

Federal Court



Cour fédérale

**Date: 20100624**

**Docket: IMM-4781-09**

**Citation: 2010 FC 691**

**Ottawa, Ontario, June 24, 2010**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**SVIET LUBOV MENESES GONZALEZ**

**Applicant**

**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 of the Refugee Protection Division (the Panel), dated August 19, 2009, where Sviet Lubov Meneses Gonzalez (the Applicant) was found not to be a Convention refugee nor a person in need of protection..

**Factual Background**

[2] The Applicant is a citizen of Mexico, resident in the district of Azcapotzalco, in the Federal District of Mexico City. In Azcapotzalco, she was threatened repeatedly by local politician Ricardo

Betancourt Linares (Betancourt). In December 2005, Betancourt asked the Applicant to give him information about the social equity programme participants that she worked with. He offered her a job and money, should he win the election that was being held, in exchange for the information. He also threatened her and told her that he would force her to give him the information.

[3] Shortly thereafter, in February 2006, the Applicant changed jobs and began working for the Federal Electoral Institution as a coordinator of the workers for the voting stations for the upcoming election. Betancourt contacted her again and this time wanted her to manipulate ballots and give him the names of the voting station workers but she refused. He sent people to follow the Applicant and she was beaten on one occasion. The Applicant reported the incident to police on June 21, 2006. Despite the police report, Betancourt continued to send people to follow the Applicant and threaten her.

[4] Also, a few days after she filed the police report, the Applicant was picked up by police, driven around in a police car for about an hour. During this time, the police threatened her, they told her she should not have made the report and she should just give Betancourt the information that he wanted.

[5] Betancourt lost the election and the Applicant moved on to another job. She began working for the Public Property Registration Office and continued to receive calls for information. She still refused and received death threats. She quit her job in March 2007 because of the threats. The Applicant arrived in Canada on May 31, 2007 and filed a claim for refugee protection on September

13, 2007. Betancourt and his accomplices continued to call her home in Azcapotzalco, even after she left and her mother changed her telephone number as a result of the calls.

[6] Based on the evidence, the Panel concluded that a viable internal flight alternative (IFA) was available and it was satisfied that it would not be unreasonable to the Applicant to seek refuge in Guadalajara.

[7] The Applicant raises issues with regard to the assessment of the evidence and the application of the test of the IFA. These determinations are questions of fact and mixed fact and law and are reviewable on a standard of reasonableness. This presupposes that the Panel has correctly set out the test for the IFA which is a question of law and the Panel is not entitled to deference if it fails to do so (*Lugo v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 170, [2010] F.C.J. No. 203 at paragraph 30 and 31).

[8] In applying the standard of reasonableness, 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).

[9] I note that the Applicant does not take issue with the Panel's statement of the test for an IFA and rightly so as the Panel did correctly state the two prong test for an IFA. The test to be applied in determining whether there is an IFA is two-pronged: (i) there is no serious possibility of the

claimant being persecuted or subjected, on a balance of probabilities, to persecution or to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment in the proposed IFA area, and (ii) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (F.C.A.) (QL).. The burden is on the individual making a claim for refugee protection to defeat either or both prongs of the test (*Thirunavukkarasu* at paragraph 9).

[10] Turning to the facts in the case at bar, I am not convinced that the Panel did actually misapply the test, despite making an incorrect preface. The Panel's reasons show that the two prong test was correctly applied and there is no further mention of the fact that the Applicant did not seek an IFA before coming to Canada. There is no indication that the Panel considered the failure to try to live in the IFA to be a factor in denying the claim for refugee protection or that it was a factor in assessing the IFA. In light of this, the decision still falls within the realm of reasonableness and it would not be appropriate to send the matter back for determination on this ground.

[11] As to the findings regarding the availability of state protection in Guadalajara, the Panel does center its analysis on the Applicant's particular circumstances, for example it is satisfied that there was no evidence that Betancourt's influence reaches outside of the Federal District and that there would also be police corruption in Guadalajara. The Panel also relies on documentary evidence that shows that there are state agencies in place that address police corruption and that there have been some positive effects resulting from these efforts.

[12] I also do not agree with the Applicant's argument that the Panel ignored evidence. She argues that her reasons recorded in the transcripts of the proceedings before the Panel (see Certified Tribunal Record at pages 188, 192-193 and 195) to explain why she does not believe that Guadalajara is a viable IFA was not considered.

[13] In the passages of the transcript referred to by the Applicant, she testifies that she believes that police in Mexico are corrupt and based on her past experiences, she believes that Betancourt's influence is far reaching and that she will not be safe anywhere in Mexico. The Panel does acknowledge these as reasons that the Applicant does not feel she can relocate to the IFA but was not convinced on the basis of the evidence before it. There is no reviewable error here.

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

**JUDGMENT**

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

“Michel Beadry”

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Judge

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

**DOCKET:** IMM-4781-09

**STYLE OF CAUSE:** **SVIET LUBOV GONZALEZ**  
**and**  
**THE MINISTER OF**  
**CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 17, 2010

**REASONS FOR JUDGMENT:** BEAUDRY J.

**DATED:** June 24, 2010

**APPEARANCES:**

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