

Date: 20090203

Docket: IMM-2807-08

Citation: 2009 FC 115

Toronto, Ontario, February 3, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MARIA LUISA PORRAS GUTIERREZ
SERGIO EMMANUEL CASTRO PORRAS
ANGELICA CLAUDIA CASTRO PORRAS
JIMMY ALEXANDER PORRAS GUTIERREZ
JOSE ARMANDO SANCHEZ PORRAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Maria Luisa Porras Gutierrez, her son Sergio Emmanuel Castro Porras and her daughter Claudia Angelica Castro Porras (the “Castro family”) are citizens of Mexico who came to Canada on or about March 9, 2007. The mother sought recognition as a Convention refugee by reason of membership in a particular social group, that is based on her status as a woman who had been the victim of a sexual assault by members of the judicial police.

[2] Ms. Maria Leonor Porras Gutierrez is the sister of Maria Luisa Porras Gutierrez and the mother of Jimmy Alexander Porras Gutierrez and Jose Armando Sanchez Porras (the “Gutierrez family”). This family originally lived in Puebla, Mexico, but fled the area after Leonor’s son Giovanni was kidnapped. They entered Canada on or about November 26, 2007.

[3] Luisa, a medical doctor and dentist by profession, was employed with a Rehabilitation Centre that treated women who were involved in prostitution and also those who suffered from alcoholism, drug addiction and behavioural problems. One of the problems faced by the Rehabilitation Centre was the involvement of the judicial police in prostituting the women and using them to sell drugs.

[4] Luisa claimed that problems began in December 2004 when an in-patient expressed hatred against her. In February 2005, this patient left the Rehabilitation Centre and returned to her partner, an officer with the judicial police.

[5] The woman patient began threatening Luisa. In January 2006, her partner also began threatening Luisa. Later, threats were made to sexually assault her son Sergio Emmanuel.

[6] Luisa noticed people driving by and parking outside her home. In January 2006, the former woman patient attacked Luisa in her home. In April 2006, Luisa decided to move with her children to Boca del Rio.

[7] In June 2006, Luisa was intercepted by two judicial police officers on her way home from work. She was forced into their vehicle and taken to a cell where she was raped and sodomized. She was threatened with death.

[8] After this attack, Luisa moved to Mexico City with her children. Then she moved to Toluca to live with a brother. In January 2007, the former woman patient called her brother's house, asking to speak with Luisa. After this incident, she decided to leave Mexico and come to Canada.

[9] The basis of the claim on behalf of the Castro family is the mother's fear of persecution from the judicial police. The Board found that they would be safe in the Federal District of Mexico and consequently, their claim for protection was dismissed.

[10] Leonor and her children settled in Toluca and the kidnapping was reported to the government-run National Human Rights Commission. However, this body declined assistance on the grounds that it did not have jurisdiction over events occurring in Puebla.

[11] In September 2006, the kidnappers contacted Leonor in Toluca. Further contact was made in September 2006 and she was told that they had killed her son Giovanni, by running over him with a truck. The kidnappers told her to go to Puebla to identify his body. Leonor went to the Public Prosecutor's office in Puebla and identified the body of her son. She was told that the killer had not been caught.

[12] In March 2007, Leonor's son Jimmy began investigating the death of his brother. He went back to Puebla and found the owner of the truck. They threatened him in an attempt to stop his investigation. Jimmy also reported his finding to the police, but they abused him and refused to help. He returned to his mother in June 2007 and told her that she and her son Jose were in danger.

[13] Later in June, Leonor received another warning by telephone that Jimmy should stop his investigation. The threatening calls continued up to October when a specific threat was made to abduct Jose Armando. After this call, Leonor decided to leave Mexico. She entered Canada with her sons on November 24, 2007.

[14] The claims of the two families were joined by Order of the Board, on its own motion, and a single decision was made. The Board made no credibility findings. The Board found that in the case of the Castro family, Luisa and her children could relocate to the Federal District, as there was no reason to believe that they would be in danger there. Alternatively, if there was danger, the Board found that adequate state protection would be available in the Federal District.

[15] In the case of the Gutierrez family, the Board determined that the criminal who murdered Giovanni would have no motivation to seek them out in that region. If they did, the Board was satisfied that adequate state protection was available. Further, the Board found that Leonor and her children had been targeted solely for the purpose of being prevented from reporting to the authorities in connection with the kidnapping and murder of her son Giovanni. For this reason, the Board found that there was no nexus for claiming protection on the basis of a Section 96 ground.

[16] The sole issue arising from this application for judicial review is whether the Board committed a reviewable error in deciding the claims advanced by the Applicants. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the decisions of statutory tribunals are reviewable upon either the standard of correctness or reasonableness.

[17] The mandate of the Board in determining claims for refugee status or the issue of protection is factually intensive. The appropriate standard of review, in my opinion, is reasonableness.

[18] The Applicants argue that the Board made unreasonable findings with respect to the issue of availability of state protection. In particular, they submit that the Board failed to address and weigh contradictory documentary evidence, that is evidence that put into question the availability of state protection in the Federal District. The Applicants rely in this regard upon the decision in *Cepeda-Gutierrez et al. v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (T.D.).

[19] For its part, the Minister of Citizenship and Immigration (the “Respondent”) argued that the Board committed no reviewable error and that the Applicants are seeking a reassessment of the evidence.

[20] I agree with the submissions advanced by the Applicants. There is substantial documentary evidence on the record before the Board that raises questions about the safety of the Applicants in the Federal District. The Board offered no explanation for rejecting this evidence.

[21] For example, the Department of State Country Report on Human Rights Practices for 2006 indicates that police were providing protection for, or acting directly on behalf of organized crime and drug traffickers. It also states that impunity amongst law enforcement officers was pervasive, such that victims often refused to file complaints. Further, the Washington Office on Latin America report notes evidence of ties between drug cartels and high-ranking Mexican law enforcement officials. It also indicates the generalized belief that every Mexican security force has a core group of members that are aligned with one cartel or another. This evidence directly contradicts the Board's finding that should the Applicants require it, they would receive adequate protection in the Federal District.

[22] In the result, this application for judicial review is allowed and the matter remitted to a differently constituted Board for re-determination. There is no question for certification arising.

JUDGMENT

This application for judicial review is allowed and the matter remitted to a differently constituted Board for re-determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2807-08

STYLE OF CAUSE: *MARIA LUISA PORRAS GUTTIERREZ
SERGIO EMMANUEL CASTRO PORRAS
ANGELICA CLAUDIA CASTRO PORRAS
JIMMY ALEXANDER PORRAS GUTIERREZ
JOSE ARMANDO SANCHEZ PORRAS
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION*

PLACE OF HEARING: Toronto, ON

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

DATED: February 3, 2009

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