

Federal Court



Cour fédérale

Date: 20100514

Docket: IMM-5409-09

Citation: 2010 FC 508

Ottawa, Ontario, May 14, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**Carlos Maximino PEDRAZA CORONA
Fernando CRUZ MARTINEZ
Joshi Eduardo CRUZ MARTINEZ
Maria Belem MARTINEZ MOZQUEDA**

Applicants

and

**THE 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 by the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated October 5, 2009, according to which the applicants are not Convention refugees as defined in section 96 of the Act or persons in need of protection under section 97 of the Act.

[2] The applicants are citizens of Mexico. They fear for their lives if they are sent back to their country because they allege that they were physically assaulted and received death threats from the female applicant's husband, José Juan Cruz Chavez.

[3] The female applicant has been separated from her husband since 1998. He lives with another woman with whom he has two children.

[4] The panel identified two determinative issues: state protection and an internal flight alternative (IFA).

[5] To the extent that the issue involves the panel's assessment of the evidence, the applicable standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). The issue of state protection is to be considered on a standard of reasonableness (*Barajas v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 21, [2010] F.C.J. No. 8 (QL) at paragraph 21). Similarly, reasonableness will be the appropriate standard for a finding of an internal flight alternative (*Agudelo v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 465, [2009] F.C.J. No. 583 (QL) at paragraph 17). Therefore, this Court shall intervene only if the decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, paragraph 47).

[6] It is clear from reading the panel's reasons that in its analysis of the situation in Mexico, it was not convinced that filing a complaint with the police and the failure of the latter to act was

enough to rebut the presumption that Mexico could protect the applicants. In its opinion, the applicants had not exhausted the remedies that were available to them. The panel noted that the female applicant did not follow up on her complaint, alleging that she was frightened. She admitted having left her country a few weeks after filing the complaint. Given all the evidence and the circumstances, the panel's determination regarding state protection is reasonable.

[7] Regarding the internal flight alternatives of Guadalajara, Mexico City, Cancun and Monterrey, the panel considered that the applicants would be harder to track down in densely populated cities where Mr. Chavez has no family and that he would not likely try to find the applicants given that he had built a life with another woman. The panel also pointed out that the female applicant and her common-law partner would be safe in the cities mentioned and that they could find work in their fields.

[8] The Court is satisfied that the panel's finding that the applicants could find refuge elsewhere in Mexico is reasonable.

[9] No certified question was proposed. The record does not contain any.

JUDGMENT

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

“Michel Beaudry”

Judge

Certified true translation

Catherine Jones, Translator

ANNEX

The Immigration and Refugee Protection Act, S.C. 2001, c. 27

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Refugee Protection Division Rules, SOR/2002-228

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a possibilité d'un refuge interne pour s'en procurer.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5409-09

STYLE OF CAUSE: CARLOS MAXIMINO PEDRAZA CORONA
FERNANDO CRUZ MARTINEZ
JOSHI EDUARDO CRUZ MARTINEZ
MARIA BELEM MARTINEZ MOZQUEDA
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 11, 2010

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

DATED: May 14, 2010

APPEARANCES:

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