

Federal Court



Cour fédérale

Date: 20100427

Docket: IMM-4725-09

Citation: 2010 FC 460

Toronto, Ontario, April 27, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**NORMA ANGELICA RIVAS MONTANEZ,
ERIK ERNESTO MENDOZA RIVAS,
AND NORMA ITZEL MENDOZA RIVAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a mother who fled Mexico for Canada with her three children to escape the horrific physical and emotional abuse that her husband had subjected her to for 25 years. The RPD rejected the Applicant's claim for protection for the central reason that the Applicant did not seek state protection before fleeing Mexico.

[2] In her PIF, and in her evidence before the RPD, the Applicant detailed her suffering and reasons for not seeking state protection in Mexico: she was 17 when she was married; her first child

was born during the first year of marriage; her husband would not allow her to work outside the home; she relied on her husband to support her and the three children; and she feared violent retribution if she reported his violence to the police. The RPD made no negative credibility finding with respect to the Applicant's evidence.

[3] As a matter of law, the RPD was bound to consider the Applicant's detailed evidence to determine whether it was objectively unreasonable for her not to have sought the protection of her home authorities (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584 (F.C.A.)). In my opinion, the RPD failed to discharge this obligation.

[4] In the decision rendered, the RPD did not demonstrate a sensitive understanding of the power dynamics in play between an abused and captive wife at the hands of a violent and jealous husband in order to fairly determine whether, in the Applicant's circumstances, it was objectively unreasonable for her to have not sought state protection. As a result, I find that the decision under review was made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4725-09

STYLE OF CAUSE: NORMA ANGELICA RIVAS MONTANEZ,
ERIK ERNESTO MENDOZA RIVAS,
AND NORMA ITZEL MENDOZA RIVAS
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 27, 2010

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

DATED: April 27, 2010

APPEARANCES:

Daniel L. Winbaum FOR THE APPLICANTS

Tessa Kroeker FOR THE RESPONDENT

SOLICITORS OF RECORD:

Klein, Winbaum and Frank FOR THE APPLICANTS
Windsor, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada