

Federal Court



Cour fédérale

Date: 20100901

Docket: IMM-6323-09

Citation: 2010 FC 864

Toronto, Ontario, September 1, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**JUAN MANUEL VALADEZ GALLEGOS
LAURA EDITH BARCENAS RAMIREZ
AND EVELYN YARENTZI VALADEZ BARCENAS**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Member of the Immigration and Refugee Board of Canada dated December 4, 2009 wherein it was determined that the Applicants were not Convention refugees and not persons in need of protection under the provisions of the

Immigration and Refugee Protection Act, S.C. 2001, c. 27 (IRPA). For the reasons that follow this application for judicial review is dismissed and no question is certified.

[2] The Applicants are a husband, wife and minor age daughter, all citizens of Mexico. The Principal Applicant is the husband who, shortly before the Applicants fled to Canada, resigned from his position as a sub-officer with the Municipal Police in the city of Aguascalientes in Mexico. The Principal Applicant gave evidence to the effect that he participated in a police organized raid on premises occupied by a drug cartel. Shortly thereafter he says that he began to receive anonymous phone calls threatening him and his family. He says that he made a complaint to his superior officer and, a few days later, a further complaint to a higher level authority. The Principal Applicant appears, within no more than six weeks, to have made up his mind that he and his family should flee Mexico and seek refugee protection in Canada. In seeking such protection the Principal Applicant provided, among other things, photographs obtained from the Internet, showing the shooting deaths of other police officers. The evidence is unclear as to the linkage between those deaths and the anonymous telephone threatens received by the Principal Applicant.

[3] The Board Member, in the decision under review, correctly stated the applicable law, as agreed by the Applicants' Counsel. There is a presumption that a state is capable of protecting its citizens and that international protection only comes into play when a refugee claimant has no other recourse available. The onus rests on the claimant to provide clear and convincing evidence, in the absence of a complete breakdown of the state's control over its own territory, to demonstrate that such protection is not available. The claimant must demonstrate that sufficient efforts were made to

seek out appropriate recourses in the state, both those offered by the state and by others such as human rights agencies.

[4] Given that the Member established the decision in the appropriate legal context, the question for judicial review, is whether the Member overlooked relevant evidence that would have had a material effect on the decision or whether, having regard to all the facts, the Member's decision was reasonable.

[5] Here the issue was whether there existed adequate state protection in Mexico and whether the Applicant had made appropriate efforts to seek out all reasonable recourses available.

Applicants' Counsel cited the decision of Zinn J. of this Court in *Ortega v. Minister of Citizenship and Immigration*, 2009 FC 1057 at paragraph 24:

State protection cannot be determined in a vacuum. The willingness and ability of states to protect their citizens may be linked to the nature of the persecution in question. In short, context matters. The Applicants argue, citing Garcia v. Canada (Minister of Citizenship and Immigration), 2007 FC 79, that the Board failed to take a contextual approach to assessing whether effective state protection would have been reasonably forthcoming had they made subsequent efforts at seeking protection. I agree that a contextual approach is required in assessing state protection, but I disagree that the Board failed to do so in this case. The Board acknowledged the nature of the persecution in question, and it is apparent that the Board assessed the availability of state protection on this basis. The Board concluded that there was no evidence to suggest on a balance of probabilities that had the police been approached in a more concerted manner that they "would refuse to investigate serious, non-domestic, sexual assaults". In this passage, the Board displays its awareness of the context of the situation, that being serious, non-domestic, sexual assaults; this is what the Board was required to do, and it is not evidence of a reviewable error.

I agree with what Zinn J. says, namely that the question of state protection and the adequacy of efforts made to seek that protection must be considered in context.

[6] Here Applicants' Counsel argues, the Member failed to give adequate weight to the imminent threats of death and the fact that, as a police officer, the Principal Applicant apparently would know of the futility in seeking protection. The Minister's Counsel argues that the Member did take such matters appropriately into consideration, and that the Applicants acted precipitately and without seeking out many other available resources.

[7] Having reviewed the record and the authorities cited to me, I find that the Member gave adequate consideration to the relevant facts and made a decision that was reasonable. This is a judicial review, not an appeal or reconsideration of the matter. I therefore find no basis for affording relief by way of judicial review.

[8] No party required that a question be certified and I find no reason to do so. There is no basis for an award of costs.

JUDGMENT

For the reasons provided:

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed.
2. No question is certified.
3. No order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6323-09

STYLE OF CAUSE: JUAN MANUEL VALADEZ GALLEGOS
LAURA EDITH BARCENAS RAMIREZ
AND EVELYN YARENTZI VALADEZ BARCENAS
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 1, 2010

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

DATED: SEPTEMBER 1, 2010

APPEARANCES:

Dov Maierovitz FOR THE APPLICANTS

Nicole Rahaman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gertler, Etienne LLP FOR THE APPLICANTS
Barristers & Solicitors
Toronto, Ontario

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