

**Date: 20090505**

**Docket: IMM-4024-08**

**Citation: 2009 FC 450**

**OTTAWA, Ontario, May 5, 2009**

**PRESENT: The Honourable Max M. Teitelbaum**

**BETWEEN:**

**ROSAS PRADO, ANGEL  
IBARRA ROSAS, ERIKA  
ROSAS IBARRA, ERICK  
ROSAS IBARRA, KIMBERLY ANAID  
ROSAS IBARRA, ALEJANDRO ANGEL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Refugee Protection Division (“the RPD”) of the Immigration and Refugee Board (“IRB”) denied the applicants’ claims for protection under the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27, on the basis that they were neither Convention Refugees nor persons in need of protection. The decision turned on a finding that the applicants’ had failed to avail themselves of state protection. This is a judicial review of that decision.

[2] The applicants are Mexican nationals. Mr. Angel Rosas Prado is the principal applicant. Mrs. Erika Ibarra Rosas is his wife. The three other applicants are their minor children. The family previously lived in Mexico City, where Mr. Rosas Prado worked as a taxi driver.

[3] The facts giving rise to the family's refugee claims are related in the narrative portion of the Personal Information Form ("PIF") which Mr. Rosas Prado submitted to the IRB. At the RPD hearing, he elaborated on this narrative with a more detailed account of the circumstances under which he and his family left Mexico for Canada.

[4] Mr. Rosas Prado was the victim of an armed robbery when his taxicab was held up by two individuals in February of 2002. In itself this was unexceptional; as a taxi driver, he had been carjacked and robbed a number of times over the years. In this instance, however, one of the robbers, later identified as Rafael Arellano Solis, was apprehended by police and sentenced to a five-year prison term. The second robber was never caught. The applicants all fear retribution for the denunciation of Arellano Solis and do not believe that the Mexican authorities can protect them. Mr. Rosas Prado suspects that the robbers are associated with the Arellano-Felix drug cartel, a group which apparently has influence over the police.

[5] The claimants contend that their fear is substantiated by a series of incidents showing that the robbers are indeed bent on revenge. In September of 2004, a man matching the description of the second robber accosted and threatened Ms. Ibarra Rosas while she was walking to her daughter's school. The following month, the driver of a pickup truck tried to ram Mr. Rosas Prado's taxicab, in

the vicinity of his home. Shots were fired before Mr. Rosas Prado fled the scene. He claims to have seen the second robber - the one that was never caught - in the pickup truck. After this incident, he became convinced that his life was in danger and decided to leave Mexico. He left for Philadelphia in December 2004 with the financial support of his uncle, where he found work in construction, although he was in the United States without any legal status. His wife and children stayed in Mexico City, living with her parents.

[6] In October of 2007, Mrs. Ibarra Rosas received another threat. A note was left at the family home, which read [trans.] "I warned you, time has passed." This note was submitted in evidence, and is included the certified tribunal record. The words of the note are assembled from individual letters cut from magazines or newspapers.

[7] Shortly after receipt of the threat of October 2007, the family learned that Arellano Solis had been released from prison. Worried for the safety of his wife and children, Mr. Rosas Prado decided to rejoin them in Mexico and arrived there towards the beginning of November 2007. Less than a month later, once they had all obtained travel documents, the family relocated to Toronto, where they filed their claims for protection.

[8] The RPD issued its decision on the applicants' claims on August 19, 2008. It found that the applicants' fear of persecution was not linked to any Convention ground and that they had otherwise failed to rebut the presumption of state protection. Accordingly, it dismissed their claims under both

sections 96 and 97 of the *IRPA*, the legislative provisions which provide for refugee protection and complementary protection, respectively.

[9] In its decision, the RPD expressed misgiving with respect to specific elements of Mr. Rosas Prado's testimony and the documentary evidence submitted in support thereof. In the RPD's estimation, it was implausible that the alleged agent of persecution would have been able to locate and attack Mr. Rosas Prado on the road, in a city of 30 million people. Nor was the RPD willing to grant any weight to the threat note which ostensibly precipitated Mr. Rosas Prado's return from the United States and the family's subsequent flight to Canada, in the absence of any verifiable information as to the note's actual provenance.

[10] The RPD nonetheless proceeded to analyze the merits of the claim on the assumption that the threats had in fact occurred. With respect to the issue of state protection, the RPD relied on IRB country-of-origin documentation indicating that Mexico is a functioning democracy with a relatively independent and impartial judiciary; that Mexico has a functioning security force; that there are "new laws" designed to counter official corruption; that the punishment of corrupt and abusive police officers has been a priority for a number of years; and that "[t]here have been significant efforts to eradicate corruption and impunity with Mexican security forces and to foster accountability and respect for human rights." In the face of such information, the RPD was unsatisfied with Mr. Rosas Prado's explanation that he had simply been too fearful to report to the police any of the incidents recounted above. Further, the RPD noted that the very fact that Arellano-

Solis was caught, prosecuted and sentenced in connection with the 2002 carjacking, “clearly demonstrates that the rule of law exists in Mexico”.

### *Issues and Analysis*

[11] In this proceeding, the applicants have raised two issues: whether the RPD erred in its determinations that (a) adequate state protection is available to them, and (b) there is no nexus between their claims and any Convention ground. With respect to the former, the applicants submit that the RPD ignored evidence to the effect that they cannot rely on the Mexican state for protection. With respect to the latter, they claim to be members of a particular social group – victims of crime – who fear not only organized crime, but agents of the state itself.

[12] As a matter of law, it is well-established that the RPD’s determinations on the availability of state protection warrant the deference of this Court to the point of unreasonableness. Accordingly, so long as the RPD’s conclusions fall within a range of possible, acceptable outcomes, and are sufficiently justified, transparent, and intelligible, the Court will not interfere: *Dunsmuir v. New Brunswick*, 2009 SCC 9; *Sanchez Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 971, at para. 10.

[13] In connection with the issue of state protection, the applicants directed the Court to two documentary sources which were before the RPD, attesting to problems with the Mexican police and judicial systems. A 2006 report from the Washington Office On Latin America (WOLA) states

that “[d]rug traffickers have become the law of the land in many Mexican cities because of their ability to corrupt and threaten public officials”, while a 2008 U.S. Department of State includes the following passages:

“Corruption continued to be a problem, as many police were involved in kidnapping, extortion, or providing protection for, or acting directly on behalf of organized crime and drug traffickers. Impunity was pervasive to an extent that victims often refused to file complaints (...) Government authorities occasionally influenced court decisions...

Corruption, inefficiency, and lack of transparency continued to be major problems in the justice system (...)”

[14] It is notable that the RPD introduced its reasons with the observation that “[t]here is a presumption, except in situations where the state is in a complete breakdown, that it is capable of protecting its citizens. A claimant can rebut this presumption by providing clear and convincing evidence of the state’s inability to protect.” This statement of the law is in accordance with the Supreme Court of Canada’s exposition of the issue in *Canada (Attorney-General) v. Ward*, (1993), 103 D.L.R. (4th) 1, as well as the Federal Court of Appeal’s more recent discussions of state protection in *Hinzman v. Canada (Minister of Citizenship and Immigration)*, (2007), 282 D.L.R. (4th) 413 (F.C.A.) and *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94.

[15] In the Court’s view, neither the DOS nor the WOLA reports relied upon by the applicants contain information that is sufficiently detailed to constitute the type of “clear and convincing”

evidence that would be required to rebut the presumption of state protection in this case, particularly where the alleged persecutors' association with organized crime is merely speculative. Nor do the particular passages relied upon by the applicants strike the Court as sufficiently compelling to have warranted specific mention by the RPD.

[16] In her memorandum of fact and law, counsel for the respondent refers to the comments of Justice Anne MacTavish in *Sanchez Gutierrez v. Canada (Minister of Citizenship and Immigration)*, cited *supra*, where she writes that “[h]aving recognized the limitations in Mexico’s ability to protect its citizens, it was up to the Board to weigh the evidence before it, in order to determine whether the available state protection was adequate. This it did. It is not the task of this Court sitting on judicial review to reweigh the evidence that was before the Board.” The Court agrees that the comments are germane to the case at hand, where the RPD turned its mind to whether protection might reasonably have been forthcoming had the applicants approached the Mexican authorities for protection and concluded in the affirmative. On the record before the Court, there was nothing unreasonable in that conclusion and counsel for the applicants has not convinced the Court otherwise.

[17] In light of the forgoing conclusion on the issue of state protection, the second issue raised by the applicants need not be addressed. Suffice it to say that even if the applicants were able to establish a nexus to a Convention ground, this would not overcome their failure to make reasonable efforts to secure state protection from the Mexican authorities, particularly in light of the RPD’s finding that the Mexican security forces are “hierarchical, allowing for redress to [*sic*] a higher level

if a complainant is dissatisfied with services.” Furthermore, the alleged fear of the police seems to have emerged as an afterthought during the hearing and does not otherwise emerge perceptibly from all of the evidence.

[18] Accordingly, the application for judicial review must be dismissed. No question was proposed for certification and none will be certified.



**JUDGMENT**

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Max M. Teitelbaum”

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Deputy Judge

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

**DOCKET:** IMM-4024-08

**STYLE OF CAUSE:** ROSAS PRADO, ANGEL et al v. The Minister of  
Citizenship and Immigration

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 30, 2009

**REASONS FOR JUDGMENT:** TEITELBAUM D.J.

**DATED:** May 5, 2009

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