, and that the police refused to do anything to help her. Nevertheless, the Board rejected her claim. The Board concluded that Ms. Hernandez Garcia should have tried to get help from other

agencies serving victims of domestic violence. In addition, it found that she would be safe if she moved from Guadalajara to Mexico City; *i.e.*, she had an “internal flight alternative” (IFA).

[2] Ms. Hernandez Garcia argued that the Board erred in its finding that she should have done more to try to get protection in Mexico, and in its conclusion regarding an IFA in Mexico City. She asks me to order another panel of the Board to reconsider her claim. In my view, the Board’s decision on an IFA was reasonable and its decision should be upheld on that ground. Therefore, I must dismiss this application for judicial review.

[3] Given my conclusion about an IFA, it is unnecessary to consider the issue of state protection. The only issue is whether the Board’s decision regarding an IFA was reasonable.

## II. Analysis

### (a) Factual background

[4] In 2005, Ms. Hernandez Garcia met her partner, Aron Morales Cervantes. She and Aron moved in together in 2006.

[5] Aron often behaved abusively after drinking. He was particularly aggressive after she took a business trip to Canada in 2006. He accused her of infidelity. Things got worse after that. She needed medical attention after an assault in November 2006.

[6] In 2007, she decided to return to live with her family. Aron stalked her, demanding that she return to him. He kidnapped and raped her.

[7] Ms. Hernandez Garcia went to the police. However, the officer she spoke to blamed her for the problem. Somehow, Aron found out that she had gone to the police. He suggested she was wasting her time; he had good contacts with the police.

[8] To get away from Aron, Ms. Hernandez Garcia decided to move from Zapotlenjo to Guadalajara to live with family members in April 2007. Just a few weeks later, Aron found her. In September 2007, Aron kidnapped and raped her again. Her uncle, with whom she was living, insisted she report the offence to the police. An officer “begrudgingly” took a report.

[9] Shortly afterwards, Aron told her that he was aware she had contacted the police again. She fled to another family member’s home approximately an hour away, where she stayed until December 2007. When she learned that Aron had contacted and threatened her family members, she decided to come to Canada.

(b) The Board’s decision

[10] The Board noted the broad range of services available in Mexico City and concluded that Ms. Hernandez Garcia would have access to better protection there.

[11] Further, the Board found that Ms. Hernandez Garcia could easily move to Mexico City and find a job and, therefore, it was reasonable for her to seek refuge there.

(c) Was the Board's conclusion regarding an IFA unreasonable?

[12] Ms. Hernandez Garcia was specifically asked if she could live safely in Mexico City. She said she could not, because Aron could easily find her there. The Board observed that Aron might have some police contacts in Zapotlenjo, but not in Mexico City.

[13] Ms. Hernandez Garcia submits that the Board did not seriously consider the possibility that Aron could track her down in Mexico City. Further, she argues that the Board failed to note the ineffectiveness of many programs and services designed to assist victims of domestic violence, including those in Mexico City.

[14] The Board was clearly aware of the problems with domestic violence in Mexico. Many women are unaware of the resources available to them and, consequently, crimes against women are underreported. Police and other public officials are often dismissive of or, at best, indifferent to these crimes.

[15] The Board noted that Aron seemed to have learned Ms. Hernandez Garcia's whereabouts from police contacts, suggesting corruption within the police. However, it found that in this area, Mexico is making serious efforts at reform. There are various agencies to which one can complain about corruption on the part of public officials.

[16] However, in its discussion of an IFA, the Board stated that there was no reason to believe Aron could track down Ms. Hernandez Garcia in Mexico City. It seemed to have overlooked the fact that Aron had located Ms. Hernandez Garcia in Guadalajara. Obviously, if he could track her down there, there was at least a possibility that he could find her in Mexico City.

[17] I do not regard this as a serious error on the Board's part given that it went on to consider the availability of sources of protection in Mexico City for persons who fear domestic violence. In other words, the Board considered what resources would be available to Ms. Hernandez Garcia if Aron did pursue her there.

[18] As I read the Board's reasons, it carefully considered the special programs available only in the Federal District of Mexico City. Ms. Hernandez Garcia brought to my attention evidence suggesting that programs in the various states are deficient, but nothing that cast serious doubt on what the Board said about Mexico City. The programs available there appear to be more prevalent, more serious and more helpful than in the various states. Further, Ms. Hernandez Garcia did not dispute the Board's conclusion that she could move there and find employment with relative ease.

[19] In light of the evidence before the Board about the sources of protection in Mexico City, I cannot find its conclusion about an IFA for Ms. Hernandez Garcia was unreasonable.

III. Conclusion and Disposition

[20] The Board carefully considered the documentary evidence about programs and services available to women who fear, or have been victims of, domestic violence in Mexico City. I cannot find its conclusion that Ms. Hernandez Garcia could live safely there, even if Aron could find her, was unreasonable. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

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"James W. O'Reilly"

Judge

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

**DOCKET:** IMM-3481-09

**STYLE OF CAUSE:** GARCIA v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** April 8, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 12, 2010

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