

Federal Court



Cour fédérale

Date: 20100902

Docket: IMM-6543-09

Citation: 2010 FC 874

Toronto, Ontario, September 2, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**HUGO REYNA FLORES
KARLA MARIA VAZQUEZ MONTIEL
AND FRIDA YOSELIN REYNA VAZQUEZ (MINOR)**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a husband, wife and minor child, all citizens of Mexico. Their claim for protection as convention refugees was rejected by a decision of a Member of the Immigration and Refugee Board of Canada dated December 4, 2009. Judicial Review of that decision is now sought

by the applicants. For the reasons that follow I am dismissing the application, no question is to be certified.

[2] The principal applicant is the husband Hugo Reyna Flores. In Mexico he worked as a journalist with a television network, Televisa. His work was all behind the camera. Much of his work involved programmes in which an on-camera journalist, Mr. Ramirez appeared as an investigative journalist. The uncontroverted evidence includes:

- in about February 2007 Ramirez began investigations as to connections between drug-traffickers and government authorities
- in about early April 2007 Ramirez received phone calls threatening to kill him
- April 6, 2007 Ramirez was murdered
- May 9, 2007 the Superior Court of Justice of Mexico was requested by the principal applicant's Mexican lawyer to protect him under a witness protection programme. May 23, 2007 that request was denied as being unfounded.
- May 24, 2007 the principal applicant was assaulted and his wife was raped by two unidentified persons
- June 12, 2007 the applicants entered Canada and sought refugee protection

[3] The controversial evidence includes the principal applicant's claim that he worked closely with Mr. Ramirez as a result of which he began to receive threatening phone calls. The principal applicant alleges that after Ramirez was murdered he went to the police seeking protection and was told that if he identified two persons then in custody as being implicated on the murder things would go easily for him and presumably protection afforded. The motivation of the two assailants/rapists is

unclear, the principal applicant urges that he was being sent a message by those implicated in Ramirez's murder. The applicants allege that, as a journalist, the principal applicant and his wife are particularly vulnerable to persecution and that adequate state protection is not available.

[4] The Member provided extensive Reasons rejecting the applicants' claim, comprising 88 paragraphs. Throughout as to relevant controversial evidence the Member found the principal applicant's evidence not to be credible and lacking in substantive corroboration. The Member found at paragraph 75 that a careful examination of the evidence led to a finding that Ramirez was shot and killed but there is no persuasive evidence that anyone other than Ramirez was threatened. At paragraph 55 the Member summarized his conclusions that the principal applicant had taken a basic set of facts and created a story around it to enhance, through embellishment, the refugee claim. As to the assault and rape the Member concluded, at paragraph 83 that the applicants had waited only a few days after the event to flee Canada without giving the police an adequate opportunity to deal with the matter.

[5] Applicants' Counsel argued the decision should be quashed on three grounds:

- Bias
- Improper conclusions as to credibility
- Improper finding as to lack of state protection

[6] As to bias, it is argued that the Member consistently found that the principal applicant's evidence lacked credibility and found that corroboration was lacking on many relevant points. It is

argued that the Member had made up his mind before the hearing to defeat the claim on every possible factual basis.

[7] I find no proper basis to support this allegation of bias. The only basis raised is the consistent finding that the principal applicant's evidence was not credible and lacked corroboration. The function of the Member includes determinations as to credibility and whether certain allegations are corroborated. Simply because many such findings are unfavourable to an applicant does not, in itself, lead to a conclusion of bias. This ground is unfounded.

[8] The second ground raised by the Applicants' counsel is directed to the findings of lack of credibility and lack of corroboration. The arguments were that, if credibility is an issue, the applicant should be directly confronted with the evidence said to be lacking credibility and asked to give an explanation. So to corroboration it was argued that, particularly since the new Act in 2001, corroboration is unnecessary.

[9] As to the first matter raised, confronting the applicant, I have reviewed the Tribunal Record including in particular the transcript of the hearing. I find that the applicant was given ample opportunity to explain his testimony and was questioned by the Member on the relevant points of his evidence such that an ample opportunity was given for any explanation. As to corroboration, it is argued that, particularly since the new Act in 2001, corroboration may not be essential however where there is doubt as to the evidence given it is not improper for the Board to ask for corroboration or to take lack of corroboration into account where assessing credibility. I find that the

Board made no reviewable error in handling the evidence as it did and that the conclusions which it reached were reasonable.

[10] Thirdly, as to state protection, the Board's reasons clearly demonstrate that the Member made no error as to the applicable law as to the adequacy of state protection. The argument made by applicants' counsel is that the Member failed to give adequate consideration to the particular vulnerability of journalists in Mexico and, more particularly, the principal applicant. However the Member had found that the principal applicant's assertions as to his personal vulnerability as a journalist were exaggerated and lacked credibility. I find that the Member's determination as to state protection, in law, was correct and his conclusions in respect of the principal applicant's personal status, was reasonable.

[11] I find no proper basis for setting aside the decision under review. No counsel requested certification and I find no basis for doing so.

JUDGMENT

For the Reasons provided:

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed.
2. There is no question for certification.
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-6543-09

STYLE OF CAUSE: HUGO REYNA FLORES ET AL. v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 2, 2010

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

DATED: September 2, 2010

APPEARANCES:

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