

Federal Court



Cour fédérale

Date: 20100518

Docket: IMM-5568-09

Citation: 2010 FC 539

Ottawa, Ontario, May 18, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**Alejandro de Jesus ARECHIGA PIERRES
Hilda Margarita LONGORIA LUNA
Wendy Georgette ARECHIGA LONGORIA
Kevin Alejandro ARECHIGA LONGORIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision rendered on August 27, 2009 by the Refugee Protection Division of the Immigration and Refugee Board (the Board) which found that the Applicants are not Convention refugees or persons in need of protection.

[2] The Applicants allege that they were attacked and threatened by a criminal named Alfonso Capetillo, after the wife of Alejandro De Jesus Pierres (principal applicant) reported some of his illegal activities. The wife's complaint against Capetillo to the police on September 16, 2007 was supposed to be anonymous, but she was still required to give personal information and it seems that the information was relayed to him. The applicants arrived in Canada on October 1, 2007 and made a claim for refugee protection on the same day.

[3] The judicial review application shall be dismissed for the reasons that follow.

[4] The Board begins its decision by determining that the Applicants have been found to be credible as to the alleged events at the basis of their claim. However, it determines that the claim cannot succeed as the Applicants did not rebut the presumption of state protection and an internal flight alternative (IFA) exists in Mexico City.

[5] In *Perea v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1173, [2009] F.C.J. No. 1472 (QL), the Court asserted that questions with regard to state protection is to be held to the standard of reasonableness. The determination with regard to the existence of an internal flight alternative is also held to the same standard of review (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 158, [2009] F.C.J. No. 202 (QL)).

[6] In applying that standard, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls

within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47).

[7] The Applicants argue that they provided evidence of police connivance which goes to show that state protection is not available to them and that this evidence was ignored by the Board. The Applicants point to a translation of a newspaper article dated April 30, 2004 (Certified Tribunal Record, pages 247, 298 and 299) which they claim establishes connivance between their persecutor, Capetillo, and the authorities. They submit that the Board’s failure to mention this piece of evidence is a reviewable error.

[8] The Respondent highlights that the burden of rebutting the presumption of state protection is placed on the Applicants and that, in this case, they did not rebut that presumption as they did not exhaust all of the domestic avenues available to them before claiming refugee status in Canada. The Respondent argues that in light of the fact that the Applicants left Mexico before waiting for the results of the police report, it was reasonable to conclude that they had not rebutted the presumption of state protection. The Respondent also urges that this conclusion of the Board was sufficient to reject the Applicants’ claim.

[9] I note that the Board actually does refer to the article in question in two footnotes of the decision (see footnotes 5 and 6 and paragraph 13). At paragraph 13, where the Board cites the article, it finds the following: “The documentary evidence showed that Mr. Capetillo was a notorious criminal but it did not indicate, despite his alleged connections to the father of a city

mayor in the region, that he was under police protection or that because of his crimes, he had police protection or impunity.” This is an accurate summary of the information contained in the articles referred to in the footnotes. The April 30, 2004 article pertains to a search of a home which led to the finding of an arsenal of weapons believed to belong to Capetillo. It also underlines that the situation was being investigated and relates to other crimes committed by Capetillo.

[10] In light of this, the Applicants’ argument that the Board ignored evidence cannot succeed.

[11] The Applicants emphasize that the Board failed to see the collusion between Capetillo and the public authorities. They reason that since Capetillo is protected by the authorities, he would be able to find them wherever they relocate in their country through their social security card information and their voter registration card information. They also point to a decision of the Refugee Protection Division adduced before the Board, where it was found that drug dealers would be able to track down their victims using social security and voter information contained in government databases (Certified Tribunal Record, pages 232 to 240). Accordingly, the Applicants argue that the Board failed to comprehend the key reasons why an IFA is not available to them.

[12] The Respondent submits that the Applicants did not demonstrate that they have a well-founded fear of persecution throughout the country. The Respondent relies on the Board’s findings with regard to the documentary evidence in response to the principal applicant’s testimony on his fear of being tracked and argues that the Board’s conclusion is reasonable. The Respondent also

urges that if the Court finds this conclusion to be reasonable, any other errors would be of no consequence.

[13] Firstly, as already explained above, I cannot find that the Board ignored the piece of evidence relied on by the Applicants. Secondly, with regard to the decision adduced before the Board, that decision did not involve any of the same parties and there was evidence in that case of police and government corruption which was the basis of the decision. In the case at bar, the Board was satisfied that, on a balance of probabilities, that there is no serious possibility of the claimants being persecuted in the part of the country in which it found the IFA to exist and the decision adduced by the Applicants is not sufficient to render that decision unreasonable. In view of the documentary evidence relied on by the Board and the facts in the present case, I am satisfied that the decision with regard to the IFA falls within an acceptable range of outcomes.

[14] No question for certification was proposed and none arises.

JUDGMENT

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

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5568-09

STYLE OF CAUSE: **ALEJANDRO DE JESUS ARECHIGA PIERRES
HILDA MARGARITA LONGORIA LUNA
WENDY GEORGETTE ARECHIGA LONGORIA
KEVIN ALEJANDRO ARECHIGA LONGORIA
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: May 12, 2010

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

DATED: May 18, 2010

APPEARANCES:

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