Date: 20091015

Docket: IMM-1486-09

Citation: 2009 FC 1048

Ottawa, Ontario, October 15, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

Ulises FUENTES SIERRA
Loth Katiuska MARTINEZ MAGANA
Cristian Ulises FUENTES MARTINEZ
Carlos Samuel FUENTES MARTINEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated March 4, 2009 (Decision) refusing the Applicants' application to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicants - a husband, a wife and their three sons - are citizens of Mexico. The Principal Applicant was formerly a radio reporter in Morelia who conducted an investigation into drug traffickers, their links to police, and the joint crimes committed by both.

[3] The Principal Applicant was threatened and assaulted because of his investigation. He sought protection from the Department of Justice but was told that nothing could be done. Both the Principal Applicant and his wife experienced further threats.

[4] The Applicants relocated to the Federal District Mexico City (FDMC). The Principal Applicant was told that his family would be harmed if he did not return to Morelia. Again, he sought police protection but was told that the police could not assist.

[5] After returning to Morelia, the Applicants continued to receive threats of harm and death. The Principal Applicant fled to Canada on June 23, 2008. After an alarming incident in which the Female Applicant and her children were victims of an intentional automobile collision, the Applicant's wife and children fled to Canada on July 19, 2008. The family then filed a refugee claim.

[6] A hearing date was set for December 23, 2008. The Applicants were informed of the requirement to submit a Confirmation of Readiness. The Board never received this form.

[7] On December 1, 2008, the Applicants' new counsel requested an adjournment to allow more time to gather documents and prepare for the hearing. This request was denied by the Board. The Applicants and their counsel appeared for the hearing on December 23, but the hearing was adjourned to February 20, 2009, due to the unavailability of a Board member.

[8] On February 20, 2009, an assistant for the Applicants' counsel appeared to request an adjournment because counsel was ill. The Board denied the request and the hearing proceeded without counsel present.

DECISION UNDER REVIEW

[9] The Board found that the failure of the Mexican authorities to apprehend the unidentified agents who threatened and attacked the Principal Applicant and his wife did not rebut the presumption of state protection.

[10] The Board was also concerned about numerous inconsistencies between the Applicants' written and oral testimony, including the addition of events not previously reported and date discrepancies of events that had been reported. The Board went on to make a series of plausibility and credibility findings.

[11] The Board did not believe that the Principal Applicant was an investigative reporter who had been targeted for years and as a result of the incriminating knowledge he had amassed in his

short career. The Board also did not believe that the Principal Applicant would have been the only person targeted as a result of his radio program if it had truly been a threat to criminals and corrupt officials.

[12] The Board determined that the Applicants' return to Morelia from FDMC was not credible. The Board believed that such a move would further endanger the Principal Applicant's family and would do nothing to ensure protection for his extended family. Their return to Morelia caused the Board to question and doubt the Applicants' well-founded fear.

[13] The Board found it unbelievable that, as an inexperienced investigator, the Principal Applicant could have gathered information in 2005 that would still be a threat. Moreover, the Board doubted that an investigative reporter would endure years of threats without being able to identify the agents of persecution.

[14] The Board also doubted whether the Principal Applicant would leave his wife and children in a situation of danger in order to assess a country of asylum. In addition, the Board did not believe that the Female Applicant and children would maintain a predictable pattern of programs in Mexico, including day care and school, if their lives were in danger.

[15] The Board was sceptical of the police report filed by the Female Applicant five days prior to her arrival in Canada. The Board reasoned that the Female Applicant likely filed the report to "bolster the claims for refugee protection."

ISSUES

[16] The Applicants submit the following issues on this application:

1) Did the Board err in law in that its credibility findings were made without regard for the evidence before it or were otherwise unreasonable?

2) Were the Applicants denied natural justice, or fundamental justice under the Charter, when the Board proceeded with their hearing in the absence of their counsel?

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or

(iii) la menace ou le risque ne

incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[18] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review." Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[19] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] The Court in *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, determined that reasonableness is the appropriate standard for reviewing findings of credibility. Accordingly, reasonableness will be used to review the Board's credibility findings.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[22] The Applicants have also raised a procedural fairness issue to which the standard of review is correctness: see *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 and *Dunsmuir* at paragraph 60.

ARGUMENTS

The Applicants

[23] The Applicants submit that the Board made numerous errors in its Decision: it failed to consider the totality of evidence before it; it made inconsistent findings of credibility which undermined the Decision; it made implausibility findings based on erroneous cultural assumptions; and it committed errors of fact with regard to the evidence that it purported to consider.

The Newspaper Article

[24] The Board relied on the newspaper article provided by the Applicants from the *Seguiridad* on October 29 of 2005 to discount their argument of the unavailability of state protection. However, the Board gave this article no weight as corroboration of the Principal Applicant's story. In *Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27, it was determined that pieces of evidence either "had no weight and should be disregarded or they are relevant and taken as part of the proof [of] their contents in all respects."

[25] The Applicants submit that this error is compounded by the importance of the newspaper article in corroborating the Applicants' claim. The newspaper article described the Principal Applicant as a "known reporter" who was beaten by men who emerged from unmarked vehicles and was admitted to hospital. The report also said that this attack had taken place after the Principal Applicant had received "several threats by strangers."

[26] This evidence corroborated the central elements of the Applicants' claim. The Board did not doubt the authenticity or credibility of the newspaper article. Accordingly, the Board erred in its determination of credibility based on its erroneous treatment of this evidence.

Inconsistencies

[27] There are numerous inconsistencies within the Board's Decision. For instance, the Board determined that it was not credible that the Principal Applicant was the only person targeted because of his radio program. However, in the same paragraph, the Board acknowledged the Principal Applicant's explanation that Mauricio Estrada Zamora had been kidnapped as a result of the Applicant's radio show. These statements are mutually exclusive. The Applicants contend that the Board made erroneous findings of fact central to the determination of credibility.

[28] The Board also found that other family members had been threatened, but then stated that the Applicants were unsure as to whether or not other family members had been threatened. It is impossible for both of these statements to be correct. The evidence on record shows that the Applicants' extended family had not been threatened. Rather, the Principal Applicant feared harm to his immediate family if he did not follow the wishes of those who threatened him.

Implausibility Findings

[29] The Board is entitled to make findings of plausibility. However, such findings must be reasonable and supported by evidence. See *Yada v. Canada (Minister of Citizenship and Immigration)* 140 F.T.R. 264 and *Giron v. Canada (Minister of Employment and Immigration)*(1992), 143 N.R. 238.

[30] The Board found it implausible that the Principal Applicant had: (1) gathered incriminating evidence in 2005 that remained a threat three years later; (2) suffered three years of threats without being able to identify the agents of persecution; and (3) fled Mexico before his wife and children.

[31] The Applicants submit that the Board's first finding of implausibility was made without consideration of the nature of the evidence uncovered by the Principal Applicant. He obtained evidence naming a powerful criminal gang and a high-ranking police officer who was corrupt. It was unreasonable for the Board to overlook the plausibility that the Principal Applicant was still a threat to the criminals in question, even after the passage of three years.

[32] The Board's determination regarding the Principal Applicants' inability to identify the agents of persecution is also unreasonable. This determination was made without regard to the evidence on the record. The Applicants were aware of who was behind the threats and assaults; they were simply unable to personally identify the attackers. It is not uncommon for high-ranking officials or drug traffickers to hire anonymous thugs to make threats and commit assaults.

[33] The Board also erred in neglecting to consider why the Principal Applicant might flee Mexico prior to his wife and children. The Principal Applicant provided an honest answer that he believed they were safer in Morelia with his wife's family. The Female Applicant testified that she had attempted to lead as normal a life as possible in Mexico. However, she felt unable to continue living in FDMC when her vehicle was intentionally struck by thugs trying to locate her husband and the men inside the other vehicle threatened her.

[34] The Board failed to consider the Applicants' explanation for their conduct. Their explanations were not implausible and should have been considered. Furthermore, it was unreasonable for the Board to judge the plausibility of the Applicants' security arrangements. The Board's assessment fails to take into account the different risk tolerances of people who live in violent societies. Although the Board was entitled to accord little weight to these explanations, it was not entitled to ignore them (*Giron*, *supra*).

[35] The Board also discounted the final police report filed by the Female Applicant because it was "more probable" that the report was simply made to "bolster the claims for refugee protection." The Applicants contend that this finding was made without any supporting evidence. Moreover, this determination is faulty since it is based on the Board's other erroneous credibility findings.

[36] The Board decided that the Principal Applicant's story was implausible because of the Board's own cultural biases and prejudices. The impugned portion of the interview is as follows:

> I find it exceptional that a large radio station would have a 19 year old person investigation crime, criminal gangs and police and political corruption and then exposing themselves on the radio
>
> When I watch news in Canada or the U.S., the reporters are much more mature than you are. Today you're still 22 years old. I find it exceptional that a man of your youth would be making a regular broadcast with his own investigations and being exposed to this type of problem. I wonder why that would be that they gave you this responsibility.

[37] There was no evidence before the Board with regard to the ages of Mexican radio presenters or reporters. The Board made an erroneous judgment on the plausibility of the Principal Applicant's story based its perception of the age of North American anchorpersons. The Board was unable to render a reasonable finding on the plausibility of the Applicant's story because the Board was influenced by a North American cultural paradigm.

[38] Both personal and general corroboration existed for the Applicants' story that was overlooked by the Board. Such evidence includes: the newspaper article; a medical report from a hospital dated October 28, 2005; a letter from a psychotherapist; and a medical report from a nurse, dated March 25, 2008.

[39] The Board also failed to consider the documentary evidence demonstrating the persecution suffered by journalists and other whistleblowers in Mexico. This evidence was clearly consistent with the Applicants' story. One report provided as follows:

> [p]owerful drug cartels and escalating violence associated with criminal groups have made Mexico one of the world's deadliest countries for reporters. Since 2000, 23 journalists…have been killed,

> at least seven in direct reprisal for their work. Seven journalists have disappeared since 2005.

[40] Other evidence adduced by the Applicants showed at least five cases of disappeared journalists who had been investigating the link between local government officials and organized crime prior to their disappearance:

> The main source of danger for journalists is organized crime – and the second is the government…The worst scenario for journalists is when organized crime and the government become partners. And in many parts of this country, they are completely intertwined.

Even a security advisor to the United Nations found that there are parts of Mexico where "you can't distinguish between local police and criminals, and it has become very dangerous for journalists who report on this situation."

[41] The Board cannot reasonably find the Principal Applicant's story implausible while ignoring cogent documentary evidence to the contrary. By doing so, the Board has committed a reviewable error. See *Ali v. Canada (Minister of Citizenship and Immigration*), 2008 FC 448; *Santos v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 937.

Procedural Fairness

[42] The Applicants further submit that the Board's decision to proceed with their hearing in the absence of counsel was a breach of procedural fairness.

[43] The Federal Court of Appeal canvassed factors relevant to the Board's discretion to grant an adjournment in *Modeste v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1027 at paragraph 15:

1. Whether the applicant has done everything in her power to be represented by counsel;
2. The number of previous adjournments granted;
3. The length of time for which an adjournment is being sought;
4. The effect on the immigration system;
5. Whether the adjournment would needlessly delay, impede or paralyse the conduct of the inquiry;
6. The fault or blame to be placed on the applicant for not being ready;
7. Any previous adjournments granted on a peremptory basis;
8. Any other relevant factors.

These factors parallel those set out in subsection 48(4) of the *Refugee Protection Division Rules*.

[44] The Applicants submit that the brief reasons given by the Board for proceeding without counsel failed to address most of the issues relevant to granting an adjournment. The reasons were incomplete and inaccurate.

[45] The Applicants were mistaken in their belief that they had retained counsel. When they finally managed to retain counsel, their counsel could not confirm that they were ready to proceed on December 23, 2008 because they were not prepared for the hearing. Counsel requested an

adjournment which was denied. Counsel and the Applicants appeared for the hearing. However, this hearing was adjourned due to the absence of a Board member to hear it. The Applicants' counsel did not object to an adjournment. Accordingly, the hearing was set for February 20, 2009.

[46] The Applicants' counsel was ill on February 20, 2009. She sent her assistant to request an adjournment. The Board member refused the adjournment and proceeded with the hearing in the absence of counsel. At the end of the hearing, the Board member failed to advise the Applicants of their right to make submissions supporting their claim. Consequently, the Applicants made no submissions and the Board adjourned the hearing.

[47] The Applicants submit that the Board's characterization of the February 20, 2009 hearing as peremptory was erroneous. The December 23, 2008 adjournment was not due to a failure on the part of the Applicants, but rather to the absence of a Board member to hear the claim. The Applicants should not have been deemed responsible for this adjournment. Nor should they have been penalized for the illness of their counsel on February 20, 2009.

[48] The Applicants were prejudiced as a result of the refusal to adjourn since they made no submissions to support their claim. The Applicants were denied their right to a fair hearing because the Board forced them to proceed without counsel.

The Respondent

[49] The Respondent submits that the Board is in the best position to gauge the credibility of an applicant and to draw the necessary inferences: *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315. It is not the Court's place to substitute its discretion for that of the Board.

[50] The Board doubted the Applicants' well-founded fear because they had returned from the FDMC to Morelia. The Board did not find it credible that the Applicants would return because of threats against other family members.

[51] In the November 30th report, and in the FDMC report, the Principal Applicant failed to mention his subsequent returns to the police. The Principal Applicant said these omissions were an oversight. It was not unreasonable for the Board to draw a negative inference from the omissions, since these events are relevant to the claim.

[52] The Principal Applicant was working in a furniture store when the incident that prompted him to leave Mexico occurred. It was not unreasonable for the Board to doubt that the Principal Applicant, without being able to identify the agents of persecution, would face ongoing threats years after his investigations.

State Protection

[53] It is presumed that the state can provide protection to its citizens: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689. It is the Applicants' burden to provide clear and convincing evidence to rebut this presumption. It is not enough for the Applicants to show that government protection has not always been effective. The imperfection of state protection is not enough to justify a conclusion of insufficient state protection: *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 99 D.L.R. (4th) 334.

[54] The Female Applicant filed a police report on July 14, 2008 and arrived in Canada five days later. It was reasonable for the Board to conclude that she had concluded too quickly that no protection would be forthcoming. It was also reasonable for the Board to doubt her subjective fear, since she did not leave the country at the same time as her husband.

[55] The Board is presumed to have considered all the evidence unless the contrary is shown. A failure to refer to all of the evidence does not mean that evidence was ignored if the reasons suggest that the totality of the evidence was considered. See *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598.

No Breach of Procedural Fairness

[56] The Board's decision with regard to granting adjournments is discretionary. There is no presumption that a claimant is entitled to an adjournment. The Court should not interfere with the refusal to grant an adjournment unless exceptional circumstances exist. See *Siloch v. Canada (Minister of Employment and Immigration)* (1993), 10 Admin L.R. (2d) 285; *Pierre v. Minister of Manpower and Immigration*, [1978] 2 F.C. 849; *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560.

[57] The Federal Court has held that a fair hearing may occur without counsel present. As found in *Dadi v. (Canada Minister of Citizenship and Immigration)* (1999), 173 F.T.R. 123, "the right to be represented by counsel is not an absolute right. It is predicated on all parties and counsel acting reasonable in all circumstances."

[58] The Board's decision to proceed on February 20, 2009 without counsel present was reasonable. The Applicant had been given ample time to find counsel. Moreover, it was made clear to the Applicants that the case would proceed on this date with or without counsel present.

[59] The transcript shows that the Board considered the relevant factors in determining whether or not to exercise its discretion to refuse an adjournment. Consequently, it was open to the Board to proceed with the hearing. See *R.B. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 197 at paragraph 5 and *Antypov v. Canada (Minister of Citizenship and Immigration)*, 2004 FC

1589 at paragraph 7. In fact, the Court has held that "where a matter has been set for a peremptory hearing, a postponement should be granted only in exceptional circumstances": *Tripathi v. Canada (Minister of Citizenship and Immigration)*, 2000 F.C.J. No 1232 at paragraph 11.

[60] The Respondent disputes the Applicants' claim that they were not allowed to make submissions. The Board asked the Principal Applicant if he had anything else to say before the end of the hearing. The Board also asked the Applicants if there was "anything I did not ask you that you want to say."

[61] Finally, the Applicants' counsel was aware that documents could be submitted to the Board after the hearing. The Applicants had the chance to submit further evidence.

[62] There is no evidence that a breach of procedural fairness occurred. The Applicants were aware of the hearing process, and their claims were refused without error.

ANALYSIS

[63] There are portions of this Decision that are very difficult to understand. For example, why does the Board find it implausible that the Principal Applicant would be the only person at the radio station who was targeted when the Principal Applicant testified that he was <u>not</u> the only person who was targeted? The Board appears to have decided that the Applicants' story was implausible without addressing the significant evidence that supported their claim, and by utilizing the evidence in an

inconsistent way to support its finding of implausibility and credibility. The Board is also inaccurate in its conclusions about some of the Applicants' testimony.

[64] For example, the Board uses a newspaper article to discredit the Principal Applicant's testimony that the Department of Justice he approached for assistance refused to take a report, but the Board completely disregards the other evidence in the same article that corroborates attacks upon the Principal Applicant. It is not reasonable for the Board to selectively rely upon evidence to doubt one aspect of the Applicants' story but then to overlook the same evidence that strongly supports the central aspects of the Applicants' claim relating to physical abuse in retaliation for the Principal Applicant's radio exposures of links between drug traffickers and police. See *Tekie* at paragraph 11.

[65] The Board also asserts that it is not credible "that the claimant, whose wife and children were threatened, would leave them in Mexico, precede them to Canada to assess a country of asylum, or that the female claimant would continue to attend predictable and regular programs like day care and school in Morelia if their lives were in danger."

[66] Whether or not this sequence of events is credible depends upon whether there were good reasons for the Applicants to arrange their departure from Mexico in the way they did. There is nothing inherently incredible about members of a family leaving at different times if the exigencies of the situation call for such a procedure.

[67] The Applicants provided an explanation for why they fled separately. The Board certainly did not have to accept the explanation; but it does have to address the actual facts of their departure and say why it disbelieves the explanation provided. Instead, the Board simply makes a general statement to the effect that the Principal Applicant would not have come to Canada if his wife and children were threatened. This reveals that the Board was determined not to believe the Applicants rather than engage with, and assess, the particulars of their evidence. There are other credibility and plausibility findings that create the same impression and, overall, I am left with the conclusion that the Applicants' evidence has not been addressed in a reasonable manner by the Board as required by *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL) and *Ali*.

[68] This impression is confirmed by the Board's total failure to engage with, and address, a large body of documentary evidence that supports the Applicants' claim including: the newspaper article; a medical report from a hospital dated October 28, 2005 that confirmed the injuries suffered by the Principal Applicant; a letter from a psychotherapy centre confirming further treatment for an "acute episode paranoid" arising from the physical and psychological injuries he had suffered; and a medical report from a nurse dated March 25, 2008, the day upon which the Principal Applicant was subjected to a "mock execution" by persons who came to his home. There was also significant evidence before the Board concerning the murder and disappearance of reporters who expose drug traffickers and corrupt police, all of which evidence confirms the Applicants' fears but is never mentioned by the Board. The Board cannot simply ignore evidence that contradicts its own conclusions. I must conclude that the Board either failed to appreciate that this evidence was before

it or deliberately ignored the evidence because it did not support the Board's own conclusions. This was a reviewable error that renders the Decision unreasonable.

[69] All in all, I am not convinced that the Board has addressed the full evidentiary record before it. The Decision is unsafe and unreasonable and this matter must be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.:	IMM-1486-09
STYLE OF CAUSE:	***ULISES FUENTES SIERRA et al.***
	v.
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
DATE OF HEARING:	October 1, 2009
REASONS FOR JUDGMENT:	RUSSELL J.
DATED:	October 15, 2009

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