

**Date: 20090209**

**Docket: IMM-3029-08**

**Citation: 2009 FC 128**

**Ottawa, Ontario, February 9, 2009**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MARIA DE LOURDES FLORES ARGOTE  
MYRIAM GRISEL HERNANDEZ FLORES  
MELISSA IVAN HERNANDEZ FLORES  
DANIELA MARIBEL HERNANDEZ FLOREZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Refugee Protection Division of the Immigration and Refugee Board (“the Board”) dismissed the applicants’ claims for protection, after determining that they had not availed themselves of domestic state protection in Mexico, and that there were internal flight alternatives (IFA’s) open to them in Mexico itself. For the reasons that follow, the Court concludes that there is no basis to interfere with the Board’s decision.

## **Background**

[2] Ms. Flores Argote and her three children, aged 15, 17, and 19, fled their home in Leon, Guanajuato province, Mexico, to escape the reach of Ms. Flores Argote's ex-husband, whom she divorced in 2000. Both Ms. Flores Argote and her eldest daughter Myriam testified at the hearing before the Board. Although Ms. Flores Argote was married to David Ruben Hernandez Frausto for 13 years, only six of them were spent together because he was sentenced to a prison term of 10 years in the mid-1990's. He was an abusive husband, but his incarceration was unrelated to domestic violence; rather, it was owing to his involvement with a criminal gang that had carried out robberies. He apparently believes that it was Ms. Flores Argote who denounced him to the police, and blames her for his 10-year incarceration.

[3] Ms. Flores Argote had no contact with her former spouse from 2000 until 2006 when he attempted to abduct the oldest child, Myriam, outside of her college. She escaped on foot. Ms. Flores Argote filed a report with the Public Ministry in relation to this incident on March 18, 2006, but it was treated as a "family problem" and no charges were laid. Ms. Flores Argote thinks her ex-husband may have bribed public ministry officials, and describes him as an influential man with money and power. Four months later, fearing for Myriam's safety, she sent her to Canada to study English while things "cooled down."

[4] Sadly, they did not cool down. On July 12, 2007, Mr. Hernandez Frausto allegedly attacked Ms. Flores Argote while she was out shopping. He assaulted her and threatened to kill her

daughters. She consulted a lawyer after this incident, but did not go to the police. Two weeks later, she came to Canada.

[5] In its decision, the Board accepted that the applicants' account of harassment, violent incidents, and threats made by Mr. Hernandez Frausto was truthful. It did not, however, find any nexus between the persecution and a Convention ground. Nor did it find that the acts recounted amounted to persecution. The Board nonetheless went on to analyze the merits of the claim, presumably as a claim for complementary protection under s. 97 (1) of the *Immigration and Refugee Protection Act* although better wording might have made this clearer.

[6] The Board determined that there are several cities in Mexico which the applicants might have used as an IFA. The applicants' contention that it would be possible for Hernandez Frausto to locate his ex-wife and daughters anywhere in Mexico was rejected. The Board also noted that there was no evidence that the psychological problems alleged to affect one of the daughters, Melissa, could not be addressed in Mexico. With respect to the availability of state protection, the Board referenced its own documentation regarding efforts that have been undertaken to combat violence against women (e.g., the passage of the *General Law on Women's Access to a Life Free from Violence*), to support its conclusion that state protection, though it might not be perfect, would likely be forthcoming if the applicants were to seek it.

### **Issues**

[7] In this proceeding, the applicant makes the following submissions:

- (a) The Board erred in rejecting the evidence of the applicant that her former spouse had money and thus could bribe public officials;
- (b) The Board erred in its analysis of an internal flight alternative; and
- (c) The Board erred in its determination of the availability of state protection.

## **Analysis**

### *Credibility finding*

[8] The applicant alleges that the Board made “credibility findings” which are either contradictory or unclear. The Board noted that Hernandez Frausto reportedly had no money when he was arrested in 1993, as related in the contemporary report from the *El Herald* newspaper that was part of the record. With regard to the robbery money, the article stated that “[the robbers] all said that they had spent it all.” The Board concluded from this, and from the fact that there is no evidence that he is currently engaged in crime, that he is not now a wealthy person.

[9] Admittedly that conclusion does not flow from the fact that he had no money when arrested, more than a decade ago. On the other hand, there is no evidence at all, other than the statement of Ms. Flores Argote, that Hernandez Fausto is now a man of means. Further, as respondent counsel noted, the description of the former spouse given by Ms. Flores Argote at page 354 of the certified tribunal record, when she last saw him, does not suggest that he is a man of means. Her claim at page 342 of the certified tribunal record that “the man had money, he has power and he has acquaintances” is simply not supported by any objective evidence. While the Board may have erred

in the passage questioned by the applicant, there is no reason to think that this error had any impact on the result.

[10] Counsel for the applicants acknowledged that the applicants concede and do not question the Board's finding that there is no serious possibility of them being persecuted in the parts of Mexico identified as an IFA, that is, they do not dispute the Board's findings that the former spouse and father would be unlikely to trace them there. If he cannot find them, then his ability to bribe or influence authorities becomes irrelevant. In any event, as noted, there was no objective evidence to support the claims of Ms. Flores Argote in this regard and the Board's assessment cannot be said to be unreasonable.

#### *IFA*

[11] As noted, the applicants do not question the Board's findings with respect to the first prong of the two-pronged IFA test described in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.). They submit, however, that the Board failed to properly consider the second part of that test. The second prong, as enunciated by the Court of Appeal in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.) provides that after there has been a finding that there is no serious possibility of the applicant being persecuted in the IFA, one asks whether it would be unreasonable, in the particular circumstances of the individuals concerned, to relocate to that IFA.

[12] The applicants submit that the Board erred in its analysis because it failed to consider their unique circumstances and whether it was reasonable that they relocate. In my view, the applicants' submission is entirely misguided. Whether the relocation to the IFA is unreasonable is an objective test and the onus is on the applicants to establish on objective evidence that the relocation to the IFA is unreasonable. It is not for the Board to prove that it is reasonable, as the applicants suggest. In this case, there was only one factor raised, the psychological counselling received by one daughter in Canada, as a possible reason why they could not relocate to the IFA. That concern was answered fully by the Board's determination that the child had previously received psychological counselling in Mexico and thus could do so again if she was relocated back to her country of birth.

*State Protection*

[13] The applicants submit that the Board erred in that it selected only portions of the documentary evidence to justify and support its conclusion that the applicants would receive protection if they sought it. While the Board recites only parts of the documentary evidence, there is no evidence that it ignored relevant evidence or based its conclusion on irrelevant evidence.

[14] The evidence is that Ms. Flores Argote never sought protection for the abuse she suffered. The only time that protection was sought related to the attempted abduction of the daughter. The police took the statements but admittedly did not act on them. On the evidence in the record, I concur with the view of the Board that Ms. Flores Argote has exaggerated the risk to herself and her children.

[15] It also bears mention that the documents the applicants rely upon and claim were ignored are dated and do not reflect the current situation in Mexico. Further, the agent of persecution in this case is one man, whom the applicants concede is unlikely to trace them to any of the numerous IFA cities that were identified. The Board was not persuaded, based on the evidence before it, that Ms. Flores Argote would not have received protection if she had sought it. Based on the documentary evidence and the personal circumstances of the applicants as well as that of the agent of persecution, a convicted criminal, that was not an unreasonable finding of fact. I agree entirely with the respondent's submissions on this issue in its memorandum at paragraphs 20 to 34, particularly the observation that it is incumbent on claimants to adduce clear and convincing evidence that their state is unable to protect them if they wish to effectively rebut the presumption that such protection is available. No such evidence was before the Board.

[16] For all of these reasons, the Court concludes that the Board's decision was reasonable, and should not be set aside.

[17] Neither party proposed any question for certification and on the facts, there is no question certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3029-08

**STYLE OF CAUSE:** MARIA DE LOURDES FLORES ARGOTE  
MYRIAM GRISEL HERNANDEZ FLORES  
MELISSA IVAN HERNANDEZ FLORES  
DANIELA MARIBEL HERNANDEZ FLOREZ  
v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 5, 2009

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

**DATED:** February 9, 2009

**APPEARANCES:**

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