

Federal Court



Cour fédérale

**Date: 20110526**

**Docket: IMM-5848-10**

**Citation: 2011 FC 595**

**Ottawa, Ontario, this 26<sup>th</sup> day of May 2011**

**Before: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**SERGIO SANTIAGO RAYMOND SALVAGNO  
HAYDEE CAROLINA GIMENEZ BENTANCOUR  
MICHELLE RAYMOND GIMENEZ  
AGUSTIN DAMIAN RAYMOND GIMENEZ**

**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 (the “Board”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”) by Sergio Santiago Raymond Salvagno, Haydee Carolina Gimenez Bentancour, Michelle Raymond Gimenez, and Agustin Damian Raymond

Gimenez (the “applicants”). The Board determined that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[2] The applicants are citizens of Uruguay. Sergio Santiago Raymond Salvagno and Haydee Carolina Gimenez Bentancour (the “principal applicant”) are married to one another, and were aged 51 and 46 respectively at the time of the hearing. The other two applicants are their children, who were aged 14 and 21 at the time of the hearing.

[3] The principal applicant is a member of a well-known and influential Uruguayan family that owns and operates a winery and a large amount of land. She, her mother, and her four siblings own the two companies controlling the winery and the land. Her father historically supported two political parties in Uruguay, the Blancos and the Colorados. In 1962, members of the Movimiento de Liberacion Tupamaro (“MLT”) applied pressure on influential Uruguayan families to support their cause. Her father refused. In 1972, MLT guerillas dug a tunnel on the winery property and hid themselves with arms and ammunition. Several were arrested after her father reported the tunnel.

[4] In 1973 the military took power and in 1983-1984 democracy was restored. The principal applicant’s father and brother continued to support the Blancos and the Colorados. The principal applicant became the general manager of the winery following her father’s death, and has received telephone threats. Robberies and fires have occurred on the property. In 1999 the company tried to manufacture non-alcoholic beverages, but the principal applicant alleges that the MLT was controlling the municipal council of Montevideo and caused so many problems that the operation was never established.

[5] In 2005-2006, the winery and the applicants' homes were robbed several times but the crimes were never solved. A shipment of labels never came, though the shipping company showed them a waybill with what must have been a forged signature of receipt. In January 2006 the applicant's car was stolen. Four dogs kept in a kennel at their house were poisoned.

[6] On February 23, 2006, the principal applicant's sister's garage and house were destroyed by fire. The firefighters allegedly stated that gasoline was found around the house, but the official report stated that the cause of the fire was unknown. A voicemail threat was left at the business. In August 2006, the principal applicant's mother's garage caught fire in the night, though the fire department contained the fire. The applicant son was meant to be staying there that night but was out. A telephone threat implied that the intention was to harm the son.

[7] In December 2006, the principal applicant's niece was killed while riding the applicant son's motorcycle. The official police report stated that a collision occurred with a horse-drawn carriage. The principal applicant alleges that a witness said a vehicle left the scene of the accident, but the police did not question the witness. The incident was suspicious, the ambulance and police were very slow to respond, and on the date of the funeral a telephone threat was received stating that "we killed the wrong person". The applicants retained a lawyer to investigate the matter.

[8] The claimants left for Canada and arrived on December 17, 2007.

\* \* \* \* \*

[9] The Board found that section 96 did not apply to the applicants because of a lack of nexus to a Convention ground. The Board found that section 97 did not apply because state protection would be available to the applicants in Uruguay.

[10] There are two issues in this application:

- a. Did the Board err in finding that there was no nexus to a Convention ground?
- b. Did the Board err in finding that state protection would be available to the applicants?

[11] In *Chekhovskiy v. The Minister of Citizenship and Immigration*, 2009 FC 970 at para 18, Justice Yves de Montigny found that the standard of review applicable to the Board's interpretation of the nexus issue is that of reasonableness, as the Board is interpreting the statute that is most closely connected with its functions (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

[12] The standard of review applicable to a finding of state protection is likewise reasonableness (*Buitrago v. The Minister of Citizenship and Immigration*, 2009 FC 1046 at para 14).

\* \* \* \* \*

#### A. *Nexus*

[13] The applicants argue that the Board erred in determining that they did not demonstrate that they were being persecuted in relation to a Convention ground, arguing that it is trite law that the ground of political opinion, actual or perceived, is assessed based on the perception of the

perpetrators, who need not be related to the government. The applicants note that they provided an extensive narrative showing that the actions against them were rooted in the family's political history against the MLT; the Board considered the applicants credible and yet found that there was no persuasive evidence that the MLT was responsible.

[14] The applicants also contend that they had a nexus to the ground of "membership in a particular social group". They submit that their history of reporting and defying the perpetrators is an immutable part of their past, involving their right to freedom to associate or not associate and freedom to respect the rule of law.

[15] In my view, the Board's conclusion on a nexus with section 96 is within the range of "possible, acceptable outcomes" mandated by *Dunsmuir*, above. I note that while not disbelieving all of the applicants' allegations, the Board was not convinced that every element of the story was correct or true. As the respondent points out, the Board is entitled to accept an applicant's narrative without accepting their interpretations or deductions; the Board was therefore entitled to come to its own view on whether the MLT was most likely responsible for the incidents. Given the lack of persuasive evidence showing a link between the incidents and the MLT (other than the allegations of the applicants), I find that the Board was entitled to conclude that the applicants were the victims of criminality rather than political persecution. I also note that while the Board did not find credibility to be determinative, the allegations of the applicants were not necessarily considered to be true facts, given that the Board found that if the applicants' extended family were afraid of the MLT they would have left Uruguay. There was therefore no error on the issue of nexus.

B. *State protection*

[16] The applicants submit basically that in light of the proof of the numerous denunciations made by them to both the Montevideo police and the technical police, the proof of the lack of response by the police, the existence of the flawed police report and the proof of judicial corruption, it was unreasonable of the Board to simply conclude that the applicants had not taken all reasonable steps to obtain state protection, without setting out what they should have done.

[17] The applicants also submit that the Board erred in finding that serious efforts on the part of the state to deal with crime and corruption are equivalent to actually providing adequate state protection to the applicants.

[18] I disagree with the applicants' interpretation of the Board's decision, given that the Board did explicitly note that state protection must be found to be adequate, if not completely effective (paragraph 26 of the decision). First, the documentary evidence relied upon by the Board indicates that Uruguay has effective control over the national police and the government has effective mechanisms to investigate and punish abuse and corruption; it was open to the Board to prefer this evidence to that of the applicants' essentially alleging judicial and police corruption without persuasive evidence to support their theories. Here, the police investigated all of the applicants' allegations. I do not find it unreasonable for the Board to have concluded that while the applicants were not satisfied with the outcome of the investigations, this did not mean that state protection was not forthcoming. In my view the fact that the police were not able to solve the crimes does not necessarily mean that they did not try to do so. While state protection may not have been completely effective in the circumstances of the applicants' case, as the police were not able to solve the crimes,

this does not mean it was not adequate, as the police did investigate and respond to all of the allegations. The Board's decision was reasonably open to it.

[19] I do question the Board's very general statement that the applicants did not do all that was reasonably open to them to avail themselves of state protection, given that the Board does not actually discuss what other avenues the applicants could have taken. While the respondent noted certain failures on the part of the applicants (not following up with the police regarding the other witness of the motorcycle accident, not mentioning the MLT in the complaints) the Board did not mention any of these. However, in my view this does not alter the outcome, namely that adequate state protection was available to the applicants, though they may not have been satisfied with it.

\* \* \* \* \*

[20] For the above-mentioned reasons, the application for judicial review is dismissed. I agree with counsel for the parties that this is not a matter for certification.

**JUDGMENT**

The application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”) determining that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act is dismissed.

“Yvon Pinard”

---

Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-5848-10

**STYLE OF CAUSE:** SERGIO SANTIAGO RAYMOND SALVAGNO,  
HAYDEE CAROLINA GIMENEZ BENTANCOUR,  
MICHELLE RAYMOND GIMENEZ, AGUSTIN DAMIAN  
RAYMOND GIMENEZ v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 27, 2011

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

**DATED:** May 26, 2011

**APPEARANCES:**

Mr. Daniel M. Fine FOR THE APPLICANTS

Ms. Prathima Prashad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Daniel M. Fine FOR THE APPLICANTS  
Toronto, Ontario

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