

Date: 20081117

Docket: IMM-1880-08

Citation: 2008 FC 1280

Ottawa, Ontario, November 17, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**RAFAEL GONZALEZ LARA
FLOR LILIAN PENA MARQUEZ
IVANNA GONZALEZ PENA
ROLANDO GONZALEZ PENA
ROBERTO GONZALEZ LARA
MONICA ULIBARRI HERNANDEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ramon Gonzalez Lara was kidnapped in Mexico by a gang of seven in January 2003. His brothers Rafael and Roberto complained to the authorities. Five of the seven were captured, tried, convicted and jailed. The other two are apparently still on the loose. Starting in November 2003 and over the next two and a half years, both brothers received a handful of telephone calls on their cell phones. Death threats, believed to be from the kidnappers at large, were uttered.

[2] Rafael, his wife and two children fled to Canada, followed shortly thereafter by Roberto and his wife. Their claim for refugee status, or that they were otherwise in need of Canada's protection, was rejected by the Refugee Division of the Immigration and Refugee Board. This is a judicial review of that decision which turned on state protection and, to a lesser extent, on the internal flight alternative. The Board member found that Mexico is a democracy with functioning police forces that makes serious efforts to protect its citizens although not, of course, always successful.

[3] The applicants make much of those portions of the reports on general country conditions which suggest that the police are ineffective and usually complicit in kidnapping. However, in this case, the police acted very promptly and were successful in capturing most of the kidnappers and freeing Ramon.

[4] As regards the threatening phone calls, the Board member had this to say:

The claimants allege that they contacted the PGR in Veracruz when the claimants were receiving threatening calls but that they were told there that unless there was some more concrete evidence the police could do nothing. Given that the calls were so far apart; November and December 2003, May and September 2004, December 2005 and May 2006 I find that this reaction was not unreasonable. It is unclear what response the claimants could reasonably have expected in such circumstances.

[5] There is nothing unreasonable in the finding that state protection was available. This was not a template analysis. The presumption that state protection was available was not rebutted (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 691).

[6] Subsidiarily, the Board member also found that if the claimants did not want to return to Mexico City or Veracruz "there are many other locations in Mexico for them to choose from." The

applicants referred to the decisions of *Rabbani v. Canada (Minister of Citizenship and Immigration)* (1997), 125 F.T.R. 141 and *Valdez Mendoza v. Canada (Minister of Citizenship and Immigration)* 2008 FC 387, in support of the proposition that it is not sufficient to find applicants could go elsewhere for there to be a viable internal flight alternative. Amongst other things, a specific geographic location must be identified where the conditions are appropriate.

[7] I certainly subscribe to that view. However, the applicants were on notice that the internal flight alternative was in issue. The claimants rejected La Paz in Baja California on the grounds that there was a lot of drug trafficking there. The whole of Northern Mexico was also rejected for drug trafficking and as the band of kidnapers, which they could not identify, was allegedly everywhere. In Merida there was no work and in Acapulco they would be decapitated. “Q: O.K. how about San Luis Petisi? Nice, quiet little place. A: I have nothing against San Luis Petisi but it’s like I would not feel safe anywhere.”

[8] This “feeling” was generated by a lack of confidence in the police and the belief that the kidnapers were both omnipresent and omniscient. The applicants may well “feel” safer in Canada. However, there is an objective element to the test. Even Ramon, the brother who was kidnapped, shuttles back and forth between the United States and Mexico. In context, the Board member actually identified a number of viable internal flight alternatives.

[9] The decision was reasonable on both findings and is not to be disturbed.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1880-08

STYLE OF CAUSE: Rafael Gonzalez Lara et al v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 12, 2008

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: November 17, 2008

APPEARANCES:

Cristina Marinelli FOR THE APPLICANTS

Zoé Richard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cristina Marinelli FOR THE APPLICANTS
Barrister & Solicitor
Montréal, QC

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, QC