

Federal Court



Cour fédérale

**Date: 20111026**

**Docket: IMM-1034-11**

**Citation: 2011 FC 1224**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, October 26, 2011**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**ALMA ELIZABETH MIRANDA ORDUNO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board (Board) dated January 21, 2011, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act). In that decision, the Board rejected the refugee claim of the applicant, a Mexican citizen, on the ground that she could have availed herself of the protection of the Mexican state.

## **THE FACTS**

[2] The applicant is alleging the following facts in support of her application.

[3] In November 2006, she received harassing telephone calls from a secret admirer. This person also sent her gifts and messages. She tried at that time to report this secret admirer to local police authorities, but they refused to believe her.

[4] Things calmed down for some time. She then agreed to go out with a co-worker, Mr. Rios. The next day, her admirer called her to tell her that any man who took an interest in her would end up like her co-worker, Mr. Rios, hospitalized for being beaten after their date. The description that Mr. Rios gave her was of the applicant's maternal uncle. The applicant tried to persuade Mr. Rios to file a complaint against her uncle, but he refused to do so, thinking that it was useless without a witness.

[5] The harassment continued unabated. The applicant confided in her mother, but she did not believe her.

[6] Fearing for her life, she left her country on March 1, 2008, and claimed refugee protection upon arrival in Canada.

[7] The Board does not doubt the applicant's allegations with respect to the identity of her admirer despite her inability to explain why she had not recognized the voice of her uncle during the

telephone harassment. The Board recognized that the applicant had suffered serious physical and emotional trauma at the hands of her uncle.

[8] At the hearing, the Board asked her to explain why she had not reported her uncle to the police. She replied that because the police force had not believed her when she complained the first time, she did not think they would help her subsequently. Furthermore, she feared more harm by her uncle if she reported him.

[9] The Board noted that the state protection test is objective and that clear and convincing evidence is required to rebut the presumption of protection. It considered the applicant's testimony and the documentary evidence, but found that adequate state protection would be available to the applicant upon her return to Mexico. Because the presumption of state protection had not been rebutted, the Board found that she is not a "Convention refugee" or a "person in need of protection".

[10] The applicant submits that the Board improperly assessed the evidence regarding the state protection available in Mexico. In particular, she alleges that the Board did not consider her explanations as to why she did not seek protection from the police force. She claims that, after the police force made fun of her the first time, it was reasonable for her to not want to return.

[11] The respondent contends that the applicant did not exhaust all of the recourses available to her before seeking international protection. I share this opinion.

[12] Even though the applicant told the police about the harassment she was a victim of in 2007 without getting any assistance, I note that she never told them the complete story or her suspicions with respect to her admirer's identity.

[13] As in *Gamash v. Canada (Minister of Employment and Immigration)*, 93 F.T.R. 242, the police cannot be faulted for doing nothing because they did not have the necessary information to proceed with an investigation or make an arrest.

[14] In this case, given the burden on her, a bad experience with the local police is not sufficient to demonstrate that state protection was not available. Furthermore, as I indicated in *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 855, it is insufficient for applicants to rely solely on documentary evidence of flaws in the judicial system if they have failed to avail themselves of available state protection.

[15] For these reasons, the application is dismissed. No question for certification was proposed and none will be certified.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

The application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

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Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1034-11

**STYLE OF CAUSE:** ALMA ELIZABETH MIRANDA ORDUNO  
v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 26, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TREMBLAY-LAMER J.

**DATED:** October 26, 2011

**APPEARANCES:**

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Andrea Shahin FOR THE RESPONDENT

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