

Federal Court



Cour fédérale

Date: 20111026

Docket: IMM-1641-11

Citation: 2011 FC 1182

Ottawa, Ontario, this 26th day of October 2011

Before: The Honourable Mr. Justice Pinard

BETWEEN:

**Andres SILVA PENA
Aurora CARRILLO MENDEZ**

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 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 Andres Silva Pena and Aurora Carrillo Mendez (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] In 2007 and 2008, the applicants, citizens of Mexico, worked on an “adventure tourism” initiative in Guadalupe y Calvo, in the State of Chihuahua. In March 2009, they were invited by Mr. Pereda Lopez, President of Communal Land Commissariat, to attend a conference on the sale of wood to buyers.

[3] The lumbermen at the conference attempted to secure a lower price for cutting rights than they had previously paid. The applicants spoke out against this proposal and spoke in favour of the preservation of the wooded areas in order to advance eco-tourism rather than logging.

[4] The applicants allege that the following day, they were threatened by an unidentified man who may have had a gun. The applicants fled and went home to Jalcomulco, Veracruz. They received a call from Mr. Pereda Lopez implying that the lumbermen were looking for them. Later that week, they received three threatening text messages. These messages were received in various parts of Mexico, implying that the unidentified senders were aware of the applicants’ movements.

[5] The applicants believed that the police would not or could not help them. They fled to Canada in May 2009 and claimed refugee protection in August of that year.

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[6] The Board considered the applicants to have told their story “in a clear fashion”, though certain elements of their claim were implausible or overblown. The Board concluded that the

applicants came to Canada as a migration opportunity rather than as a result of perceived threats from lumbermen.

[7] The Board found that there was no nexus to a Convention ground. The supposed agents of persecution are lumbermen threatening the applicants because of the industry in which they worked.

[8] The determinative issue was state protection. The Board noted that the applicants did not inform any state agents or even Mr. Pereda Lopez about the threats. They could have contacted the Director of Rural Development (a supporter of the applicants' development ideas) or the Mayor of Guadalupe y Calvo.

[9] The Board concluded that it was unreasonable of the claimants, after being threatened once by one unidentified person and receiving three threatening text messages, not to speak to anyone, including the police, and to instead make a refugee claim in a foreign country. The Board also noted that the threats arose in an objectively small town in an isolated part of Mexico.

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[10] A finding that state protection exists for an applicant is determinative of both a section 96 and a section 97 claim. The respondent cites several relevant cases to the effect that Mexico is a democratic state and is therefore presumed to be able to protect its citizens. In *Navarro v. Minister of Citizenship and Immigration*, 2008 FC 358 at para 17, my colleague Justice Yves de Montigny

notes that the state “must at least be offered a real opportunity to intervene before one can conclude that it is unable to provide the protection required by one of its citizens”.

[11] The standard of review applicable to the Board’s finding on the question of state protection is one of reasonableness, according to Justice François Lemieux in *Mendoza v. Minister of Citizenship and Immigration*, 2010 FC 119 at paras 26-27. Therefore, the Board’s conclusions on this issue must fall within the “range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para 47).

[12] In the case at bar, the applicants never once approached the state for protection. Considering that the Board’s conclusion that the applicants have failed to offer any reasonable explanation as to why they did not approach the state was reasonable in light of the evidence before it, I find that the applicants have not met the onus of demonstrating that state protection would not have been reasonably forthcoming in their case.

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[13] As the issue of state protection is determinative in this matter, the application for judicial review is dismissed.

[14] The parties agree that this is not a matter for certification.

JUDGMENT

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

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1641-11

STYLE OF CAUSE: Andres SILVA PENA, Aurora CARRILLO MENDEZ v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 12, 2011

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

DATED: October 26, 2011

APPEARANCES:

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