

Federal Court



Cour fédérale

Date: 20090508

Docket: IMM-4870-08

Citation: 2009 FC 482

Ottawa, Ontario, May 8, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**GUADALUPE BALLESTEROS VALERIO  
SUZANA QUINTERO CIENFUEGOS  
JONATHAN ALDHER BALLESTEROS QUINTERO  
JESSICA ALEJANDRA BALLESTEROS QUINTERO**

**Applicants**

and

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel) dated October 10, 2008, that the applicants are not Convention refugees or persons in need of protection.

[2] For the following reasons, the application for judicial review will be dismissed.

**Factual background**

[3] Guadalupe Ballesteros Valerio, his spouse Susana Quintero Cienfuegos and their two children, Jonathan Aldher Ballesteros Quintero and Jessica Alejandra Ballesteros Quintero, all citizens of Mexico, are claiming refugee protection based on section 96 and subsection 97(1) of the Act. The mother is named as the designated representative of the two minor children and the members of the family are basing their refugee claim on that of the principal applicant, the father.

[4] The applicant started working as a driver and delivery person for the company Sersufar in February 2000. This company manufactures drugs. As he was transporting some equipment and merchandise, several boxes fell and came open, and some white powder escaped from the boxes. His employer, José Luis Arias, came to the scene with three uniformed municipal police officers. They started to punch the applicant. After the applicant had returned home, his former employer telephoned him and told him that he would make him and his family disappear.

[5] The following day, the applicant went to the public ministry to file a complaint. He was given a blank page on which he was asked to recount the facts of the incident and was told that the process would be lengthy and difficult since police officers were involved.

[6] On October 14, 2006, at about 3:00 p.m., two unknown persons forcibly seized the applicant and tried to make him get into their car. Several people intervened and the applicant was freed. Again, he went to the public ministry to report these facts and he was told that someone would contact him.

[7] On October 22, 2006, gunshots coming from outside his residence were fired in his direction. He went to see a lawyer the next day. This counsel told him that it was futile to continue to file complaints, and that it would be preferable if he left the country.

[8] The applicant arrived in Canada on November 6, 2006, and he made his refugee claim on December 4, 2006.

### **Impugned decision**

[9] The panel rejected the claim on the basis of state protection and the possibility of an internal flight alternative (IFA) in the cities of Guadalajara, Monterrey, Tijuana and Cancun.

[10] The panel considered that the applicant had 12 years of education and that he had worked as a driver and delivery person for five different companies between the years of 1996 and 2006. He could have therefore found work elsewhere in Mexico. His spouse also had 12 years of education and had worked in customer service between 1997 and 1998. She resumed this work from November 2006 until April 2007 for an office supplies company. Regarding the two minor children, they could continue to go to primary school and nursery school.

[11] Citing (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*), [2001] 2 F.C. 164, 266 N.R. 380), the panel found that the difficulties associated with moving and resettling would not make the IFA unreasonable. The IFA was therefore a realistic and affordable option in this particular case.

### **Standard of review**

[12] The appropriate standard of review for issues of state protection is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d) 392 at paragraphs 9 to 11; *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14 and *Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721 at paragraph 3, [2008] F.C.J. No. 908 (QL)).

[13] The appropriate standard of review for IFA issues was patent unreasonableness (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912 and *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289). According to *Dunsmuir*, the Court must continue to show deference in determining an IFA and this decision is reviewed on the new standard of reasonableness. Consequently, the Court will intervene only if the decision falls outside the range of “possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above at paragraph 47). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process.

[14] In this case, the panel determined that the principal applicant failed to provide clear and convincing evidence that the State of Mexico was unable to ensure his protection because he did not exhaust all recourses available to him by the State of Mexico before seeking international protection.

[15] This conclusion is not unreasonable in light of the context. The panel could also have found that the applicant did not make a genuine effort to seek state protection because he left Canada less than a month after filing his first complaint.

[16] With respect to the establishment of an IFA, the Federal Court of Appeal stated that this must be carried out in two steps: 1. the Board must be satisfied on the balance of probabilities that there is no serious risk that the applicants will be persecuted in the suggested place; and 2. the situation in the suggested place is such that it is not unreasonable for them to seek refuge there (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)).

[17] For the first step of the analysis, the panel determined that there was no serious risk of the principal applicant being persecuted by his alleged persecutors. The panel simply did not believe that his former employer and the municipal police officers who had accosted him would have been interested in searching for him all over the country. The panel also did not believe that they would have had the means to search for and find the applicant in that immense country, especially since documentary evidence indicates that the municipal police even have a difficult time tracking down those involved in crimes of local jurisdiction.

[18] For the second step, the panel found that internal flight was a reasonable option that would not impose an unreasonable burden on the applicants. Considering the personal circumstances of the applicants, the panel found that it would not be unreasonable for the family to settle elsewhere in the country.

[19] In *Thirunavukkarasu*, above, the Court established that an applicant must cross a very high threshold to prove that the IFA is unreasonable. As explained in *Ranganathan (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.), at paragraph 15:

. . . It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. . . .

[20] The panel's decision is based on the testimony of the applicant as well as the documentary evidence in the record and it is reasonable in light of the circumstances.

[21] The intervention of the Court is not warranted in this proceeding.

[22] The parties did not propose any question for certification.

**JUDGMENT**

**THE COURT ORDERS** that this application for judicial review be dismissed and no question is certified.

“Michel Beaudry”

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Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-4870-08

**STYLE OF CAUSE:** GUADALUPE BALLESTEROS VALERIO  
SUZANA QUINTERO CIENFUEGOS  
JONATHAN ALDHER BALLESTEROS QUINTERO  
JESSICA ALEJANDRA BALLESTEROS QUINTERO  
v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 6, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** BEAUDRY J.

**DATED:** May 8, 2009

**APPEARANCES:**

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Mireille-Anne Rainville FOR THE RESPONDENT

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