

Date: 20090202

Docket: IMM-3368-08

Citation: 2009 FC 112

Toronto, Ontario, February 02, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**MARIA SOLEDAD SILVA LOPEZ and
MONSERRAT GONZALEZ SILVA,
MARIA FERNANDA GONZALEZ SILVA,
by their litigation guardian MARIA SOLEDAD SILVA LOPEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' claims for refugee status or complementary protection, under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, were denied by the Immigration and Refugee Board on July 9, 2008.

[2] Silva Lopez, the principal claimant, described a pattern of physical, sexual and psychological abuse by her spouse, extending over many years from 1997 until her divorce from him in 2004. She alleges that the psychological abuse continued thereafter until she came to Canada in late 2005. Her young daughters followed in early 2006.

[3] The Board accepted her evidence of abuse and her attempts to escape it. The Board writes that “the determinative issue in this claim is whether is a viable Internal Flight Alternative (“IFA”) exists for the claimants in Mexico, specifically in Mexico City in the Federal District ...”

[4] The applicants advanced many grounds for relief. However, during oral submissions, counsel for the applicants noted that the Board had not questioned the principal applicant as to whether Mexico City was an IFA but had only questioned her concerning Guadalajara. Nonetheless, the Board then found that Mexico City was an IFA. Relying on the decision of the Federal Court of Appeal in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, counsel submits that in failing to provide the applicants with the location that it held to be the IFA, it breached the principles of natural justice.

[5] Counsel for the respondent, to his credit, acknowledged that this omission by the Board had escaped the respondent’s attention and advised the Court that in the interests of justice the respondent would not be opposing the application.

[6] Accordingly, this application will be allowed and the matter sent back for redetermination. No question is certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The refugee claims of the applicants are referred back to the Board for redetermination by a differently constituted panel; and
3. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3368-08

STYLE OF CAUSE: MARIA SOLEDAD SILVA LOPEZ ET AL v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 2, 2009

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

DATED: February 2, 2009

APPEARANCES:

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