

Federal Court



Cour fédérale

**Date: 20110720**

**Docket: IMM-474-11**

**Citation: 2011 FC 907**

**Toronto, Ontario, July 20, 2011**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**LUIS ALFREDO OLIVERA LECHUGA  
MARIA DEL ROSARIO GOMEZ  
HERNANDEZ  
MICHELLE AYLIN OLIVERA GOMEZ**

**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 Refugee Protection Division dated December 13, 2010 wherein the Applicants' claim for refugee protection was rejected. For the reasons that follow I am dismissing this application.

[2] The principal Applicant is an adult male citizen of Mexico the other Applicants are his wife and minor aged daughter. In brief they fear persecution and risk of harm from a person

identified as Alma and a group known as La Familia. The principal Applicant borrowed money from Alma presumably to assist in maintaining his small business. He could not repay. Alma was a loan shark who pursued the principal Applicant and his family. At one point the principal Applicant says he was beaten. At another point it is alleged that an attempt was made to abduct his daughter. The principal Applicant and his family moved to different locations in Mexico and made certain complaints to the police. They fled to Canada and sought refugee protection.

[3] The decision of the Member turns on two issues, the adequacy of state protection in Mexico and the efforts made by the Applicants to avail themselves of that protection. On the evidence presented as to state protection the Member concluded:

*Mexico is making serious efforts to address the problem of criminality, and that the police are both willing and able to protect victims. Police corruption and deficiencies, although existing and noted by the Board, are not systemic. I am of the view in canvassing the documentary evidence, that, as a whole, the issues of corruption and deficiencies are being addressed by the state of Mexico.*

[4] As to efforts made to seek police protection the Member concluded:

*In this particular case, there is no information to suggest that police were not making genuine and earnest efforts to investigate the claimant's allegations and apprehend the claimant's perpetrator. The claimant's choice to leave Mexico may have resulted in the investigation being delayed or abandoned, given that he, as the victim, was a key witness.*

...

*I reject a lack of state protection as Maria did call the police but did not remain to give a report and did not make any further attempts to follow up with the police. Therefore, I conclude Maria has demonstrated only the merest attempt to avail herself of the protection of the police. Without further contact with the police, the police would be helpless in rendering support. Maria's actions do not support a contention of a lack of state protection.*

[5] In summarizing these conclusions the Member wrote:

*[22] Therefore, having considered the totality of the evidence, I find that the claimant, in the circumstances of this case, has failed to rebut the presumption of state protection with clear and convincing evidence and that the claimant did not take all reasonable steps in the circumstances to avail himself of that protection before making a claim for refugee protection. Therefore, I am not persuaded that the state of Mexico would not be reasonably forthcoming with state protection, should the claimant seek it.*

[6] Applicants' Counsel raised four issues in her Memorandum and at the hearing, the first three of which are directed to the adequacy of state protection, the fourth is directed to whether the Applicants' made proper efforts to seek such protection:

**15. The Board Member made at least four errors:**

**Issue 1:** *She erroneously characterized the test for state protection as 'adequate,' rather than 'effective,' as mandated by the Supreme Court in Ward;*

**Issue 2:** *She did not acknowledge a diminished presumption of state protection for Mexico as merely a developing democracy;*

**Issue 3:** *She ignored relevant and directly contradictory evidence on the availability of state protection; and*

**Issue 4:** *Her assessment of the claimants' efforts to obtain state protection was unreasonable.*

[7] With respect to the adequacy of state protection the Applicants bear the burden of rebutting the presumption of state protection by clear and convincing evidence on the balance of probabilities (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraph 30). Each case concerning the adequacy of state protection must be examined

individually and on its own merits (*Soto v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1183 at paragraph 30).

[8] Here the Member concluded that there was adequate state protection available to the Applicants in Mexico. This finding is different from other decisions of the Board where a Member found only that Mexico was improving or making efforts. In the present case there was a finding that there was adequate protection. Applicants' Counsel pointed out parts of the evidence that would lead to a contrary conclusion. Respondent's Counsel pointed to evidence that supported that conclusion. The Member acknowledged that there was evidence on both sides of the issue. I am not prepared to reweigh that evidence. I have not been persuaded that the Member made a palpable and overriding error in reaching the conclusion that there was adequate state protection.

[9] As to whether the Applicants made sufficient efforts to avail themselves of state protection, the findings of the Member are not unreasonable (see e.g. *Canada (Minister of Citizenship and Immigration) v Carillo*, 2008 FCA at paragraphs 31 to 36). This Court will not interfere with those findings.

[10] No party required certification.

**JUDGMENT**

**FOR THE REASONS PROVIDED;**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;
2. No question for certification;
3. No order as to costs.

**“Roger T. Hughes”**

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-474-11

**STYLE OF CAUSE:** LUIS ALFREDO OLIVERA LECHUGA, MARIA DEL  
ROSARIO GOMEZ HERNANDEZ, MICHELLE AYLIN  
OLIVERA GOMEZ v. THE MINISTER OF  
CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** July 19, 2011

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

**DATED:** July 20, 2011

**APPEARANCES:**

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