

Date: 20080714

Docket: IMM-5394-07

Citation: 2008 FC 868

Ottawa, Ontario, July 14, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DORA LUZ CUEVAS SANDOVAL
FRIDA GARCIA CUEVAS and
YARID GARCIA CUEVAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Dora Luz Cuevas Sandoval and her twin daughters, Frida Garcia Cuevas and Yarid Garcia Cuevas, are citizens of Mexico who came to Canada and claimed refugee protection. Ms. Cuevas Sandoval alleged a well-founded fear of persecution at the hands of her former common-law partner, Alberto Rivas Rios, an older man of means and former judicial police officer who

physically abused her and threatened her children. In its decision of November 30, 2007, the Refugee Protection Division of the Immigration and Refugee Board dismissed the claims because it determined that there was adequate state protection available to the Applicants in Mexico.

[2] For the reasons that follow, this application for judicial review is dismissed.

BACKGROUND

[3] In 1991, Ms. Cuevas met an older man from her neighbourhood, Alberto Rivas Rios, who was then a judicial police officer. Ms. Cuevas soon moved in with him following which she was subjected to physical and emotional abuse. Approximately one year later Mr. Rivas Rios phoned her to tell her that he'd been arrested and jailed for kidnapping. Ms. Cuevas returned to her mother's home and had no further contact with Mr. Rivas Rios until January 1997. In the intervening five years she had had twin daughters who were fathered by another man.

[4] In January 1997, Mr. Rivas Rios told her he had been released from jail after eight months and that he had lost his police position as a result of the kidnapping. He begged her to come back to him, claiming to be a changed man. She agreed and they moved in together in a new neighbourhood in Mexico City.

[5] On March 14, 1998, Mr. Rivas Rios, in a state of intoxication, beat Ms. Cuevas severely and caused her to miscarry. He also threatened the twin daughters. She went to the police and

explained what had happened to her. The police visited Mr. Rivas Rios and found him sleeping with his gun. He was arrested.

[6] Ms. Cuevas testified that he subsequently told her that he had been in jail for five days following this arrest. She does not know whether this is true or not. Following Mr. Rivas Rios' arrest Ms. Cuevas travelled with a friend to the United States of America and, on her return, she rented a new apartment in Mexico City. She lived there with her daughters and heard nothing from Mr. Rivas Rios for about seven years until May 2005, when he called her and again begged her to come back with him. Again, she agreed. Her explanation for agreeing to return to him on this occasion, as well as the previous occasion, was she did so out of fear.

[7] Again, she was subjected to spousal abuse from Mr. Rivas Rios; however, she did not seek police assistance. She testified that she did not call the police because "even if they took him away, he would get out of jail quickly".

[8] On May 26, 2006, she took an overdose of medication and was hospitalized for two days. She has not seen Mr. Rivas Rios since her attempted suicide. Mr. Rivas Rios was told that she was in a psychiatric hospital. Following her release from hospital she lived with her sister and then flew to Canada with her daughters on August 26, 2006, and later made a claim for refugee status in December 2006.

[9] The Board found Ms. Cuevas to be credible but denied her claim because it found that state protection is adequate and available for her in Mexico.

[10] The Applicants submit that the Board's decision is not reasonable and that it erred in that it "only cited three facts to support its assertion that [Ms. Cuevas] could expect state protection in the future: the existence of a telephone hot line, the appointment of a special prosecutor in 2006, and the existence of a health regulation which informs women of their rights" and did not reference the "numerous statements in the evidence which contradicted its finding".

ANALYSIS

[11] The Applicants pointed to six passages from the documentary evidence that they claim support the view that state protection is not adequate and available to Ms. Cuevas and which are contrary to the Board's findings and which thus required the Board to mention specifically in its decision. The Respondent submits that those passages are largely irrelevant as they relate to general conditions in Mexico and not the specific conditions in Mexico City which is within the Federal District.

[12] I have reviewed those passages in detail and concur with the position of the Respondent. The evidence before the Board dealing specifically with the Federal District of Mexico does show that support in the Federal District for female victims of spousal abuse is better than it may be elsewhere in the country.

[13] In my view, the assessment of state protection cannot be done effectively without an examination of the particular applicant's unique circumstances, all the steps the applicant did in fact take, and the results of the applicant's interactions with the authorities. There are cases where the applicant has taken no steps to seek protection and had no interaction with authorities but one can reasonably conclude on the evidence that state protection is not available to her given that applicant's unique circumstances. The situation of the applicant in *Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, may be one such situation. Ms. Zepeda described her spouse as a "violent, jealous and vengeful man" who often abused her. She never approached the police for protection as her former husband was himself a police officer. I agree with Justice Tremblay-Lamer that an applicant is not required to put herself in danger in order to exhaust all possible avenues of protection. Where there is evidence that seeking protection will be ineffectual and will place an applicant in further danger, the fact that it has not been sought will not be determinative of whether state protection is adequate and available to that particular applicant. Where, as in this case, the applicant has sought protection, one must consider what resulted when considering the adequacy of the protection for that person.

[14] The abuser here was no longer a member of the judicial police. He had been jailed for his criminal activity and had lost his position. Unlike the situation in *Zepeda*, there was no evidence that the authorities would be reluctant to act. In fact, the one time that Ms. Cuevas sought protection, it was provided. Mr. Rivas Rios was arrested and spent time in jail. It was submitted that this had more to do with the fact that he was found with a gun than the fact that he had viciously

assaulted Ms. Cuevas. That is speculative; the fact remains that she sought assistance and it was provided to her.

[15] It was submitted that the Board could not conclude on the basis of the evidence before it that state protection was effective in Mexico for abused women. Counsel relied upon *Zepeda; Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 387, and *Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586. The Respondent relied on the decision of the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v. Carrillo*, 2008 FCA 94, which confirmed that the test for a finding of state protection was whether that protection was adequate rather than effectiveness *per se*.

[16] The Federal Court of Appeal in *Carrillo* held that one seeking to rebut the presumption of the adequacy of state protection must adduce “relevant, reliable and convincing evidence” which, on the balance of probabilities, satisfies the trier of fact that the state protection is inadequate. Where, as in this case, protection was sought and provided, an applicant will have a challenge to show that it was an aberration unless there has been some material change in personal or state circumstances. Here there was no such evidence.

[17] Accordingly, in my view, the decision of the Board with respect to the availability of state protection for this Applicant was reasonable and this application is dismissed.

[18] Neither party submitted a question to be certified nor is there any.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5394-07

STYLE OF CAUSE: DORA LUZ CUEVAS SANDOVAL; FRIDA GARCIA CUEVAS; YARID GARCIA CUEVAS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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