

Federal Court



Cour fédérale

Date: 20110310

Docket: IMM-4267-10

Citation: 2011 FC 274

Ottawa, Ontario, March 10, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**LUIS ALFREDO RAMIREZ MEZA
MARIA IRMA VIZCAINO OROZCO
VICTOR ROMAN RAMIREZ VIZCAINO
CESAR ALEJANDRO RAMIREZ VIZCAINO
MARIA GUADALUPE PEREZ SILVA
KASANDRA RAMIREZ-PEREZ
CESAR EDUCARDO RAMIREZ PEREZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants brought an application seeking judicial review of a decision dated July 9, 2010, wherein the Immigration and Refugee Board (IRB) decided that the Applicants were neither

Convention refugees nor persons in need of protection under the regime of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Leave was granted by Justice Martineau on December 1, 2010.

[2] The Applicants are citizens of Mexico and represent three (3) generations of the same family. Luis Alfredo is a mason by trade, but operated two (2) businesses. He was allegedly approached by members of a criminal organization, the Zetas, for him to sell drugs through his establishments or pay a monthly fee instead. He refused and was threatened. One of his vans was stolen by men recognized as being part of the Zetas. The family moved to Aguascalientes for seven (7) months, but returned to Tabasco, where the threats resumed. Luis Alfredo's son, Cesar, was followed by a car, but managed to escape unharmed. Calls and threats were allegedly received again. The family moved to Guadalajara, but the Zetas organization apparently managed to track them and persist in their threats. While in Canada, threatening phone calls were allegedly received by the family.

I. The IRB's decision

[3] After stating the applicable law to refugee protection, the IRB focused on the sufficiency of state protection in Mexico. Through broad analysis of country conditions in Mexico, the IRB concluded that it was "not persuaded that the police would not investigate the claimants' allegations if they were reported to them". Curiously enough, the IRB related a few paragraphs earlier that the Applicants had denounced to the police and Public Ministry the theft of the van. The IRB concluded that "Luis' responses regarding the effectiveness of state protection were not persuasive, since they were not credible, largely unsubstantiated and not consistent with the documentary evidence".

[4] The IRB did state that it “would be remiss” if it did not acknowledge the issues regarding state protection in Mexico, namely impunity, corruption and the like. However, acknowledging Mexico’s efforts and legislative framework, the IRB preferred the view that Mexico’s efforts were sufficient and indicative of sufficient state protection.

[5] Consequently, the IRB was of the view that the Applicants had failed to rebut the presumption of state protection and did not take all reasonable steps to avail themselves of the state protection offered in Mexico.

II. Standard of Review

[6] The Applicants raise two (2) questions. Firstly, did the Board Member fail to discharge its duty in not addressing the applicability of sections 96 and 97 of the IRPA? And secondly, did the Board Member fail to consider relevant testimony and evidence?

[7] The Court finds that the determinative issue in this case is the IRB’s evaluation of the evidence before it, particularly in regards to the sufficiency of state protection. This is a mixed question of fact and law that is to be reviewed on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Sanchez Roviroso v Canada (Citizenship and Immigration)*, 2011 FC 48).

III. Analysis

A. *Application of the Evidence*

[8] The IRB's decision is unreasonable, as it preferred generic analysis of country conditions in Mexico, thereby failing to consider key elements of the evidence. At the very least, the IRB should have indicated why it discounted key elements of the evidence (*Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491). It was not sufficient for the IRB to simply state that it had considered all the evidence before it, when its reasons do not meaningfully reflect such an analysis (*Viguera Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359).

[9] There is evidence to suggest that the IRB rendered what Madam Justice Snider has called "cookie-cutter analysis" in *Alvandi v Canada (Citizenship and Immigration)*, 2009 FC 790. For example, the IRB's statement to the effect that it was "not persuaded that the police would not investigate the claimants' allegations if they were reported to them". It was presented with evidence, sworn statements, to the effect that the theft of the van and the Zetas' involvement was reported to the police, who referred the Applicants to the Public Ministry. Officials at the Public Ministry allegedly threatened to put Luis Alfredo in jail if he did not withdraw his complaint. This statement is hard to reconcile with the IRB's decision, wherein it is said that "it is not known why the official reacted this way and Luis was not able to offer an adequate explanation except that the Zetas had influence over the police. I reject this explanation and find that Luis is merely speculating that the police would not investigate his allegations because the police were corrupted by the Zetas". Moreover, the IRB noted that it found that "the police took steps to deal with Luis' matter but were unable to resolve it due to some unknown factor". Without further analysis by the IRB, this unknown factor still remains "unknown". The valid determination of the Applicants' claim requires more than simply relying on an "unknown factor". It could have been that this so called "unknown factor" could have supported the conclusion to the effect that police were infiltrated by the Zetas.

[10] As such, this finding is clearly unreasonable. Through this plausibility finding, it seems as though the IRB was zealous in drawing inferences from the evidence, despite the Applicants' statements and considerable portions of the documentary evidence that could arguably substantiate the finding that the police did not meaningfully investigate the crime because it was corrupt.

[11] The IRB's dismissal of the Applicants' endeavours with authorities could have been found to be reasonable. However, in this case, it is unreasonable as it overlooks documentary evidence supporting the allegations and situations not deemed to be credible. It was therefore unreasonable for the IRB to conclude that the claims were "largely unsubstantiated and not consistent with the documentary evidence".

[12] Furthermore, the decision clearly ignores portions of the evidence that could be important to the case. While it is true that the Court must presume that the IRB analyzed all the evidence before it, there are cases where it is clear such deference is not owed when important elements of the evidence were not addressed (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35; *Vigueras Avila*, above).

[13] Suffice it to say that the alleged persistence of the threats while in Canada and adequate analysis of the Zetas' influence were not considered. Such analysis may have prevented the IRB from condemning the Applicants' story and arguments as "mere speculation". There are elements of the documentary evidence about the Zetas, none of which were mentioned, or apparently considered by the IRB (see, for example, pages 454, 458, 469, 473-475 of the Certified Tribunal Record).

[14] Serious analysis of the documentary evidence was required, and the Court cites Justice Martineau in noting in *Vigueras Avila*, above, at para 32, that:

the main flaw of the impugned decision results from a complete lack of analysis of the applicant's personal situation. It is not sufficient for the Board to indicate in its decision that it considered all the documentary evidence. A mere reference in the decision to the National Document Package on Mexico, which contains an impressive number of documents, is not sufficient in the circumstances. The Board's hasty findings and its many omissions in terms of evidence make its decision unreasonable in the circumstances. Further, because of the laconic nature of the reasons for dismissal contained in the decision, it cannot stand up to somewhat probing examination

[15] Another example of documentary evidence that was either not considered or whose exclusion was not properly reflected in the reasons is the newspaper article to the effect that two people residing at the Applicants' last home in Tabasco, who also had the same last name as the Applicants, were murdered.

[16] Further, it is also clear that the IRB should have considered, or adequately justify why it did not consider the documentary evidence concerning the Zetas. The only information provided in the reasons is anecdotal evidence that police had "unknowingly" arrested a leader of the Zetas in 2006. This can hardly support the conclusion that the IRB "had considered all the evidence before it". It just may well be that the Applicants did not take sufficient steps to avail themselves of state protection. However, in this case, it cannot be said that the IRB's analysis of the sufficiency of state protection and the role of the Zetas is sufficient.

IV. Analysis of Section 96

[17] The IRB mentioned in general terms that it had considered the claim under sections 96 and 97 of the IRPA. However, no analysis was presented in this respect. The Board Member had noted, after submissions from counsel, that the section 96 nexus grounds were to be analyzed in regards to the Zetas organization. The decision is silent on this issue.

[18] As noted in *Anthonimuthu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 141, sections 96 and 97 are distinct grounds for protection and thus must be considered distinctly, even if the factual matrix may well be the same. In this case, even after the Board's Member's claim that the nexus ground would be considered, the reasons do not speak to the Convention nexus at any given point.

[19] Again, the analysis possible Convention nexus is absent, as is the analysis of the Zetas' capacities, influence and like information reflected in the documentation. The omissions are fatal, and the application must be granted.

V. Other Issues

[20] The Court does not take issue with the Luis Alfredo's late mention of his brother-in-law's involvement with the Zetas. This finding could be seen as reasonable, as it indeed was omitted in the Applicants' PIF. In any event, for the reasons above, this question is not determinative, as counsel for the Respondent has conceded in the written representations. Also, the Court does not take issue with the alleged insufficiency of the Applicants' steps to avail themselves of state protection: these are matters to be considered by a newly constituted panel of the IRB.

[21] The application is allowed and the matter is to be sent for redetermination by a newly constituted panel. No question for certification was suggested and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted and the matter is to be sent back for redetermination by a newly constituted panel. No question is certified.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4267-10

STYLE OF CAUSE: LUIS ALFREDO RAMIREZ MEZA
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V.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 1, 2011

REASONS FOR JUDGMENT: NOËL S. J.

DATED: March 10, 2011

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