

Federal Court



Cour fédérale

**Date: 20110317**

**Docket: IMM-2982-10**

**Citation: 2011 FC 320**

**Ottawa, Ontario, March 17, 2011**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**FRANCISCO JAVIER LUNA  
(A.K.A. FRANCISCO JAVIE LUNA)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] Mr. Francisco Javier Luna fled Mexico in 2008 and sought refugee protection in Canada on the basis that he feared reprisals from drug cartels at home. He had called authorities to report on drug trafficking taking place outside the bar where he worked. After he left Mexico to visit his sister in Canada, some drug dealers were arrested. He claims that they will harm him if he returns.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Luna's claim on the basis that he had not shown that state protection was unavailable to him in Mexico. Mr. Luna argues that the Board made factual errors and overlooked important evidence that was relevant to the issue of state protection. He asks me to overturn the Board's decision and order a new hearing before a different panel. I agree that the Board made a reviewable error in its treatment of the issue of state protection and will, therefore, allow this application for judicial review.

## II. Factual Background

[3] Mr. Luna worked at a bar in Ciudad Juarez, where drug cartels and affiliated gangs are prevalent and violent. One member of the Juarez Cartel, Sergio Castro, suspected Mr. Luna of providing information to authorities about the cartel's members and activities. In fact, before leaving Mexico, Mr. Luna made an anonymous call to authorities in which he described drug trafficking at the bar where he worked. The army apparently acted on that information and arrested a number of drug dealers. Later, Mr. Luna learned that Mr. Castro was looking for him. He fears that Mr. Castro will harm him if he returns.

## III. The Board's Decision

[4] According to the Board, the main issue arising from Mr. Luna's claim was state protection. However, before analyzing that issue, the Board made two clear factual errors. First, it stated that Mr. Luna was from Ciudad Jujuzi in the state of Chiguaga, instead of Ciudad Juarez in the state of

Chihuahua. Second, it stated that Mr. Luna feared only the Aztecas Cartel. Mr. Luna had referred to both the Aztecas gang and the Juarez Cartel in his evidence. The Board did not mention the Juarez Cartel in its reasons.

[5] The Board went on to discuss the circumstances in Mexico generally. It mentioned that Mexico:

- is a democracy (which increases the evidentiary burden on a claimant to show a lack of state protection);
- is in control of its territory;
- has security forces and makes serious efforts to fight crime, including drug trafficking, and corruption; and
- has problems with crime, corruption and inefficiency, but is attempting to address these problems.

[6] The Board also noted that Mr. Luna's anonymous phone call sparked a response by Mexican authorities, showing that state protection is, in fact, forthcoming on request.

#### IV. Did the Board Err on the Issue of State Protection?

[7] Mr. Luna argues that the Board made serious factual errors and overlooked important evidence in its analysis of state protection. As these two submissions are related, I will deal with them together.

[8] The Board did not correctly identify the location where Mr. Luna lived, nor the proper agent of persecution. The latter is not as egregious an error as the former, given that Mr. Luna had mentioned the Aztecas gang in his testimony and it was associated with the primary organization he feared – the Juarez Cartel.

[9] Still, in the circumstances of this case, the Board's errors caused it to overlook evidence particular to Ciudad Juarez and the capacity of Mexican authorities to provide protection to citizens targeted by the Juarez Cartel for reprisals. Instead, the Board relied primarily on evidence of a general nature about state institutions in Mexico and examples of sincere efforts on Mexico's part to deal with its crime and corruption difficulties. There was only one example of state action relevant to Mr. Luna's circumstances – the reaction to his anonymous phone call. But that evidence was of little assistance in deciding whether state officials could offer protection to a person suspected by a drug cartel of being an informant.

[10] Accordingly, the Board's analysis did not address Mr. Luna's particular circumstances – where he lived, whom he feared or what state apparatus was available to him in that location against that particular agent of persecution. As such, the Board failed to refer to the evidence before it that was relevant to those subjects. As a result, the Board failed to discharge its obligation to address the specific claim before it: *Medina v Canada (Minister of Citizenship and Immigration)*, 2008 FC 728; *Moreno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 993; *Velasquez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1201.

[11] In my view, the Board's decision was unreasonable. It did not fall within the range of possible, defensible outcomes based on the law and the facts before it.

V. Conclusion and Disposition

[12] By failing to analyze Mr. Luna's particular circumstances, the Board's analysis of state protection was flawed, and its conclusion was unreasonable. Therefore, I must allow this application for judicial review. Neither party proposed a question for certification, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is granted. The matter is referred back to the Board for a new hearing before a different panel.
2. No question of general importance is stated.

“James W. O’Reilly”

---

Judge

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

**DOCKET:** IMM-2982-10

**STYLE OF CAUSE:** LUNA v MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** January 18, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** March 17, 2011

**APPEARANCES:**

Patricia Wells

FOR THE APPLICANT

Tamrat Geheyehu

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Patricia Wells  
Barrister & Solicitor  
Toronto, ON.

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, ON.

FOR THE RESPONDENT