

Federal Court



Cour fédérale

Date: 20121127

Docket: IMM-9124-11

Citation: 2012 FC 1378

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 27, 2012

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

**BASILIO CARREON CORTES, CLAUDIA
ANGELICA RODRIGUEZ LOPEZ, DENISSE
CARREON RODRIGUEZ and JOSELYN
CARREON RODRIGUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review filed by the Cortes family, all citizens of Mexico, of the decision by the Refugee Protection Division (panel) dated October 27, 2011, that the Cortes

family are not Convention refugees or persons in need of protection. The panel rejected the refugee claim on the ground that the risk Mr. Cortes would face is not personalized but generalized.

[2] The panel found that the applicants are credible and trustworthy witnesses. The panel found that the principal applicant, Basilio Cortes, testified directly without trying to dodge the questions asked, and that the applicants submitted many pieces of documentary evidence in support of their claim.

II. The facts

[3] The applicants fear a man named Eduardo Garcia. He sought, on June 6, 2007, the cooperation of Basilio Cortes, a sales manager for the company Muna Automotriz, in the purchase of three cars a week using false credit cards.

[4] Mr. Cortes refused to cooperate and told Eduardo Garcia that he had informed his boss and that the police would be notified if he insisted. On August 6, 2007, he was kidnapped and beaten by Eduardo Garcia, who threatened to kill him if he did not go along with his plan and to retaliate against his spouse if he told the police. Released and fearing for his life, he left Mexico and arrived in Canada on October 2, 2007.

[5] However, Mr. Cortes returned to Mexico in November 2007 after his spouse informed him that his attacker had been arrested by the police. He resumed his work at Muna Automotriz.

[6] On April 8, 2008, Eduardo Garcia called out to him. He insulted him, called him a rat and told him that, because of him, he had spent a few months in prison. Again fearing for his life, he left Mexico on April 22, 2008, for Canada and claimed refugee protection upon his arrival.

Ms. Rodriguez Lopez and the children joined Mr. Cortes on July 19, 2008, after being threatened.

III. Panel's decision

[7] The panel found that the applicants were victims of the rampant criminality in Mexico and the courts have indicated numerous times that being a victim of a criminal act and experiencing fear of reprisals motivated by vengeance are not equivalent to a ground of persecution within the meaning of section 96 of the IRPA. Since the state was not involved . . . [the panel was of the opinion that] the claims were reviewed under paragraph 97(1)(b) of the IRPA and that it must be determined whether the applicants' return to Mexico would subject them "personally" to the risks listed there.

[8] According to the documentary evidence submitted by the principal applicant, the panel was of the opinion that Mr. Garcia, who was suspected of making purchases using fake bank cards, was arrested by the police.

[9] The panel added the following:

They [the applicants] believed that their attacker was a member of an organized group with ties to the police and, because of the rampant impunity in Mexico, they were not certain that he would be arrested again. [Emphasis added]

Although their testimony was credible, their attacker's alleged ties to the police were pure conjecture. . . . [but] that they were plausible given the widespread criminal activity in Mexico.

[10] The panel continued its analysis and stated the following:

For a claim to be allowed under subparagraph 97(1)(b)(ii), the claimants must establish that the risk they face is different from the [translation] “generalized risk” faced by all or part of the Mexican population.

In this case, the panel is of the opinion that the claimants did not discharge their burden of proof in this regard.

The Federal Court has referred to the difficulty of establishing what makes a “personalized risk” different from a “generalized risk” that could give rise to a claim under paragraph 97(1)(b) of the IRPA. Addressing the integral elements of that provision, the Court has stated that claimants must demonstrate the existence of a risk that is personal “but also that such risk ‘is not faced generally by other individuals in or from that country.’”

[Emphasis added]

[11] The panel cited *Osman José Paz Guifarro v Canada (Citizenship and Immigration)*, 2011 FC 182; and *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331 at paragraph 23 “confirmed by” the Federal Court of Appeal in *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31.

[12] Upon reading the documentary evidence, the panel found that insecurity is widespread in Mexico because of criminal activities tied to organized groups. Weapons and drug trafficking, money laundering, kidnappings for ransom and even the extortion of money are only a few examples of the crimes committed by criminal groups in Mexico. The panel found the following:

The documentary evidence highlighting the crime problems tied to criminal gangs states the following:

. . . Other sources also note their involvement in assaults, rapes, homicides, kidnappings and extortions (Desde la red 12 Mar. 2009), contraband and auto theft (*La Jornada*

18 Feb. 2005), and, in the north of the country, in gun smuggling (US Apr. 2006, 116).

[13] The panel cited documentary evidence on the Zetas in the two following paragraphs.

[14] The panel considered that, despite Mexico's crackdown on criminal organizations, the security situation in Mexico seems to have worsened.

[15] The panel found, after assessing the applicants' personal situation, that they failed to establish that they would personally face the risks listed in paragraph 97(1)(b) of the IRPA if they returned to Mexico.

[16] According to the panel, that finding was based on the following facts and jurisprudence:

At the hearing, the male claimant submitted Exhibit P-19, a Mexican newspaper showing that other criminals carried out plans similar to that of Eduardo Garcia, to obtain cars and resell them.

That newspaper article and the information in the package lead the panel to conclude that these are criminal activities that likely target a considerable number of car dealerships or any other type of business that sells or leases cars; therefore, they constitute a large enough subgroup that the risk faced by these merchants can be considered [translation] "prevalent or widespread" in Mexico and, accordingly, be described as a "generalized risk."[Relying on *Gil Osorio v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1459]

Recently, the Federal Court has stated that although a claimant may have been targeted personally, which is the situation in this case, the risk is still generalized insofar as the risk faced by the claimant is similar to that faced by other citizens. [Relying on *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772]

In this case, the male claimant was targeted because of the type of job he had and because his attacker, whose activities included buying cars with false credit cards, needed an accomplice. This collaboration

was necessary, no matter the identity of the person with the sales job. Exhibit P-19 demonstrates that in Mexico, other criminals have engaged in comparable activities with other merchants who operate similar businesses. [Emphasis added]

[17] The panel also cited the following excerpt by my colleague, Justice Tremblay-Lamer, in *Prophète*:

. . . While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence. [Emphasis added]

[18] Citing *Chavez Fraire v Canada (Minister of Citizenship and Immigration)*, 2011 FC 763, counsel for the applicants argued before the panel in this case that the risk the applicants would face should they return is different from the “generalized risk” faced by the Mexican population because their attacker will try to seek revenge because the applicant refused to cooperate with him and because he believes that he was imprisoned for a few months because of a report made by the applicant.

[19] That argument was not accepted by the panel for the following reasons:

In *Chavez Fraire*, the claimant feared a criminal group called “Los Zetas”. He alleged that the risk he faced was different because he had reported their criminal activities to the authorities and because this group would try to seek revenge. However, Justice Zinn stated: “That risk did not become personalized simply because the applicant fell into the group of those who were enemies of Los Zetas.” Justice Rennie made similar statements in *Flores Romero Damian*, in which a claimant sought to resist the extortion of which he was a victim by reporting it to the police. The fact of filing a complaint does not make him unique, or does not bring him within a unique or discreet subgroup of the general population.

As mentioned, the documentary evidence states that in Mexico, criminal groups engage in various types of crime and that the car market seems to be of particular interest to them. In this case, the

panel is of the opinion that this is a situation that is likely to recur frequently enough for the risk to be described as a “generalized risk.”
[Emphasis added]

IV. Parties’ submissions

(a) Applicants’ submissions

[20] They raise two points.

[21] The documentary evidence cited by the panel is not relevant for the purposes of this case because it talks about “auto theft” whereas the illegal transactions suggested by the principal applicant were completely different.

[22] The panel failed to analyze the applicant’s specific situation and, because his testimony was found to be credible, that is a reviewable error. He cites *Pineda v Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 501 and *Zacarias v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 144.

(b) Respondent’s submissions

[23] The introductory information in the respondent’s memorandum reads as follows:

[TRANSLATION]

Activities by criminal organizations in Mexico are a genuine scourge and affect its entire population.

[24] According to the respondent:

1. The panel found that the risk faced by the applicants was widespread.
2. In fact, a newspaper article submitted into evidence by the applicants shows that a considerable number of car dealerships are targeted by criminal groups (panel's reasons at paragraph 26).
3. The panel also analyzed the applicant's specific situation and noted that he was targeted because of his position. Consequently, the bandits' master plan did not target the applicant specifically, but rather his possible participation as a car salesperson (panel's reasons at paragraph 28).
4. As a result, because the vehicle market is coveted by criminal organizations, the applicant did not face a personalized risk, but a generalized risk faced by all car dealership employees.

[25] With respect to the standard of review, the respondent states that it is established that the standard of review that applies where the issue turns on a question of fact or a question of mixed fact and law is reasonableness and that, consequently, deference is owed to the panel's decision.

[26] According to the respondent:

1. The panel found that the risk alleged by the applicants is generalized and that they failed to establish that they faced a personalized risk.
2. It is settled law that, for someone to be considered a person in need of protection, the risk the person faces must be personalized, that is, a risk not generally faced by the country's other citizens (see *Prophète v Canada (Minister of Citizenship and*

Immigration), 2008 FC 331 (Justice Tremblay-Lamer); *Salem Ould v Canada (Minister of Citizenship and Immigration)*, 2007 FC 83 at paragraph 21 (Justice Beaudry); and *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 11 at paragraph 74 (Justice Russell).

3. This Court interpreted the term “generally”, set out in subparagraph 97(1)(b)(ii), as possibly including parts of the general population:

[26] Further, I can see nothing in s. 97(1)(b)(ii) that requires the Board to interpret “generally” as applying to all citizens. The word “generally” is commonly used to mean “prevalent” or “widespread”. Parliament deliberately chose to include the word “generally” in s. 97(1)(b)(ii), thereby leaving to the Board the issue of deciding whether a particular group meets the definition. Provided that its conclusion is reasonable, as it is here, I see no need to intervene. (*Osorio v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1459, at paragraph 26 (Justice Snider) and cited with approval in *Paz Guifarro v Canada (Citizenship and Immigration)*, 2011 FC 182 at paragraphs 24, 25 and 30 (Justice Crampton).)

4. That issue, as correctly noted by the panel, is highly factual and must be analyzed on the individual facts of each case (*Rodriguez v MCI*, above at paragraph 71).
5. In this case, the panel reasonably analyzed the documentary evidence before it and found that there is an abundance of organized criminal groups in Mexico that commit all sorts of crimes.
6. Namely, a newspaper article (exhibit P-19) submitted by the applicants shows that the scam used by Eduardo Garcia, that is, to illegally purchase cars from dealerships or comparable businesses and resell them, is a prevalent risk in Mexico.
7. Contrary to what the applicants allege in their memorandum, there is no doubt that the panel considered the testimonial evidence together with the documentary

evidence and the case law to carry out a personalized analysis of the risk the applicants faced.

8. Moreover, the mere fact that the principal applicant was kidnapped in the past does not establish that he was personally targeted under the IRPA. In that regard, the respondent points out *Acosta*, where this Court determined that a refugee claimant, a citizen of Honduras who worked in a bus collecting fares and was the subject of extortion by members of the Mara Salvatrucha gang, was subject to a generalized risk.
9. Furthermore, the applicant does not face a personalized risk because he resisted Eduardo Garcia and refused to participate in his crimes (*Chavez Fraire v Canada (Citizenship and Immigration)*, 2011 FC 763 at paragraph 10 (Justice Zinn); *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772 at paragraph 20 (Justice Rennie)).
10. The panel's analysis is personalized and is consistent with this Court's recent decisions that confirm that generalized risk is established on a case-by-case basis, and that, as long as the decision is within the bounds of reasonableness, this Court should not interfere, even if it would have reached a different conclusion (*Rodriguez*, above, at paragraph 88; *Trigueros Ayala v Canada (Minister of Citizenship and Immigration)*, 2012 FC 171 at paragraph 10 (Justice Hughes); *Camargo Vivero v Canada (Minister of Citizenship and Immigration)*, 2012 FC 138 at paragraphs 12 and 30 (Justice Rennie)).

11. In their memorandum, the applicants did not establish why the panel's decision is unreasonable. They merely cited excerpts from the case law without pointing out a parallel with this case. The intervention of this honourable Court is not warranted.

V. Analysis and conclusion

(a) The standard of review

[27] The parties agree that the applicable standard of review is reasonableness and that the heart of the panel's decision is the application of the established case law to the facts of this case.

[28] The Supreme Court of Canada, in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, at paragraph 47, explained the meaning of reasonableness:

47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. [Emphasis added]

(b) Conclusion

[29] This application for judicial review must be dismissed. According to the panel, the principal applicant was targeted by his agent of persecution because he was a car salesperson, a member of a significant subgroup. The result of that finding by the panel means that the risk the applicants face is

a generalized risk that makes section 97 inapplicable. What is more, the panel's analysis is consistent with this Court's current jurisprudence. The panel's decision is reasonable. This Court is not entitled to intervene.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question of general importance was proposed.

“François Lemieux”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9124-11

STYLE OF CAUSE: BASILIO CARREON CORTES, CLAUDIA
ANGELICA RODRIGUEZ LOPEZ, DENISSE
CARREON RODRIGUEZ and JOSELYN CARREON
RODRIGUEZ v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, QC

DATE OF HEARING: June 27, 2012

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

DATED: November 27, 2012

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