

Date: 20080909

Docket: IMM-559-08

Citation: 2008 FC 1013

Toronto, Ontario, September 9, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**GADIEL FLORES ANGELES,
DIANA LORENO JIMENEZ LARA,
GADIEL DAVID FLORES JIMENEZ and
DIANA XIMENA FLORES JIMENEZ**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns parents and their children from Mexico who claim refugee protection. The Refugee Protection Division (RPD) found that the Applicants proved the following facts:

The principal claimant [the father] alleges that on September 2, 2006, he was beaten, robbed of his money and taxi cab. From his beating he lost consciousness and required medical attention. On September 11, 2006 he reported his ordeal to the police. He alleges that his assailants were police officers after seeing them at the police station.

The principal claimant alleges that on November 7, 2006 he was kidnapped and assaulted. The kidnappers demanded a ransom of one hundred thousand pesos and the ownership papers to his taxi cab. On November 12, 2005, his family delivered the ownership papers and fifty thousand pesos to the kidnappers. The principal claimant was released the next day and the day after this incident, the principal claimant and his family left for Veracruz.

On November 21, 2005, the principal claimant alleges that he found a note indicating that the kidnappers had found him and wanted the remaining fifty thousand pesos or he would be killed. The principal claimant returned to Mexico City to get his passport. He received another letter telling him that it was pointless to hide. On November 30, 2006, the principal claimant arrived in Canada.

The female claimant [the mother] alleges that after the principal claimant left for Canada, on January 30, 2007, she was forced into a car, threatened and sexually abused. The assailants demanded three times the money that they wanted from the principal claimant when they kidnapped him earlier. The female claimant did not make a denunciation to the police. She called her husband who told her to come to Canada. [Emphasis added]

(RPD Decision, p.1)

[2] With respect to this fact scenario, the RPD posed the following question as the central issue in the application for protection: “Would the claimants have recourse to the rule of law considering that the alleged kidnappers were judicial police officers and presumably the female claimant’s attackers were judicial police officers”? On the basis of the findings of fact made, it is important to note that the father’s kidnappers are not “alleged” to be judicial police officers; they are judicial police officers. Further, the mother’s attackers are not “presumably” judicial police officers; they are judicial police officers. Given this understanding, I find that, essentially, the RPD asked the right question. However, in the reasons for decision provided, the RPD failed to provide the answer. I find that this failure constitutes a reviewable error.

[3] The RPD's decision to reject the Applicants' claim for protection depends on a finding that state protection is available to them in Mexico. The finding is based on a rendition of statements about the democratic law enforcement structure of Mexico, including the serious problem of police corruption. However, the decision does not express one word about how the Applicants could be expected to seek state protection in such a regime when their agents of persecution are the judicial police.

[4] There is one fact that brings home the serious injustice to the Applicants by the RPD's failure to analyse the real life willingness of the Applicants to seek state protection. The facts found include the statement that the mother was "sexually abused" by the judicial police. In fact, the mother testified that she was raped and, understandably, she is traumatized as a result (see Tribunal Record, p.363). The RPD's failure to accurately acknowledge the circumstances of the sexual assault, and the failure to attempt to understand how much trauma it would cause the mother and father to seek state protection from the rapists, makes it impossible to proceed to find that state protection is available to them, and their children, in Mexico.

[5] In the decision, the RPD states that "the panel considered both adult claimants testimony in its entirety and has taken the *Gender Guidelines* into consideration in reaching its determination". Clearly the consideration the *Guidelines* were given is wholly deficient.

ORDER

Accordingly, the decision under review is set aside and the matter is sent back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-559-08

STYLE OF CAUSE: GADIEL FLORES ANGELES, DIANA LORENO
JIMENEZ LARA, GADIEL DAVID FLORES JIMENEZ
and DIANA XIMENA FLORES JIMENEZ v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 9, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: SEPTEMBER 9, 2008

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