Date: 20071203

Docket: IMM-1948-07

Citation: 2007 FC 1242

Ottawa, Ontario, December 3, 2007

Present: The Honourable Mr. Justice Blais

BETWEEN:

JESUS MEJIA LAZCANO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated May 2, 2007, where the Board determined that that the applicant was not a person in need of protection within the meaning of paragraph 97(1)(*b*) of the *Immigration and Refugee Protection Act*, S.C., c. 27 (the Act).

RELEVANT FACTS

[2] Jesus Mejia Lazcano (the applicant) is a citizen of Mexico.

[3] He claims to have been persecuted through threats and assaults from his immediate superior, Raoul Garcia Trejo.

[4] On March 6, 2006, he received threatening phone calls advising him to return to work. He alleges that he sent a letter of resignation that very day.

[5] On March 15, 2006, he complained to the Attorney General of the Federal District, stating that he had been beaten for sending the above-mentioned letter.

[6] On April 28, 2006, he sent a letter to the Human Rights Commission referring to his complaint, asking the Commission to ensure his protection as well as that of his family.

[7] The applicant arrived in Canada on May 1, 2006, and applied for refugee protection.

IMPUGNED DECISION

[8] On May 2, 2007, the Board dismissed the applicant's refugee claim, determining that he was not a "person in need of protection" since he had failed in his obligation to seek the protection of the State. According to the Board, he had not established by clear and convincing evidence that the State of Mexico was unable or unwilling to protect him.

ISSUE

[9] Did the Board err in determining that the applicant had not satisfied his burden of establishing that the Mexican State could not adequately protect him?

RELEVANT LEGISLATIVE PROVISIONS

[10] Paragraph 97(1)(*b*) of the Act reads as follows:

> 97. (1) A person in need of 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
>
> …
>
> (*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
>
> (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
>
> (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,
>
> (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
>
> (iv) the risk is not caused by the inability of that

> 97. (1) A qualité de personne à 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:
>
> […]
>
> *b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:
>
> (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
>
> (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) 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

country to provide adequate health or medical care.	occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats

STANDARD OF REVIEW

[11] The appropriate standard of review in regard to the State's ability to protect a claimant was recently determined by my colleague, Mr. Justice Michel M.J. Shore, in *Prieto Velasco v. Canada (Citizenship and Immigration)*, 2007 FC 133, at paragraph 17. After pointing out that there are two lines of case law on the issue, one tending toward the standard of patent unreasonableness and the other toward reasonableness; he chose rather to follow the reasonableness standard as dictated by a pragmatic and functional analysis. As it is a mixed question of fact and law, the appropriate standard is that of reasonableness.

ANALYSIS

[12] Before embarking on a detailed analysis of the case at bar, it seems important to me to state that at the time of the hearing, the member read several passages from *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, explaining in detail the presumption to the effect that States are able to protect their citizens and that to rebut this presumption, claimants must file clear and convincing evidence of the State's inability to ensure their protection. The member also referred to a passage from *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL), leave to appeal to the S.C.C. dismissed [1993] 2 S.C.R. x.i., as well as two passages from *Kadenko v. Canada (Solicitor General)*, [1995] F.C.J. No. 889 (QL).

[13] It appears from the transcript of the stenographer's notes that the member then very clearly stated that the applicant had filed a formal complaint but that he had not followed up on it at all and that he expected explanations to explain the statement regarding the State's inability to protect him.

[14] In *Ward*, *supra*, Mr. Justice Gérard V. La Forest states at pages 724 and 725:

> Like Hathaway, I prefer to formulate this aspect of the test for fear of persecution as follows: only in situations in which state protection "might reasonably have been forthcoming", will the claimant's failure to approach the state for protection defeat his claim. Put another way, the claimant will not meet the definition of "Convention refugee" where it is objectively unreasonable for the claimant not to have sought the protection of his home authorities; otherwise, the claimant need not literally approach the state.
>
> The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.

See also *Torres Lopez v. Canada (Citizenship and Immigration)*, 2007 FC 198, at paragraph 19:

> 19 I am of the opinion that that the RPD, in view of the evidence that was before it, could reasonably conclude that the applicants had not discharged their burden of showing that the Peruvian government was unable to protect them. It is true that the panel may have given the impression that the bar was very (too) high when it stated that "no evidence was submitted allowing the panel to determine that the entire police force was conspiring with the politician" and that Peru was not in a state of chaos and complete breakdown. The fact remains that Mr. Lopez and his wife never even gave the authorities of their country a chance to protect them.

[15] In the case at bar, the applicant's testimony was deemed credible overall. It was the issue of State protection that led to the member's refusal of the claim.

[16] The events preceding the applicant's departure from Mexico took place over a relatively brief period of time. After he was threatened, he decided to resign and he was then assaulted in the street. On March 15, he immediately addressed the Attorney General of the Federal District in order to file a complaint, specifically identifying the motives of the persons who were after him.

[17] He then left Mexico City for the State of Guanajuato, where he stayed with his family for one month, until April 19, before he was threatened again. He then definitively decided to leave his country and on April 28, i.e. two days before his departure, he sent a letter to the Human Rights Commission referring to his complaint with the Attorney General and seeking the Commission's help for protection.

[18] The applicant did not follow up on the complaint that he made following his fears and he sent a new letter to the Human Rights Commission two days before leaving his country.

[19] At the very least, the applicant failed to take the time to examine whether his recourse would be useful with the office of the Attorney General or with the Human Rights Commission.

[20] The applicant relied heavily on the documentary evidence on Mexico. In his opinion, it established that the police are corrupt and often resort to violence and abuse.

[21] It appears clearly from the applicant's file that after attempting to secure State protection by filing a formal complaint, he did not even wait to find out what the outcome of his efforts would be. The complaint was addressed and the police did not refuse to intervene. To the contrary, it noted all of the details of the circumstances. However, the applicant did not trouble himself to find out whether concrete actions had been taken after his complaint was filed.

[22] We can understand that the applicant left Mexico City to go to another place with his family, but in the Board's opinion, these steps were not sufficient to establish that the applicant had sought protection from the State of Mexico.

[23] It is clear that the applicant had initiated the process to obtain State assistance, but he did not follow up on his actions. The Tribunal record contains the index of all the documents found in the national binder on Mexico.

[24] The applicant claims that the Board did not refer to the documentary evidence filed in the record and specifically Mexico's regional binder. The applicant refers to many passages from the documentary evidence regarding corruption within the police corps.

[25] It must be noted that among the documents filed, the applicant most specifically referred to the difficulties he encountered with his employer, the Institutional Republican Party (PRI) as well as its representatives. In his case, it appears from the evidence that his complaint was considered and that he never verified with the authorities whether they had taken steps to follow up on his case.

[26] The applicant also referred to the report "Mexico – State Protection (December 2003 to March 2005)" according to which the criminal justice system is often ineffective and unfair and that, accordingly, the State of Mexico could not adequately protect him.

[27] Even though this document raises many concerns about the Mexican government's ability to deal with all the crime in its country, this same document indicates that the government has made improvements to the system of protection. In fact, it reads:

> As President Vicente Fox approached the mid-term of his presidency in 2003, sources questioned whether he could achieve the state protection reforms he had promised at the outset of his presidency (*Los Angeles Times* 6 Dec. 2004; *The Economist* 23 Nov. 2004; ibid. 14 Aug. 2003; *Freedom House* 23 Aug. 2004). Nevertheless, in 2003 and 2004, Fox reportedly remained committed to addressing issues such as crime, corruption and human rights abuse, even though new incidents continued to be reported under his administration (AI 2004; *Country Reports* 2004 28 Feb. 2005; *International Narcotics Strategy Report* 2005 1 March 2005; HRW 8 Jan. 2005).

[28] In *Yanez Alfaro v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 460 at paragraphs 16 and 17, the Court stated the following:

> [16] The applicants submit that the conclusions of the panel as to the possibility of availing themselves of state protection in Mexico are contrary to the documentary evidence it had. The applicants submit that the panel did not take into consideration an IRB report

> concerning state protection in Mexico (Exhibit C of the principal applicant's affidavit), which established that Mexican courts did not offer any protection to its nationals.
>
> [17] The excerpt from this report cited by the applicants in support of this argument concerns corruption in the judicial system. However, it must be noted that the same document mentions the determination of President Vicente Fox to carry out the reforms undertaken at the beginning of his administration. It is therefore not possible to conclude that the state apparatus has totally broken down as far as the protection of its nationals is concerned.

[29] I have reviewed the file, and specifically the stenographer's notes of the hearing.

[30] Although in its decision the Board did not make any specific reference to the case law or to the documentary evidence on Mexico, it could reasonably find as it did based on the questions the applicant was asked and the analysis of the evidence in the record.

[31] It is possible that if I had to make a decision at first instance in light of the same evidence, I may have come to a different decision. However, this is not the manner of proceeding on judicial review before the Federal Court. It is a matter of whether it was reasonable for the decision-maker, in light of the evidence before it, to find that the applicant was not a person in need of protection based on the fact that he had not established clear and convincing evidence that Mexico was unable to protect him.

[32] In my opinion, even though the decision is not very detailed, I cannot find that the Court's intervention would be justified under the circumstances. In fact, this is not a matter where "there is no line of analysis within the given reasons that could reasonably lead the tribunal from the

evidence before it to the conclusion at which it arrived”(*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paragraph 55).

[33] I therefore find that this application must be dismissed.

[34] The parties did not propose any questions for certification and no question will be certified.

JUDGMENT

1. The application for judicial review is dismissed.
2. No question will be certified.

“Pierre Blais”
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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