

**Date: 20080416**

**Docket: IMM-3471-07**

**Citation: 2008 FC 490**

**Ottawa, Ontario, April 16, 2008**

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

**BETWEEN:**

**MARIA GUADALUPE MIRON GUZMAN  
MARCOS FERNANDO SOLIS MIRON  
FERNANDA LORENA MIRON GUZMAN  
MARIA GUADALUPE MIRON GUZMAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicant's request for judicial review questions whether the Refugee Protection Division (RPD) failed to consider the actual effectiveness of state protection in Mexico both in respect of domestic abuse generally and in respect of the Applicant in particular.

## II. BACKGROUND

[2] The Applicant and her children lived with the Applicant's common-law partner, over which time the physical, emotional and verbal abuse were said to have occurred.

[3] Following incidents of abuse, beatings, insults and choking, the Applicant said that she complained to the authorities. One incident occurred in 2000 but the complaint was filed in 2004. After that, the Applicant continued to live with her partner.

[4] Following an incident in 2004 where the Applicant was required to wear a neck brace for three months, the Applicant's complaint resulted in her receiving legal assistance, psychological counselling, and assistance with her custody battle. The partner was summoned to the Sub-Attorney General's Office for the Service of Victims of Crime and Services to the Community - Centre for the Attention on Family Violence (CAVI). The partner did not appear at CAVI when summoned and the Applicant was told that nothing further could be done.

[5] As a result of the 2005 incident, a police report was made out. The Applicant moved from the partner for a brief time but resumed cohabitation. She did not know and did not follow up on whether criminal proceedings were instituted.

[6] The Applicant moved out finally in August 2006 and came to Canada on a visitor's visa.

[7] The RPD agreed that the Applicant was a victim of domestic abuse but concluded that she had not shown that state protection was not available. The RPD found that action was taken each time the Applicant went to the authorities, whether it was securing legal and psychological assistance, ensuring filing for financial support and assuring that she obtained custody of the children.

[8] The RPD held that the presumption of state protection applied to Mexico, a country with a functioning democracy, and that the Applicant had not provided “clear and convincing” evidence to rebut that presumption.

[9] The RPD recognized that there were areas of protection of abused women that needed improvement but that the Federal District of Mexico City had taken great strides in securing protection. The RPD relied on documentation that set forth the legislative framework, the efforts made to implement protection, as well as the regulatory and practical regime for protection. The RPD assigned greater probative value to this documentary evidence than to the Applicant’s testimony about the lack of protection.

### III. ANALYSIS

[10] As a result of the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, this Court’s jurisprudence on the standard of review for state protection will coalesce around reasonableness except in respect of issues of law and procedural fairness.

[11] The Applicant's position is that RPD failed to address the gap that exists between Mexican state protection in principle and state protection in practice, and failed to consider the evidence, in the documents relied on, which contradicted the presumption of state protection.

[12] This Court, in numerous cases, has held the presumption that state protection generally exists in Mexico (*De La Rosa v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 83; *Ortiz Juarez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 288). The RPD's starting premise that such protection exists was reasonable.

[13] The RPD was clearly aware that there were issues, both systemically and individually, with state protection. Most particularly, the RPD focused on the Federal District of Mexico City, where the Applicant lived, and noted that this area had functioning state protection. The RPD recognized that other states in Mexico did not have as developed a system of protection.

[14] Therefore, on a general level, the RPD addressed the gaps or inconsistencies in Mexican state protection – a matter referred to in the documentation relied upon. In that regard, this RPD decision can be distinguished from my decision in *Gontijo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 962.

[15] The Applicant was required, in accordance with the decision in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, to put forward clear and convincing evidence that state protection was not available to her. Aside from the presumption of state protection, and the

actions of state authorities which the Applicant said were helpful but did not address the actual experience and fear, the Applicant could not establish that the police refused or were unable to investigate her complaint. Her evidence is less than clear and convincing.

[16] It is open to the RPD to find as it did. The decision was reasonable in all the circumstances.

#### IV. CONCLUSION

[17] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3471-07

**STYLE OF CAUSE:** MARIA GUADALUPE MIRON GUZMAN  
MARCOS FERNANDO SOLIS MIRON  
FERNANDA LORENA MIRON GUZMAN  
MARIA GUADALUPE MIRON GUZMAN

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 3, 2008

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

**DATED:** April 16, 2008

**APPEARANCES:**

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