

Federal Court



Cour fédérale

**Date: 20100413**

**Docket: IMM-4838-09**

**Citation: 2010 FC 393**

**Ottawa, Ontario, April 13, 2010**

**Present: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**MANUEL ALEJANDRO ROMERO CASTAÑEDA**

**Applicant**

**and**

**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 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated September 16, 2009, according to which the applicant is neither a Convention refugee nor a person in need of protection under the Act.

Facts

[2] The applicant is a citizen of Mexico who alleges a fear of persecution by a group of Federal Judicial Police officers from Colonia Paraje San Juan, where he lives.

[3] On December 19, 2006, two Federal Judicial Police officers allegedly beat Francisco Javier Davalos Aguilar, a friend of the applicant, threatening to harm him if he did not go to work with a group involved in the theft of cars and car parts. The applicant and his friend filed a complaint with the public prosecutor that same day.

[4] On January 8, 2007, the applicant filed a second complaint and was arrested by a Federal Judicial Police patrol. The applicant received medical attention at a medical clinic. The doctor who treated him, Dr. Medrano, told him that he had to report the incident to the authorities, or she would. When the applicant came home, his mother told him to register a complaint with the public prosecutor in Ixtapalapa for his illegal detention, but he did not receive a copy of that charge.

[5] After consulting with a lawyer, the applicant made a complaint to the authorities on January 9, 2007, but the officials would not listen to him and said that they wanted witnesses. On February 18, 2007, the applicant filed another complaint with the public prosecutor, but he was told that he could not do so because the incident involved his uncle, who was the one who needed to file the complaint.

[6] The applicant went to Guadalajara, Jalisco, to the house of his friend Carlos Alberto, because he did not want to leave his country and his mother. The applicant's lawyer then informed him that he had been unable to obtain copies of his complaints and that the complaints were inactive.

[7] On May 20, 2007, the applicant went out with his friend Carlos Alberto. A white car followed them, and the applicant recognized one of the policemen involved in the car theft operation in the neighbourhood. The applicant then fled to Morelos, Mochoacán, on May 21, 2007.

[8] The applicant left Mexico on June 12, 2007. He made a claim for refugee protection in Canada the day after he arrived.

#### Impugned decision

[9] The panel first determined that the applicant was not credible, for he had produced no evidence corroborating the essential elements of his narrative and had no reasonable explanation for his failure to do so. The panel rejected the applicant's explanations about his efforts to obtain the documents, which were contradictory.

[10] In addition, the panel concluded that, even if he had been found to be credible, the applicant failed to demonstrate through clear and convincing evidence that the state was unwilling or unable to offer him protection. In the panel's the opinion, the applicant had gone to

the authorities but had not exhausted all courses of action open to him. After reviewing the documentary evidence, the panel determined that the applicant could have gone to other authorities in place in Mexico that deal with police corruption problems.

### Issues

[11] This application for judicial review raises the following issues:

1. Did the panel err in finding that the applicant was not credible?
2. Did the panel err in determining that the applicant did have access to state protection in Mexico?

### Analysis

#### Standard of review

[12] Evaluating credibility and weighing evidence falls within the jurisdiction of the tribunal assessing a refugee protection claimant's allegation of a subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at paragraph 14). Prior to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the applicable standard of review under such circumstances was patent unreasonableness; it is now reasonableness.

[13] The applicable standard of review for questions of state protection is reasonableness (*Dunsmuir* at paras. 55, 57, 62 and 64; *Hinzman v. Canada (M.C.I.)*, 2007 FCA 171, 362 N.R. 1 at para. 38; *Huerta v. Canada (M.C.I.)*, 2008 FC 586, 167 A.C.W.S. (3d) 968 at para. 14).

1. *Did the panel err in finding that the applicant was not credible?*

[14] It is well established that issues of credibility, assessment of facts and appreciation of evidence are wholly within the discretion of the panel, as the trier of fact (*Chen v. Canada (M.C.I.)*, 2005 FC 767, 148 A.C.W.S. (3d) 118; *Khangura v. Canada (M.C.I.)* (2000), 191 F.T.R. 311, 97 A.C.W.S. (3d) 1228), and it is not for the Court to substitute its assessment of the evidence for that of the panel.

[15] The applicant submits that the panel failed to assess the documentary evidence carefully and consider the fact that Mexican police have problems with corruption. In *Cepeda-Gutierrez v. Canada (M.C.I.)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264, and again in *Gill v. Canada (M.C.I.)*, 2003 FCT 656, 129 A.C.W.S. (3d) 783, this Court noted that the obligation to comment on documentary evidence in a decision depends on the importance of that evidence. Here, the applicant alleges that the documentary evidence that was ignored dealt with facts essential to the applicant's claim, rendering the panel's decision unreasonable.

[16] However, the Court notes that the panel found several omissions and inconsistencies in the applicant's testimony, namely the following:

- a. During the incident of December 19, 2006, the applicant stated that he and his friend Francisco had signed a complaint and had asked for a copy but that the authorities had refused to provide them with one. The applicant did not include

this information in his Personal Information Form (PIF), believing it to be an unimportant detail. He later admitted, however, that it was important information.

- b. The applicant first denied having asked his lawyer to obtain copies of his complaints and then said that he had asked his mother for copies. Later, he stated that his lawyer charged between 8,000 and 9,000 pesos for obtaining a copy of the complaints and refused to help him. This was not mentioned in the applicant's PIF. The applicant then asked his mother to find another lawyer, which she did in April 2008, but this second lawyer also charged between 7,000 and 8,000 pesos. This information is not in the PIF, and, according to the applicant, his lawyer refused to send him a letter confirming the incidents in Mexico for fear of having problems with Mexican police or Canadian authorities.
- c. The applicant stated that his mother had tried to get a copy of his medical report and that he had also made a number of telephone calls to try to obtain it. This information was also not in his PIF, and the applicant was unable to explain this omission. More specifically, the panel referred to the documentary evidence, in particular document MEX102725.E dated April 17, 2008, entitled "Police reports; procedures to obtain a copy from the various police forces; the cost; the persons who can obtain a copy; the time it takes to obtain a copy; the possibility of obtaining a copy from Canada", showing that the applicant in this case could have

obtained copies of police reports by writing directly to the authorities or with the help of a lawyer.

[17] Even though the applicant alleged a fear of persecution by a group of Federal Judicial Police agents in Colonia Paraje San Juan, no concrete evidence was filed in support of this element. In addition, the Court is of the opinion that the applicant provided no reasonable explanation as to why he failed to produce evidence corroborating the complaints he claims to have filed with the authorities.

[18] On this basis, it was open to the panel to draw a negative inference, first, regarding the applicant's credibility, because of the lack of corroborating evidence and, second, because of the lack of reasonable and credible explanations for his failure to produce that evidence. It is trite law that the panel may make adverse findings based on the fact that applicants failed to produce evidence corroborating their testimony or make any efforts to obtain such corroborating documentation (*Muthiyansa v. Canada (M.C.I.)*, 2001 FCT 17, 103 A.C.W.S. (3d) 809, and *Sinnathamby v. Canada (M.C.I.)*, 2001 FCT 473, 105 A.C.W.S. (3d) 725).

[19] The panel is in the best position to assess the explanations submitted by applicants for any perceived inconsistencies and implausibilities, and the role of this Court is not to substitute its judgment for the panel's on findings of fact relating to the applicant's credibility (*Singh v. Canada (M.C.I.)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at para. 36; *Mavi v. Canada (M.C.I.)*,

[2001] F.C.J. No. 1 (QL)). Here, the applicant's explanations for the lack of evidence corroborating his narrative are not reasonable.

[20] Overall, I am of the opinion that the applicant in this case did not demonstrate that the panel based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard for the evidence.

2. *Did the panel err in determining that the applicant did have access to state protection in Mexico?*

[21] The applicant submits that, in its analysis of the availability of state protection, the panel failed to consider the information on Mexico showing that the country is grappling with unequalled, rampant corruption.

[22] The respondent notes that the onus is on the applicant to provide clear and convincing evidence of the state of Mexico's inability to protect him (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 153 N.R. 321). It is not enough for the applicant merely to show that state protection was not perfect, as no government that adheres to democratic values or makes any claim to protection of human rights can guarantee the protection of all of its citizens at all times (*Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 150 N.R. 232, 37 A.C.W.S. (3d) 1259 (F.C.A.)).



[23] The panel considered the applicant's allegations that he approached Mexican authorities for protection. Several decisions of this Court have determined that Mexico is able to protect its citizens, despite problems with corruption and even when the agents of persecution are police officers (*Alfaro v. Canada (M.C.I.)*, 2006 FC 460, 152 A.C.W.S. (3d) 694 at para. 18; *Juarez v. Canada (M.C.I.)*, 2006 FC 288, 146 A.C.W.S. (3d) 705 at para. 10).

[24] The panel also noted that the applicant never sought protection from higher authorities in Mexico. In light of the documentary evidence showing that efforts are being made to fight police corruption and that there are other organizations that the applicant could have turned to, it was reasonable for the panel to reject the applicant's explanation that fear prevented him from approaching higher authorities. As counsel for the respondent pointed out at the hearing, the applicant had to exhaust all courses of action open to him in his country, which he did not do. Given that the evidence on file shows that there are other agencies with which the applicant could have filed his complaint, it was reasonable to expect the applicant to make some effort to use other measures before seeking international protection.

[25] In its decision, the panel recognized that there have been many actions taken against corrupt officials involved in illegal activities throughout the years. The June 29, 2009, National Documentation Package, at section 7.1, *Narcotics Control Strategy Report* from the United States, describes President Calderon's efforts to fight drug traffickers and police corruption. There are also other resources such as the Secretariat of Public Administration, which offers various services to citizens wishing to report acts of corruption.

[26] In spite of this, the applicant claimed that fear prevented him from going to the federal authorities. This explanation cannot be accepted, for the adequacy of state protection cannot rest on the subjective fear of an applicant. The presumption of state protection cannot be rebutted on this subjective basis alone (*Suarez v. Canada (Minister of Citizenship and Immigration)*), 2005 FC 1050, 141 A.C.W.S. (3d) 116).

[27] To rebut the presumption of state protection, an applicant must present clear and convincing proof of the state's inability to protect. The evidence must be relevant and reliable, and convince the trier of fact that the state protection is inadequate (*Ward; Carrillo v. Canada (M.C.I.)*, 2008 FCA 94, [2008] 4 F.C.R. 636).

[28] State protection does not need to be perfect, as no government can guarantee the protection of all of its citizens at all times; it merely needs to be adequate (*Canada (M.E.I.) v. Villafranca* (1992), 150 N.R. 232, 37 A.C.W.S. (3d) 1259 (F.C.A.); *Ortiz v. Canada (M.C.I.)*, 2006 FC 1365, 153 A.C.W.S. (3d) 191; *Blanco v. Canada (M.C.I.)*, 2005 FC 1487, 143 A.C.W.S. (3d) 904).

[29] When the state is a democratic state such as Mexico, the applicant's obligation to obtain state protection is greater. Applicants in that case must show that they have tried to exhaust all courses of action open to them to obtain the necessary state protection. (*Kadenko v. Canada (Solicitor General)*, (1996), 260 N.R. 272, 68 A.C.W.S. (3d) 334 (F.C.A.)). This Court has already determined that Mexico is a democratic country that is willing and able to protect its

citizens, even if this protection is not always perfect (*Sosa v. Canada (M.C.I.)*, 2009 FC 275, [2009] F.C.J. No. 343 (QL) at para. 22; *Gutierrez v. Canada (M.C.I.)*, 2008 FC 971, 169 A.C.W.S. (3d) 175 at paras. 21-22; *Velazquez v. Canada (M.C.I.)*, 2006 FC 532, 148 A.C.W.S. (3d) 291 at para. 6).

[30] If a refugee protection claimant failed to take all available measures to seek state protection, the Court finds that it is not enough to rely solely on documentary evidence of flaws in the justice system of the refugee protection claimant's country of origin (*Zamorano; Cortes v. Canada (M.C.I.)*, 2006 FC 1487, 154 A.C.W.S. (3d) 450). The applicant did not want to go to the authorities out of fear, and he did not approach higher authorities or other agencies. By not taking measures to seek state protection before making a claim for refugee protection, the applicant failed to rebut the presumption of state protection (*Cordova v. Canada (M.C.I.)*, 2009 FC 309, [2009] F.C.J. No. 620 (QL)).

[31] The Court is of the opinion that, even though there are still problems with corruption in Mexico, the evidence shows that there are avenues—albeit at times still imperfect—of state protection that were available to the applicant. Under the circumstances, the Court finds that the panel's decision is reasonable. The applicant did not try to seek out other means of state protection and did not show that state protection was not reasonably available in Mexico.

[32] For these reasons, the application for judicial review is dismissed. The parties did not propose a question for certification, and no question arises on this record.

**JUDGMENT**

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

“Richard Boivin”

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Judge

Certified true translation  
Tu-Quynh Trinh

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

**DOCKET:** IMM-4838-09

**STYLE OF CAUSE:** Manuel Aljandro Romero Castrañeda v. MCI

**PLACE OF HEARING:** Montréal, Quebec

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**DATED:** April 13, 2010

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