

Federal Court



Cour fédérale

Date: 20100505

Docket: IMM-3527-09

Citation: 2010 FC 499

Ottawa, Ontario, May 5, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CECILIA JIMENEZ HERRERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, a citizen of Mexico, claimed that she had to flee Mexico because a drug dealer (Lopez) drugged her, sexually assaulted her and continued to extort sexual relations until she left. The Immigration and Refugee Board (Board) denied her claim for refugee status and for protection. A central feature of this judicial review is the finding of state protection in Mexico.

II. FACTS

[2] The Applicant lived in Tampico, 550 miles from Mexico City. She met Lopez in 2005 at the bar at which she worked and in June 2007 she went to dinner with him. She claimed that she was drugged and raped. Later in that same month Lopez picked up the Applicant and took her to a hotel where she had sex with him.

[3] The sexual liaison continued for several months; the Applicant alleging that she participated out of fear. After the second sexual incident, the Applicant reported the matter to some unspecified police unit. The police said that they would call her but never did. This is the sole incident of seeking police involvement and there is no record of it.

[4] The Applicant was living with her parents at this time. She delayed leaving Mexico for three months because of family reasons and the need to obtain money. Lopez never approached her family either before or after the Applicant left.

[5] The Applicant arrived in Canada in August 2007 as a visitor. In May 2008 she went to New York to see her sister. She also thought that upon her return to Canada, her visitor's status would be extended for a further six months. Instead she was told that she had five days to leave Canada. The Applicant then filed her refugee claim.

[6] The Board found that (a) her delay, both in Mexico and in Canada, while not determinative showed no subjective fear, (b) there was no nexus to a Convention ground as she was a victim of

crime generally, (c) she had not sought out state protection sufficiently when state protection was available, and (d) she had an Internal Flight Alternative (IFA) in Mexico City.

III. ANALYSIS

[7] The Board's findings on nexus, well founded fear, state protection and IFA are all questions of mixed law and fact in this decision (see *Suvorova v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 373, and *Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324). There was no debate on the issue of standard of review.

[8] On the issue of delay, it was not unreasonable for the Board to find that delay, both in Mexico and in Canada, was inconsistent with subjective fear. The Applicant suggests that delay should be measured from the point at which the Applicant realized that she had to leave Canada. However, the Applicant knew or ought to have known that she had no right to stay in Canada other than as a visitor. Indeed she went to the U.S. in the expectation that upon return, her visitor status would be renewed. She had some appreciation of the immigration regime. It was not unreasonable to find against her on this issue.

[9] The Board's finding on nexus was likewise reasonable. The Board had regard to the Gender Guidelines. However, in this case, the Applicant was not part of a group who were targeted because of gender. She was the victim of an apparently obsessed individual and not of some more systemic persecution. In any event, the findings on state protection and IFA address any criticism of the Board's conclusion in this regard.

[10] The presumption of the existence of state protection in Mexico has become a troublesome principle; however, it remains just that – a presumption rebuttable on the evidence. There is evidence of significant problems in certain areas and with certain governmental authorities. However, it was not unreasonable to find that the presumption of state protection applies to Mexico; it is a democracy in control of its territory with functioning government organizations. It depends on the facts in each case whether that presumption is rebutted in respect of that individual or group or in respect of the offending actions alleged.

[11] In this instance, the Board recognized that there were problems with some police forces in Mexico. Other than one instance of approaching the police, the Applicant did not express fear of the police nor did she show that her assailant had some connection with police that would make further inquiry impossible or unreasonable. She did not flee because there were no other organizations who would or could have assisted her.

[12] In the context of this case, it was not unreasonable for the Board to find that one instance of a complaint to police was insufficient to rebut the presumption of state protection. It was unnecessary for the Board to engage in a detailed analysis of all the organizations, state and others, potentially available to the Applicant as that subject matter was not in issue.

[13] As to the Board's finding of an IFA in Mexico City, some measure of deference is owed to the Board in this regard. In any event, the unspecified concerns expressed about computer security

and the possibility that certain databases could be used to locate the Applicant was speculative and not well established. The premise is that Lopez would attempt to track the Applicant, yet he has never done so either since she left Canada or even when she was in Mexico. Her family has never been approached by Lopez. Therefore, it was not unreasonable to find that the Applicant had an IFA in Mexico City.

IV. CONCLUSION

[14] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3527-09

STYLE OF CAUSE: CECILIA JIMENEZ HERRERA

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 4, 2010

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

DATED: May 5, 2010

APPEARANCES:

Mr. Richard Addinall	FOR THE APPLICANT
Ms. Marcia Pritzker Schmitt	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. RICHARD ADDINALL Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
MR. MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT