Federal Court  Cour fédérale

**Date: 20131216**

**Docket: IMM-12503-12**

**Citation: 2013 FC 1255**

**Ottawa, Ontario, December 16, 2013**

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

**BETWEEN:**

**NICOLAS JOSE SOSA**
**JUAN JOSE SOSA**
**ROBERTO JOSE SOSA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

### 1. Introduction

[1] This application is for judicial review of a decision made on October 17, 2012 by the Immigration and Refugee Board [the Board] finding that the three applicants were not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons which follow, the application is dismissed.

**2. The Facts**

[3] Mr Juan José Sosa, the principal applicant, was born in Mexico in 1982. He and his family are visible-minority indigenous Mixteco speakers from a small village He has seven brothers and two sisters, born between 1977 and 1994. He and three younger brothers, Roberto (born 1984), Miguel (born 1986), and Nicolas (born 1988), are the current applicants seeking refuge in Canada. However, Miguel has withdrawn his application.

[4] The principal applicant has six years of schooling. He worked on his father's farm until he left Mexico on August 10, 2000, a few weeks before his 18th birthday, and went to live with his oldest brother Florencio in the United States. He then worked as a painter in Florida for seven years. His co-applicant brothers were too young to follow him in 2000, but joined him in 2002, 2004, and 2007 as they were turning 18. His two sisters Maria and Rosa had already moved to the United States and were living there without papers, while his youngest brothers, Daniel (born 1990) and Adolfo (born 1994) still lived in their home village in Mexico at the time when he completed his Personal Information Form [PIF]. As the family had little money, the brothers' father borrowed money from his neighbours in order to pay for each of the brothers and sisters to travel to the United States.

[5] The brothers did not file refugee claims, but lived in the United States illegally. At one point Mr José consulted a lawyer about acquiring status, but was told that it would cost $10,000 and that it was not possible anyway unless one member of his family was a legal resident. In 2007,

learning from the Spanish-language television channel UniVision that illegals were being deported and that it was possible to claim refugee status in Canada, all four brothers traveled to Windsor, Ontario, arriving on September 21, 2007. They submitted a claim for asylum the same day. The principal applicant found work in Windsor as a mushroom packer. His PIF indicates that his oldest brothers Florencio (born 1977) and Celestino (born 1979) submitted applications for permanent residence on humanitarian and compassionate [H&C] grounds from Windsor, but that these were denied.

[6] The principal applicant and his brothers left Mexico because they were being persecuted by the neighbouring villages of San Juan Mixtepec and Santo Domingo Yosonama. Groups of 15-20 men were coming to their village, beating people, and stealing their possessions. The nearest police were in the city of Tlaxiaco, two hours away, and the police were not sympathetic to indigenous people, whom they could identify by their accents when speaking Spanish and from their shorter stature and darker skin. The police never helped them.

[7] The principal claimant moved to Mexico City in 1999 for about one month but did not find work or shelter and was mistreated and returned to his village. The applicants claimed that they were often barred from jobs because they were not allowed to do military service and employers would not hire them without military identification cards.

**3. Contested decision**

[8] In the reasons for decision, the Board first explained that the brothers' primary dialect was Mixteco and that only Juan and Roberto spoke Spanish. The Board member noted that counsel had

requested a Mixteco interpreter and that a Coordinating Member had written to advise that every effort had been made to secure one but none were available in Canada. A pre-hearing conference with a Mixteco interpreter from California had proved unsatisfactory. The Board member indicated to counsel that the hearing would proceed in English and Spanish and that she would allow any extra time necessary to ensure that the two claimants who did not speak Spanish understood the nature of the proceedings. As well, she had stated that the Spanish-speaking brothers could act as designated representatives for the other two and had instructed the claimants to raise their hands if at any time they did not understand. The Board member commented in the reasons for decision that at no time during the hearing had the claimants indicated that they did not understand.

[9] The Board member then reviewed the allegations of persecution and identified the determinative issues as failure to claim elsewhere, state protection, and internal flight alternative. She commented that Mr José had made no attempt between 2000 and 2007 to regularize his status in the US. Counsel had submitted that consideration should be given to the fact that the brothers were young when they entered the US, had little money and little education, and were aware of the problems faced by Hispanics in that country. The Board made some allowances for those points but nonetheless drew a negative inference, although not a determinative finding, from their failure to claim asylum in the US.

[10] The Board member next noted that she had considered whether a viable IFA existed in Mexico City. She used the two-pronged test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) of a place where there was no serious

possibility of persecution and which would be a reasonable place in all the circumstances to relocate to.

[11] She found that although the principal claimant had testified that he could not live safely anywhere in Mexico, being identifiable as an indigenous person from his speech and appearance, he had only attempted to live in Mexico City once, for a month, 13 years ago. This did not represent a concerted effort. She also found that while there was documentary evidence that indigenous people in Mexico had been subject to discrimination, there was no persuasive evidence before her that this amounted to persecution or that Mr José would be subject to persecution in Mexico City.

[12] The claimants had argued that they were not entitled to serve in the military and could not find work without military identification cards, but the Board member found that this was not demonstrated by the evidence before her. She took note of two press articles from 2008 indicating that a number of companies were requiring military cards as a condition of employment, but commented that these articles were not corroborated by any information in the Citizenship and Immigration Canada [CIC] country documentation. She concluded that the claimants had not met the burden of proving on a balance of probabilities that they were not allowed to serve, and that the evidence on military cards as a requirement for employment was inconclusive.

[13] The Board member then reviewed the evidence on discrimination against indigenous people in Mexico. She found that although there was discrimination, there were constitutional protections and organizations tasked with protecting their rights (such as the National Commission for the Development of Indigenous Peoples and the Office of the Public Prosecutor's Specialized Agency

for Indigenous Peoples). As well, indigenous migrants within the country were mainly attracted to large cities and especially Mexico City, where the population of indigenous language speakers was estimated in a 2007 report as 650,000 people, a significant community.

[14] She noted that the claimants had been able to travel to the US and were able to live and work there. She found that there were avenues for complaints if they moved to Mexico City and that she was not persuaded that they would not be able to find jobs in that city, or that any discrimination they might encounter would rise to the level of persecution. The second prong of the IFA test was therefore not met.

[15] Since the claimants had a viable IFA, the Board member found that they were not Convention refugees or persons in need of protection and rejected their claims.

**4. Issues**

[16] The issues are:

*a.* *Did the Board fail to observe the principles of natural justice by holding the hearing without a Mixteco interpreter?*

*b.* *Was the Board's IFA finding reasonable?*

**5. Standard of review**

[17] The issue of procedural fairness is reviewable on a standard of correctness; the Board's finding of an IFA is reviewable on a standard of reasonableness.

**6. Analysis**

*A. Did the Board fail to observe the principles of natural justice by holding the hearing without a Mixteco interpreter?*

[18] Having read the entire transcript, I find that all four of the applicants were able to participate adequately in the proceedings without undue difficulties. I am in agreement with the panel member that there was no indication of their lack of understanding the questions put to them or any suggestion that responsive answers were not provided. The applicants fully engaged in the proceedings, including responding appropriately to their counsel's many questions. Indeed, after the initial contention that they required a Mixteco interpreter, the interpreter who acted throughout the hearing remarked at the conclusion of the evidence as follows: "Maybe may I say, so perhaps the gentleman understand even better; we have concluded with you guys [applicants who claimed not to understand Spanish] talking with us." I share this view.

[19] No objections were raised after the fact at the hearing and no passages from the transcript have been identified that could be said to have adversely affected their claims for protection. See *Bankole v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1581 at para 21.

[20] In addition, the same conditions and same facts apply to all four applicants whose stories were by and large identical. Moreover, the panel member accepted their basic allegation that as indigenous persons they were at risk of being killed in their home region of Mexico where they do not have faith in the Mexican government to protect them. Accordingly, the determinative issue was whether there existed an IFA in Mexico City where the applicants could safely live without a serious possibility of being persecuted. The panel considered their limited evidence on this issue, which amounted mostly to a generalized contention that they cannot live anywhere in Mexico

because of their being identified as indigenous people and the problems that they had finding work without military service cards.

[21] I find no basis to criticize the panel member for proceeding with the Spanish interpreter. The CIC had made several efforts to locate a Mixteco interpreter without success and the matter had been delayed on this account, needlessly it turns out, for several years. Given that the applicants had indicated on their PIF that they could speak Spanish, it was certainly within the panel member's authority to evaluate for herself the capacity of the applicants to communicate in that language. Based on the transcript of the evidence, it turns out that the applicants were all sufficiently proficient in Spanish to appreciate and participate in the proceedings.

[22] I reject the applicants' submission of a failure of natural justice due to the absence of a Mixteco interpreter.

*B. Was the Board's IFA finding reasonable?*

[23] The applicants claim that the Board was severely insensitive to their background as indigenous people from a rural area, one of the poorest regions in Mexico, who would face cultural and financial difficulties in adjusting to living in a big city. I disagree. The Board acknowledged the existence of discrimination against indigenous people in Mexico and potentially in Mexico City. Nevertheless, it found the applicants could not meet the onus of showing that Mexico City was not a reasonable IFA and that they could not avail themselves of its protection.

[24] Similar claims were made by the applicants that the Board failed to address the issue of the difficulty of obtaining a military service card and employment difficulties resulting therefrom. This matter was canvassed and, in view of no documentation being provided by the applicants and in light of other documentary evidence of the serious efforts Mexico was making to address indigenous problems, it was rejected by the Board on the balance of probabilities.

[25] With respect to the IFA issue as a whole, the applicant failed to address the Board's findings that indigenous migrants within the country are mainly attracted to large cities, that in Mexico City the population of indigenous language speakers is estimated at 650,000, that since March 2007, indigenous people in Mexico have had access to the Office of the Public Prosecutor's Specialized Agency for Indigenous Peoples and that the government generally was showing respect for the desire by indigenous people to retain elements of their traditional culture. No evidence was provided to show that the applicants would find no remedy from the Office of the Public Prosecutor's Specialized Agency for Indigenous Peoples to any discrimination they might experience in Mexico City.

[26] Furthermore, the principal applicant had last sought work in Mexico City in 1999, 13 years ago, and only for one month. This did not suffice to overturn the Board's finding that an IFA was available in Mexico City.

**7. Conclusions**

[27] I am in agreement with the respondent that the IFA issue merely amounts to disagreement with the Board's assessment of the evidence and its application of the correct test for an IFA. The

decision was reasonable, being reached in a transparent and intelligible manner and falling within the range of possible, acceptable outcomes.

[28] In light of the above, the application is dismissed. No certified question has been posed and none is merited.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed.

"Peter Annis"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-12503-12 |
| **STYLE OF CAUSE:** | NICOLAS JOSE SOSA ET AL v<br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | DECEMBER 11, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | ANNIS J. |
| **DATED:** | DECEMBER 16, 2013 |

**APPEARANCES:**

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| Sybil Thompson | FOR THE RESPONDENT |

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