

Date: 20080521

Docket: IMM-4574-07

Citation: 2008 FC 630

Ottawa, Ontario, May 21, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**ROSA ALEJANDRA HURTADO-MARTINEZ
and VALERI AILIN OLVERA-HURTADO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review is one of many before this Court touching on whether the Refugee Protection Division (RPD) erred in finding that state protection was available in Mexico. The Applicant claimed protection in Canada following an attempted sexual assault by a senior police officer.

II. BACKGROUND

[2] The Applicant was a 24-year old mother from Mexico. She claimed that her neighbour, a Commander in Mexico's Federal Investigations Agency (AFI), attempted to force himself on her in December 2005. Her common-law partner, returning home just in time, repelled the attack. The Commander then allegedly made oral threats as he left.

[3] When the Applicant attempted to file a complaint at the police department in her city, she was met by sarcasm (or laughter) by the duty officers and effectively told that nothing could be done without proof, especially of physical injuries.

[4] The Applicant further alleged that her partner was attacked two days later by the Commander and some of his men because they had tried to denounce the Commander – or so the statement was attributed to the Commander. The day following the attack, the Applicant claims, she received a threatening phone call from the Commander.

[5] Thereafter the Applicant took her daughter and fled to another city to stay with her step-sister while her partner went to a different city.

[6] Although the Applicant was in a different city, the Commander was allegedly able to call her and threaten her again. She again fled to another city, changed her cell phone number and yet the Commander was able to contact her and repeat his threats.

[7] All of these events occurred in a short period of time in December 2005. In January 2006, the Applicant went to the Desarrollo Integral de la Familia (DIF). There she was advised to take her complaint to another department of the Public Ministry.

[8] As a result of the past treatment of her complaint by police and of her fear of reprisals, the Applicant declined to follow the DIF's advice and instead decided to leave Mexico. Two days before her departure, the Commander apparently telephoned her to inform her that she would not be able to leave because of his influence. Despite the threat, she did manage to leave.

[9] The gravamen of the RPD's decision is that the Applicant and her husband had not exhausted the potential remedies for obtaining state protection. The RPD noted her partner's failure to complain about the beating he suffered and concluded that the Applicant was too quick to conclude that state protection was not available to her.

[10] The RPD acknowledged that Mexico has a deeply entrenched culture of official impunity and corruption. However, it concluded that the Applicant had not provided "clear and convincing" evidence of the state's unwillingness or inability to provide protection. The RPD preferred the objective documentary evidence, including the U.S. DOS Report and IRB reports on the situation of witnesses to crime and corruption and women victims of violence, which refer to a complaints process and recourse mechanisms.

III. ANALYSIS

[11] Even before the Supreme Court's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the standard of review of findings on state protection was reasonableness. Nothing in *Dunsmuir* changes that standard.

[12] The RPD relied on the decision in *Kadenko v. Canada (Solicitor General)* (1996), 143 D.L.R. (4th) 532 (F.C.A.), to suggest that a person must exhaust all available courses of action before concluding that state protection was not forthcoming. *Kadenko* does not go that far. The steps taken to secure state protection depend on a number of factors, including the country conditions and whether the state or its agent is a persecutor. What is required of an applicant is that they take reasonable steps to secure state protection in the context of the circumstances. The analysis of seeking state protection is not a formulaic exercise.

[13] There are several difficulties with the RPD's analysis and conclusions which require that the decision be quashed and remitted back.

[14] Firstly, the RPD's decision is unclear on whether it accepted the Applicant's story. It is a story of assault and harassment by a senior officer of the AFI (a federal police force) whose reach went beyond the boundaries of any one city or locality.

[15] Secondly, the RPD did not fully consider the existence and scope of the agent of persecution. In many of the decisions of this Court supporting conclusions of adequate state

protection in Mexico, considerable emphasis has been placed on the availability of federal authorities to deal with issues of police officers as agents of persecution.

[16] In *Lopez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1341, the RPD had concluded that the Attorney General's Office and the AFI played a significant role in providing protection.

[17] The AFI is the very force to which the Commander, alleged agent of persecution, was a member. However, the RPD conducts no analysis of this fact as against what would be reasonable in seeking protection from one of the key agents of state protection.

[18] Thirdly, while the RPD may refer and even prefer documentary evidence, it must be evidence relevant to the issue before them. The RPD refers, at some length, to reports on protection for women victims of violence, generally in the context of domestic violence. The issue in this case is not one of violence against women *per se* but that of police corruption and self-interest – the victims of which were each a woman and a man. This inclusion of irrelevant consideration raises further questions about the reasonableness of the RPD's decision.

IV. CONCLUSION

[19] Therefore, this judicial review will be granted, the RPD's decision quashed, and the matter remitted to a differently constituted panel for a new determination.

[20] In view of the basis of the Court's decision, which is largely based on the facts of this case, there is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is granted, the RPD's decision is quashed, and the matter is to be remitted to a differently constituted panel for a new determination.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4574-07

STYLE OF CAUSE: ROSA ALEJANDRA HURTADO-MARTINEZ and
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THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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

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