Federal Court  Cour fédérale

Date: 20120104

Docket: IMM-3498-11

Citation: 2012 FC 10

Ottawa, Ontario, January 4, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

FRANCISCO GONZALEZ VENTURA,
ROSA MARIA FLORES CASTRO,
FABIOLA GONZALEZ FLORES

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 1 May 2011 (Decision), which

refused the Applicants' claim for protection as Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Principal Applicant, Francisco Gonzalez Ventura, is a citizen of Mexico. The secondary Applicants, his wife, Rosa Maria Flores Castro (Rosa Maria), and their daughter, Fabiola Gonzalez Flores (Fabiola) are also citizens of Mexico. The Principal Applicant and Rosa Maria also have three sons in Mexico. The Applicants arrived in Canada on 24 December 2008 and made their claim for protection on 17 April 2009.

[3] The Principal Applicant worked for Scotiabank as a security manager in Puebla, Mexico, from 1984 to 2005. He says that on 17 February 2005, he was called at his office by Roman Martinez (Martinez), the Commander of the Judicial Police at the time, who wanted to discuss something with him. Martinez told the Principal Applicant he would like to meet him outside the office. The Principal Applicant says he declined. As he left work that night, Martinez approached him and insisted on speaking to him about a personal favour. The Principal Applicant told Martinez he could not handle any matters outside his work. Martinez did not pursue it further, so the Principal Applicant went home and did not think about this conversation any more.

[4] The Principal Applicant says that in March 2005, his employer told him that he would be let go as of 1 April 2005 because of restructuring. The Principal Applicant says that, after his dismissal, he started his own security consulting business, which he ran until October 2008.

[5] In May 2008, a man named Jose Juan approached the Principal Applicant and said he was sent by Martinez. Jose Juan asked the Principal Applicant to give him Scotiabank's security information to help him and Martinez rob the bank. The Principal Applicant says he refused and Jose Juan asked him to think about it.

[6] The Principal Applicant says that Jose Juan contacted him three times in June 2008. During the third call, Jose Juan said that the Principal Applicant had to help them because they had his personal information including his family's address. Jose Juan told the Principal Applicant that all they needed was a copy of the keys to the armor-plated van's back door. He stressed that the Principal Applicant had nothing to worry about and would be rewarded with one million pesos for his role in the robbery. When the Principal Applicant refused, Jose Juan threatened to harm him and his family if he did not cooperate. Jose Juan said that Fabiola was under surveillance and would pay the consequences for his failure to cooperate.

[7] In an amendment to his PIF, the Principal Applicant wrote that he went to the Office of the Public Ministry after this phone call to file a complaint. He was told it would be difficult to file a complaint against Martinez and he would need to bribe the police to take any action. The Principal Applicant says that he was afraid the Ministry would tell Martinez that he had tried to file a complaint, and so he did not go to the police or back to the Ministry.

[8] The Principal Applicant and his family moved to the Federal District from their home in Puebla in July 2008. On one occasion, after they moved, the Principal Applicant noticed he was being followed by men in a Cavalier, which was the kind of car police officers drove. He says that he and his family returned to Puebla for a week in August 2008 to make arrangements to leave the country. The Applicants fled Mexico for Canada on 24 December 2008.

[9] The Principal Applicant says that he learned that someone robbed the Puebla Scotiabank on 26 February 2009. During the robbery, six million pesos were stolen. He says that this event confirmed his fears about the risk he faces from Martinez.

[10] The Applicants' claims were joined under subsection 49(1) of the *Refugee Protection Division Rules* SOR/2002-228 and heard together on 9 March 2011. The Secondary Applicants relied on the Principal Applicant's testimony and narrative, so their claims were determined on that basis. At the hearing, the Applicants, their counsel, and a translator were present. The RPD made its decision on 1 May 2011 and gave the Applicants notice on 6 May 2011.

DECISION UNDER REVIEW

[11] The RPD found that the Applicants had established their identities by the official documents they submitted and their oral testimony. It found that they are neither Convention refugees nor persons in need of protection. The Applicants are not Convention refugees under section 96 of the Act because the risk they alleged was a risk of crime; their fear has no nexus to a Convention ground. The RPD also found that the Applicants' story was not credible and that they had not rebutted the presumption of state protection, so they are not persons in need of protection under section 97 of the Act.

Credibility and Failure to Establish a Claim Under Subsection 97(1)

[12] The RPD noted the presumption that a claimant's sworn testimony is true unless there is a valid reason to doubt its veracity. It then found that the Principal Applicant had provided confusing and inconsistent evidence and it did not believe that events had occurred as the Principal Applicant

had described. Accordingly, it found that the Applicants had failed to establish their claim with credible and trustworthy evidence.

Evidence of Threats and Locations During Events

[13] The RPD found inconsistencies in the Principal Applicant's testimony about being followed after the family moved to the Federal District. He claimed that he and his family had moved to the Federal District in July 2008, but later said that cars had followed him between June and August 2008. The RPD found that the Principal Applicant's answers when he was confronted with this inconsistency were evasive and confusing. The RPD said it was reasonable to expect the Principal Applicant to be consistent in this aspect of his testimony because he had only lived in two places during that period. The confusion showed that his testimony was embellished. The RPD gave the Applicants the benefit of the doubt and accepted that the family had moved to the Federal District in 2008, even though they had not mentioned this in their PIFs.

Conduct and Subjective Fear

[14] The RPD noted that a lack of subjective fear is sufficient to deny a claim under section 96. The RPD also said that subjective fear is critical to a determination under section 97, because it goes to a claimant's credibility. Though a lack of subjective fear does not determine a claim under section 97, it is useful in assessing credibility. The RPD found that concerns about the Applicants' conduct, evidence and their lack of subjective fear undermined the totality of the evidence they had presented.

[15] The RPD found that the Applicants' return to Puebla in August 2008 was inconsistent with the conduct of people who have a subjective fear. The RPD did not believe that the Applicants would risk their lives to return to a city where they were in danger in order to complete a business transaction. It would have been reasonable to expect one of the Principal Applicant's sons or partners to complete this business, so that the Applicants would not need to return to the city where they were in danger, if they actually had subjective fear.

[16] The RPD also noted that Fabiola (whom the RPD confuses with Rosa Maria in this part of the Decision) continued to study at the university, at the same time the Principal Applicant had testified that the criminals knew where she was studying and had threatened her. The fact that she continued to go to university in Puebla, where the Applicants were threatened, was inconsistent with subjective fear.

Delay in Departure and Delay in Claiming

[17] The RPD also found that the Applicants' delay in departure undermined their subjective fear. The Principal Applicant testified that his daughter wanted to finish school and there were no more threats after August 2008; the Applicants did not leave Mexico until December 2008. The RPD found that the date of departure was one of convenience rather than of necessity.

[18] The RPD also noted that the Applicants entered Canada as visitors and did not claim protection until four months after they arrived in Canada. It found that it was inconsistent for the Principal Applicant to claim that they fled Mexico because of threats at the same time as he said that he did not think they needed to claim protection until after the Puebla Scotiabank was robbed in

February 2009. The RPD found that someone who is truly fearful can be expected to claim protection at the first opportunity, and delay in claiming is evidence of a lack of subjective fear.

[19] The RPD found that the Applicants had not established their claim for protection on the basis of credible and trustworthy evidence. Although this was sufficient to dispose of their claim, the RPD also examined the availability of state protection.

State Protection

[20] The RPD found that the Applicants had not rebutted the presumption of state protection with clear and convincing evidence. The only attempt any of the Applicants made to seek protection was a complaint the Principal Applicant said he made to the Public Ministry in Puebla. The Principal Applicant only made this allegation in an amended PIF he filed on 23 February 2011, two weeks before the hearing. The RPD found that the Principal Applicant had not approached anyone for assistance after the Applicants moved to the Federal District. He also did not report to his employer that he was under pressure to assist in a robbery. At the hearing, he said reporting to his colleagues would not be prudent. The RPD said that, in *G.D.C.P. v Canada (Minister of Citizenship and Immigration)* 2002 FCT 989, Justice Elizabeth Heneghan held that claimants must take all reasonable steps to seek protection before they can successfully claim protection in Canada. The Applicants in this case did not do so, so their claim could not succeed. The RPD also noted that in *Judge v Canada (Minister of Citizenship and Immigration)* 2004 FC 1089, Justice Judith Snider said that claimants cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.

[21] The RPD also considered the documentary evidence on state protection in Mexico. It acknowledged that the evidence is mixed, and that there was evidence of inefficiency, bribery and corruption in the Mexican security forces at all levels. However, the RPD weighed this against what it found was persuasive evidence that Mexico acknowledges its past problems and is making serious efforts to address them.

[22] The RPD found that the preponderance of the evidence suggested that, although not perfect, there is adequate state protection in Mexico for victims of crime. Among other things, the RPD noted the following evidence in support of its conclusion:

a. Criminal penalties for official corruption, and evidence of indictments under those provisions;

b. Reforms to the security forces, including a new police force to replace the notoriously corrupt Federal Judicial Police;

c. The creation of new agencies to combat crime, drug cartels and organized crime;

d. New procedures for the security forces, including drug testing, education, and sanctions for inefficiency and corruption.

[23] The RPD acknowledged the evidence that corruption remained a problem and that impunity was pervasive and contributed to the reluctance of victims to file complaints. However, Mexico had made substantial investments in improving public security, had replaced high-ranking officers to reduce corruption, and had adopted legislation to reform the police forces. The RPD also noted examples of the arrest or resignation of corrupt officials and that the administration of President Felipe Calderon had made significant investments in security and justice.

[24] The RPD noted that the Applicants had adduced evidence of the problems of corruption and impunity in the police forces, including a report by Judith Hellman – a professor of Political Science

at York University – entitled *Report on Human Rights in Mexico* and dated 2007 (Hellman Report), but found that the RPD package contained more recent information on the current situation in Mexico.

[25] The RPD again acknowledged the inconsistencies in the evidence, but found that the totality of the evidence that the Applicants had adduced did not rebut the presumption of state protection. Though the protection available in Mexico may not be perfect, this was not a basis on which the RPD could conclude that state protection is not available.

STATUTORY PROVISIONS

[26] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries;	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
[…]	[…]
Person in Need of Protection	**Personne à protéger**
97. (1) A person in need of	**97.** (1) A qualité de personne à

protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[27] The only issue the Applicants raise is whether the RPD's finding that state protection was available in Mexico was reasonable.

STANDARD OF REVIEW

[28] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[29] In *Carillo v Canada (Minister of Citizenship and Immigration)* 2008 FCA 94, the Federal Court of Appeal held at paragraph 36 that the standard of review on a state protection finding is reasonableness. This approach was followed by Justice Leonard Mandamin in *Lozado v Canada (Minister of Citizenship and Immigration)* 2008 FC 397, at paragraph 17. Further, in *Chaves v Canada (Minister of Citizenship and Immigration)* 2005 FC 193, Justice Danièle Tremblay-Lamer held at paragraph that the standard of review on a state protection finding is reasonableness. The standard of review on the sole issue in this application is reasonableness.

[30] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicants

[31] The Applicants argue that the RPD's state protection finding was unreasonable because it misconstrued the evidence and was based on an erroneous finding that they did not make sufficient efforts to seek state protection.

The Board Misconstrued the Evidence on State Protection

[32] The Applicants note that the leading case on state protection is *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 which held that when a claimant is persecuted by non-state agents, the claimant must establish that the state is unable or unwilling to protect. The Applicants also note that claimants are obligated to seek state protection unless it is objectively reasonable not to do so. They say that, in some cases, a state may be able to protect citizens but it may be reasonable for claimants not to seek protection.

[33] The Applicants rely on *Villicana v Canada (Minister of Citizenship and Immigration)* 2009 FC 1205, at paragraphs 69 to 71, where I discussed the adequacy of state protection in Mexico:

> In the case of a fully developed democracy, these excuses for not approaching the authorities would not have availed the Applicants, but Mexico has problems that require a fuller assessment and a contextual approach to state protection. The state of Mexico certainly wants to protect its citizens, but is it able to protect them?
>
> In the present case, the Applicants placed before the Board reputable evidence not only that the Mexican authorities cannot protect ordinary Mexicans who lack wealth and influence, but that it is those very authorities (the police, the judiciary and the government) who pose the greatest danger to the normal citizen.
>
> This evidence suggests that all police forces in Mexico are riddled with corruption and are operating outside the law, that the National Human Rights Commission acknowledges that the very institutions who are supposedly there to protect ordinary Mexicans are the ones most likely to violate their human rights, and that the wealthy and the well-connected operate outside the law with impunity in a context where the police and government are infested by drug traffickers and other organized criminals.

[34] The Applicants say that *Villicana* teaches that the RPD must conduct a fuller assessment of state protection in claims against Mexico. The RPD must also consider whether the state's genuine intention to protect translates into the availability of adequate protection in practice.

[35] The RPD's analysis of the evidence in this case was selective and self-serving. The Applicants say that there was compelling evidence that corruption is rampant in the Mexican police forces and Mexicans fear the police. They point to:

a. The Hellman Report which describes the pervasiveness of corruption in the police forces;

b. A 2007 Amnesty International report on human rights violations and impunity in the security and criminal justice systems in Mexico;

c. A 2009 report from the Miguel Agustín Pro Juárez Human Rights Center on Mexico's violation of civil and political rights, which discusses the gap between existing laws and their enforcement, and the pervasive impunity of the police forces;

d. A 2008 report from the Miguel Agustín Pro Juárez Human Rights Center that discusses the escalating violence and crime rates in Mexico;

e. A 2009 report from Human Rights Watch, on Mexico, which states that the criminal justice system routinely fails to provide justice to victims of crime.

[36] This evidence shows that Mexico's efforts have not translated into adequate protection. Although the RPD's findings are entitled to deference, its findings based on the evidence in this case were unreasonable and require the Court's intervention.

[37] The Applicants rely on *Gilvaja v Canada (Minister of Citizenship and Immigration)* 2009 FC 598, to say that it was an error for the RPD to limit its analysis to the existence of initiatives and efforts, rather than considering whether they have had a real impact on protection in practice. Justice John O'Keefe had this to say at paragraph 39 in *Gilvaja*:

> Having laws on the books does not equate with actual, experienced state protection for citizens. It has been held that when examining whether a state is making serious efforts to protect its citizens, it is at the operational level that protection must be evaluated […]

[38] The Applicants also rely on *Lopez v Canada (Minister of Citizenship and Immigration)* 2010 FC 1176 where Justice Roger Hughes quoted the following passage from paragraph 10 of Justice Michel Beaudry's decision in *Bautista v Canada (Minister of Citizenship and Immigration)*, 2010 FC 126:

> I believe that the Board erred on two grounds in coming to its finding. First of all, it weighed the evidence of criticisms of the effectiveness of the legislation against evidence on the efforts made to address the problems of domestic violence. This is not enough to ground a finding of state protection; regard must be given to what is actually happening and not what the state is endeavoring to put in place […]

[39] The Applicants say that the RPD committed the same error in this case, referring repeatedly to the efforts of the Mexican government to protect its citizens. The test for state protection is not whether the state is making efforts to provide protection, but whether the protection offered is adequate.

[40] In further support of their position, the Applicants point to *Park v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1269 where Justice O'Keefe wrote at paragraphs 56 and 57:

> This Court has held that democracy and legislation alone does not ensure adequate state protection and the Board is required to consider any practical or operational inadequacies of state protection (see *Zaatreh v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 211 at paragraph 55; *Jabbour v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 831, 83 Imm.L.R. (3d) 219 at paragraph 42). As Mr. Justice Yves de Montingy [*sic*] held in *Franklyn v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1249 at paragraph 24:
>
> > . . . the mere fact that the government took steps to eradicate the problem of domestic violence does not mean that the fate of battered women has improved.
>
> The applicant pointed to a significant amount of documentary evidence before the Board which addressed the actual response and conduct of the police in South Korea. This evidence discussed a lack of intervention by police in domestic violence due to the belief that it was a family problem, it noted that police often blame victims and expose them to physical danger, it mentioned the rarity of men being taken into custody or charged with domestic violence, as well as the lack of understanding and awareness in the police of the serious nature of domestic violence. This evidence on the practical reality of state protection in South Korea, which emanated from a variety of sources, was not addressed by the Board. This amounted to a reviewable error.

[41] In this case, there was compelling contradictory evidence that state protection was inadequate for people like the Applicants. They say that the following passage from *Lopez*, above, at paragraph 9, is applicable to their case:

> As to the reasonableness of the findings, the evidence is overwhelming in the present case that Mexico has failed to provide adequate protection. The evidence shows ineptitude, ineffectiveness and corruption in the state agencies that the Member suggested could offer protection.

[42] The RPD's analysis was superficial and contained no meaningful consideration of protection at the operational level, so the Decision must be quashed.

The Board Erred by Finding that the Applicants did not Make Sufficient Efforts to Seek Protection

[43] The RPD also made an unreasonable finding on state protection when it failed to consider the fact that the agent of persecution was a former Commander of the Judicial Police. The Applicants also say that the RPD did not consider that, when the Principal Applicant approached the authorities, they asked for a bribe, and he was afraid the agent of persecution would find out he had tried to file a report.

[44] In light of these circumstances, it was unreasonable for the RPD to conclude that they made insufficient efforts to seek protection.

The Respondent

[45] The Respondent says that the Applicants failed to establish their claim based on credible and trustworthy evidence. Even if their allegations were accepted, they failed to rebut the presumption of state protection, which is fatal to their claim. The Applicants have only challenged the RPD's state protection findings, which is an inadequate basis on which to challenge the RPD's Decision,

since the RPD found their testimony was not credible. The Respondent also says that the RPD's state protection analysis was reasonable, so there is no basis for this Court's intervention.

Credibility Findings are Determinative

[46] The determinative issue in the Applicants' claim was credibility. The RPD found their story lacked credibility because of inconsistencies, contradictions and implausiblities. It was open to the RPD to reject the claims on this basis. See *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (FCA) at paragraph 244.

[47] In clear and unmistakeable terms, the RPD gave extensive reasons for finding the Applicants to be lacking in credibility. The RPD noted the following unresolved concerns about the Principal Applicant's evidence:

a. His testimony regarding the timing of the family's move from Puebla to the Federal District, and when he was followed by the Cavalier;

b. The fact that the family returned to Puebla to complete a business transaction, despite claiming they had to flee for their safety;

c. The fact that Fabiola continued to attend university, despite the Principal Applicant's claim that she was directly threatened and the criminals knew where she was studying;

d. The Applicants' delay in fleeing Mexico;

e. The Applicants' delay in claiming refugee protection once they arrived in Canada;

f. The Principal Applicant's inconsistent, incoherent and evasive testimony.

[48] The Applicants have not challenged any of these findings, so they must be presumed to stand. The Respondent relies on *Cienfuegos v Canada (Minister of Citizenship and Immigration)*,

2009 FC 1262 at paragraphs 25 to 26 for this proposition. Following *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paragraph 29, the Respondent says that, where a claimant is found not to be credible, country documents alone are insufficient to uphold the claim.

[49] The RPD's findings on state protection were clearly in the alternative, so they do not provide a sufficient basis to impugn the Decision. The application must be dismissed on this basis alone.

Applicants Failed to Rebut the Presumption of State Protection

[50] Even if the Court were to review the RPD's state protection findings, those findings were reasonable. The RPD did not accept the Principal Applicant's testimony, but rather found that, even if the testimony were true, the Applicants had not established that state protection was inadequate.

[51] The onus was on the Applicants to demonstrate with clear and convincing evidence that the state was unwilling or unable to protect them and they failed to do. The Respondent notes that a claimant is expected to approach the state for protection where it would be reasonably forthcoming (see *Ward*, above, at pages 725, 709, and 724). The RPD reasonably found that the Applicants had not presented clear and convincing evidence to rebut the presumption of state protection.

[52] The RPD acknowledged Mexico's problems with corruption, so it did not ignore the evidence before it going to the adequacy of state protection. There was evidence before the RPD of measures to address these problems which it weighed and reasonably concluded that the Applicants had failed to discharge their burden of showing that state protection was inadequate.

[53] The RPD's analysis included consideration of protection at the operational level. In addition to legislative changes, the RPD considered the improved operations of police forces and public agencies. The Respondent notes that the Court has repeatedly held that the fact that a state is not always successful at protecting citizens does not rebut the presumption of state protection. (see *Villafranca*, above.)

[54] The Respondent further says that numerous avenues of recourse were available to the Applicants. The RPD reasonably found that the Applicants' efforts to seek protection were insufficient to show that protection would not be reasonably forthcoming. Local failures to provide protection are insufficient to demonstrate an absence of state protection. The Applicants' arguments in this case amount to nothing more than a disagreement with the weight the RPD assigned to the evidence. It is not open to the Court to re-weigh the evidence and reach a different conclusion; the RPD's findings were reasonably open to it, so there is no basis for this Court to intervene.

ANALYSIS

[55] The Applicants have chosen to impugn the Decision from the perspective of the RPD's state protection analysis. They raise arguments that have been raised before this Court on many occasions:

1. The RPD committed a reviewable error by conducting a self-serving reading of the documentary evidence and by preferring evidence supporting its pre-conceived review of state protection in Mexico over compelling contradictory evidence;
2. The RPD did not have regard to what is actually happening in Mexico and relied instead on what the state is endeavouring to put in place.

[56] The Decision, however, was based upon two determinative issues and the Applicants have left out of account crucial findings of the RPD that impact the state protection analysis.

[57] Most importantly, the RPD did not believe that the Applicants were in danger from Martinez, and this is the only risk that the Applicants alleged. The RPD just did not believe that the Applicants had been threatened by Martinez, or that they faced a future risk from him. The RPD gave full reasons as to why it did not believe the Applicants were under threat from Martinez. The Applicants do not challenge these findings.

[58] What they do say is that the RPD's state protection analysis reveals that is was pre-disposed to find adequate state protection in Mexico which tainted its credibility analysis.

[59] There is simply no evidence to support this argument. The Decision shows that credibility was determinative and the negative findings in this regard were based upon solid evidence and full and clear reasoning. The Applicants do not challenge any of the specific reasons or grounds related to the negative credibility findings and there is no evidence that the state protection analysis clouded or tainted the RPD's approach to credibility.

[60] As Justice Michel Shore pointed out in *Cienfuegos*, above, at paragraphs 24 to 26:

> In fact, the applicants disputed only one of the Board's negative credibility findings (Applicants' Record (AR) at pp. 19-20, para. 6-12).
>
> The negative credibility finding is determinative *per se*, and the failure to prove that it is unreasonable is sufficient to defeat this application (*Salim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592, 144 A.C.W.S. (3d) at para. 31; *Chan v. Canada (Minister of Citizenship and Immigration*) [1995] 3 S.C.R. 593, 58 A.C.W.S. (3d) 287, at para. 147).

> The findings that were not challenged must be presumed to be true and constitute a sufficient basis for justifying the dismissal of this application for judicial review.

[61] Justice Maurice Lagacé addressed a very similar situation to the present in *Ortiz v Canada (Minister of Citizenship and Immigration)* 2008 FC 1326 at paragraph 22:

> The Board made the alternative finding that the applicants did not rebut the presumption of Mexican state protection. Since it did not believe the applicants' account, and therefore found that they were neither refugees nor persons in need for protection, it was superfluous and unnecessary for the Board to address the presumption of protection by their government, which they had not rebutted. However, the Board did not err simply by ruling on this point.

[62] As these authorities show, the negative credibility finding in the present case was sufficient to dispose of the claim. Even if I were to accept the Applicants' position on the unreasonableness or incorrectness of the state protection analysis, this would not vitiate the Decision. Hence, there is no point in dealing with the state protection issue.

[63] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3498-11
STYLE OF CAUSE:	**FRANCISCO GONZALEZ VENTURA, ROSA MARIA FLORES CASTRO, FABIOLA GONZALEZ FLORES** - and - **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
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