

Federal Court



Cour fédérale

**Date: 20130815**

**Docket: IMM-12032-12**

**Citation: 2013 FC 867**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Montréal, Quebec, August 15, 2013**

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

**BETWEEN:**

**ROBERTO CARLOS PULIDO BARRON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]. The applicant is challenging a decision by the Refugee Protection Division [RPD] rendered November 1, 2012, finding that he was not a refugee within the meaning of the Convention, nor a person in need of protection under section 97 of the IRPA.

## **Background**

[2] The applicant is from Mexico. He initially worked at his city's municipal office and then as a printer with restaurant and bar owners as his clients. His problems began during the summer of 2008 when he was summoned to the office of a client who owned a bar. The owner's security guards threatened him with a gun, pushed and searched him. A half hour later, the owner called him back to the office and the guards apologized, saying they thought he was someone else. Later that evening, the owner explained to the applicant that the men were members of the Zetas, and would have kidnapped him if he had not intervened. The next day, the applicant talked to the city's mayor about this and asked for his discretion. The applicant stated that the mayor nonetheless discussed it with the director of the police.

[3] Two days later, a car followed the applicant's. He fled and hit a pickup truck, lost consciousness and woke up at the Red Cross. A few days later, he saw the aggressors again and the owner of the bar informed him that the Zetas were asking for information about him. Since he did not know why he was targeted and believed his life was in danger, he fled the country.

[4] As reported by his father, later in November 2010, the Zetas blocked the street where the accident took place. They stole the applicant's father's vehicle; they threatened him if he complained to the authorities, indicating that they were waiting for the applicant to return to the country to settle things with him. They told him they knew that the director of the police was aware of the September 2008 incident.

### **Impugned decision**

[5] The RPD found that the harm feared did not result from a reason listed at section 96 of the IRPA, but rather from criminality. The panel therefore reviewed the risk from the perspective of section 97 of the IRPA. The panel did not question the applicant's credibility, but found that he did not establish that the risk was personal, as required under section 97, and not a general threat to the Mexican population. The panel considered the applicant's claim that his situation was different than a mere risk of revenge from the Zetas because he had discussed the case with the mayor and he assumed that the mayor had talked to the police, but the panel dismissed the argument that complaining could create a sufficiently personalized risk. As for the situation the applicant's father experienced, the panel found that the applicant's testimony showed that it was not unusual for the Zetas to block roads to force drivers to get out of their vehicles and steal from them.

### **Issue**

[6] The issue in question is:

Did the panel correctly assess the generalized risk?

### **Standard of review**

[7] I agree with the parties, that claim it is a matter of assessing the facts, and therefore the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

## Analysis

[8] The applicant's main argument is that the panel misinterpreted his testimony on the personalized risk, especially as described at paragraph 21 of the decision:

[TRANSLATION]

[21] The applicant claims that he does not know the reasons the Zetas are acting this way towards him, and states that his situation is different because the Zetas want revenge because he allegedly discussed his problem with the mayor of his city and he assumes that he mentioned it to the police. (Emphasis added by the applicant)

[9] The applicant, in response to the panel's questions and in his personal information form, indicated that he did not know the reasons he was targeted by the Zetas. He uses a letter from his father, Exhibit R-24, which indicates the threats made against his father, to explain why he was a target of the Zetas, because the mayor had spoken to the police about his attack.

[10] The relevant parts of his father's letter states:

[TRANSLATION]

They told me to tell my son that when he returned they would settle things with him because they knew that Roberto Carlos told Mayor Zeferino Salgado that they wanted to kidnap him at the bar Los Rieles and Fernando Garza had protected him and Salgado mentioned this to the director of the police; they knew this, and they also told me to let my son know they were clear about not telling anyone about this. (emphasis in the original)

[11] Since this was not established testimony, being hearsay and with no possibility for the respondent or the panel to obtain clarifications, I cannot understand why the panel described the father's evidence as a claim that he knew why he had been targeted.

[12] At any rate, I find that the basis of the panel decision can be found at paragraphs 22 and 23, where it finds that an information to the police leading to retaliation did not personalize the risk by making him a member of the group of enemies of the Zetas.

[TRANSLATION]

[22] The Federal Court ruled in a similar case in *Chavez Fraire*. In that case, the applicant feared "Los Zetas". He claimed that the risk to which he was exposed was different because he had informed authorities of their criminal activities and they wanted revenge. However, Zinn J. found that [TRANSLATION] "this risk did not become a personalized risk merely because the applicant was now a member of a group that represents the Zetas' enemies."

[23] Rennie J. made similar comments in *Flores Romero Damian*, when an applicant who resisted extortion informed the police. Making a complaint does not make him unique or a member of a unique or distinct sub-group of the general population.

[13] On this, the panel relied on *Chavez Fraire v Canada (Citizenship and Immigration)*, 2011 FC 763 and *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772 involving similar factual decisions. These are compatible with more recent decisions including *Cartes v Canada (Citizenship and Immigration)*, 2012 FC 1378, *Ayala v Canada (Minister of Citizenship and Immigration)*, 2012 FC 183, *Vivero v Canada (Minister of Citizenship and Immigration)*, 2012 FC 138.

[14] The applicant claimed that the Court should consider *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678, at para 50 :

[50] ...Carlos was shown to have joined the MS and he personally made a death threat to the applicant. The applicant's situation was thus fundamentally different from that of others, who might be generally at risk of recruitment, threats or even assault by the MS. The applicant, though, was found to directly and personally face the risk of death. This is a far cry from the risk of extortion, recruitment or assault and thus the applicant's risk is much more significant and

more direct than that faced by other men in El Salvador.  
Accordingly, the RPD's decision is both unreasonable and incorrect.

[15] In addition to the contradictory decisions, the panel found that Mr. Portillo had [TRANSLATION] "been identified personally as a target" which led the judge to question the panel's reasoning, finding that the applicant was only exposed to a generalized risk.

[2] ... With respect to section 97, the Board determined that the applicant "had been identified personally as a target" by the MS (decision at para 34) [emphasis added]; however, despite this finding, the RPD concluded that the risk the applicant faced was a generalized one since gang-related crime is rampant in El Salvador.

[16] The panel did not find that the applicant was personally targeted in this case.

### **Conclusion**

[17] There was no evidence before the court that the applicant had personally been targeted for retaliation aside from assumptions based on a sentence in a letter from his father describing a threat by the Zetas. This type of risk was found to be generalized and insufficient to support an application for protection. The panel's decision was supported by the authority and the evidence cannot be qualified as unreasonable.

**JUDGMENT**

**THE COURT ADJUDGES** that the application for judicial review is dismissed. No question was submitted for certification.

"Peter Annis"

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Judge

Certified true translation  
Elizabeth Tan, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-12032-12

**STYLE OF CAUSE:** ROBERTO CARLOS PULIDO BARRON  
AND MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 12, 2013

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

**DATE OF REASONS:** August 15, 2013

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