

Federal Court



Cour fédérale

**Date: 20100505**

**Docket: IMM-5163-09**

**Citation: 2010 FC 497**

**Toronto, Ontario, May 5, 2010**

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

**BETWEEN:**

**SALVADOR MONROY NIEVES  
INGRID NAOMI MONROY MORELOS  
CAROLINA MORELOS FRANCO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a protection claim pursuant to s. 97 of the *IRPA* of a husband and wife who fled Mexico for Canada with their daughter to escape risk of death. Before the Refugee Protection Division (RPD), the credibility of the principal claimant was not in issue with respect to the evidence he gave in support of the claim. Thus, quoting from the decision, the RPD found the facts upon which the claim is based as follows:

[2] Salvador Monroy Nieves is 30 years old and a citizen of Mexico. His wife, Carolina Morelos Franco, and their daughter, Ingrid Naomi Monroy Morelos, are also citizens of Mexico. Their last place of residence in Mexico was Acambaro, Guanajuato.

[3] The claimant is a ten-year-veteran of the Acambara municipal police. On July 4, 2006 he and a group of police officers arrested Hector Mejia Romero, alias El Piteco. It turned out that Mr. Mejia, who had links to drug cartels, was wanted on an outstanding warrant by the Agencia Federal de Investigacion -- Federal Investigations Agency (AFI). Mr. Mejia offered to pay the claimant to release him but the claimant refused the bribe and the suspect was escorted to a maximum security prison.

[4] The claimant began receiving death threats against himself and his family, and over a period of time, all the police officers who participated in Mr. Mejia's arrest and who had received death threats met violent deaths. Fearing for the safety of his family, the claimant requested police protection for his family which he received. However, when a new police director was installed, the protection was removed. The claimant did not seek further protection. He came to Canada with his family.

[2] The RPD rejected the claim for protection on the finding that the principal claimant did not make sufficient efforts to seek state protection before fleeing Mexico. Key features of the decision under review with respect to this finding are as follows:

[22] The claimant was asked if, as a police commander, a civilian had made a report to him similar to the one he now makes, with the suspect still in prison, what he would have done. He said he would find a way for the suspect to remain in prison. The claimant was asked to explain what the difference in his case is, why he did not work to keep the suspect in prison. He said the difference is he was afraid something would happen to his daughter. Even if that answer could be considered reasonable, the panel finds the answer to the following question unsatisfactory. The claimant was asked why he did not report the matter to the AFI. He said he could not think straight at the time, he only wanted to protect his family. The panel notes that the AFI and other agencies like the Policia Federal Preventiva- Federal Preventive Police (PFP) and the judicial police serve as the investigative force under the authority and command of

the public ministries and are there to protect the citizens of Mexico, including his wife and daughter.

[Emphasis in the original]

[23] The panel finds that based on the information provided in the claimant's testimony and other corroborating evidenced presented which points to the criminal activities of the suspect, while still in custody, the claimant's failure to present all that information to the appropriate authorities in Mexico means that he did not exhaust all recourses reasonably available domestically before claiming refugee status.

[24] A claimant's decision to flee before police have had an opportunity to properly investigate a crime does not amount to a lack of state protection.

[25] In this particular case, there is no information to suggest that the Mexican authorities would not make genuine and earnest efforts to investigate the claimant's allegation and apprehend the claimant's perpetrator if they had the information the claimant has presented to the panel. The claimant's choice to leave Mexico may have resulted in a renoun [sic] criminal being let out onto the streets of Mexico, given that he, as a surviving victim, was a key witness. This was an important consideration in the panel's finding that the claimant did not make diligent or reasonable efforts to seek the protection of the state before seeking international protection.

[26] Further, the Board considered the claimant's efforts to report any of this information to any other authority and finds that the claimant reported the matter to his then boss, Juan Joel Ruiz Troncoso, the director of municipal police. Mr. Ruiz informed the claimant that he had information that a prison inmate had overheard during a conversation between Mr. Mejia, whom the claimant had arrested, and another prison inmate about killing the claimant and his family.

[27] The claimant requested and was provided with immediate police protection. He testified that a police car with two police officers was stationed outside his place of residence. Their only responsibility was to protect his wife and daughter. However, with the appointment of a new municipal director, Pedro Gutierrez Avila, on June 14, 2008, the police officers assigned to protect the claimant's family were withdrawn. The claimant testified that he

requested continued protection for his family from the new police director, but the request was declined.

[28] The claimant testified that although he was concerned for his wife's and daughter's safety, he did not take his concern to any other authority. Asked why not, he said that the municipal police director was the highest member of the municipal force and if he said no, no one else was going to say yes. The panel notes that according to the documentary evidence, the Mexican security forces are described as hierarchical, and a complainant must seek redress at the higher level if dissatisfied with the services.

[Emphasis added]

[3] It is important to note that the death threats were made against not only the principal claimant but also his wife and daughter; on the evidence presented to the RPD, this fact was central to the actions the principal claimant took. As a matter of law, the RPD was bound to consider the principal claimant's detailed evidence explaining his actions to determine whether it was objectively unreasonable for him not to have sought greater protection of his home authorities (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584 (F.C.A.)). In my opinion, the RPD failed to discharge this obligation. Indeed, in my opinion, the emphasized portions of the passages just quoted render the decision as manifestly unreasonable.

[4] With respect to paragraph 22, the RPD dismissed the Applicant's answer because the AFI, for example, was available to protect his wife and daughter. In making this finding, the RPD neglected to take the Applicant's full explanation into consideration:

MEMBER: Yes. But the question that I'm asking you – I just want to make sure in my mind that when you were considering the safety of your family, when you were thinking of them, was it in the context that I can't report it to the AFI because it's going to take time and in

the meantime my family is in danger. Is that the context that you decided?

CLAIMANT: When I saw that my own director was not supporting me, I was very disappointed. What went through my mind was I have to protect my own family.

MEMBER: And so you started from that time to think about getting out?

CLAIMANT: Yes. It was already in my plans that I had to be in a safe place with my family.

MEMBER: So seeking assistance from the AFI or any other agency in Mexico was no longer paramount in your mind?

CLAIMANT: Many AFI – many people from the AFI have joined the drug cartel. I was thinking, what was going through my mind was if I reported this to a person at the AFI who has already been bought by the cartel.

MEMBER: So you were thinking of reporting it to AFI?

CLAIMANT: It crossed my mind. Many things crossed my mind.

(Tribunal Record, pp. 313 – 314)

[5] With respect to paragraph 23, if the “appropriate authorities” was the police force of which the principal claimant was a member, it certainly knew about the risk of death facing the claimants. If the “appropriate authorities” was the AFI, why would he report his plight to the corrupt that would be in a position to make matters worse? The RPD did not supply an answer to this question.

[6] With respect to paragraph 25, as a state protection issue, the RPD criticizes the principle claimant for leaving Mexico and not staying to give evidence in an effort to have the criminal remain in custody. In my opinion, this is a remarkably unfair and inappropriate finding given the

level of threat that he and his family were facing. The question is: why would it be objectively unreasonable for the principle claimant to be focussed on the safety of his family by fleeing as opposed to staying in Mexico and risking his and their lives in an attempt to somehow keep the criminal in custody? The RPD was required to find an answer to this question and to supply cogent reasons for the answer found. This challenge was certainly not met.

[7] With respect to paragraph 28, the expectation that, as a police officer under death threat, the Applicant would be required to go to a police authority higher than his superior who had just revoked his protection, is manifestly unreasonable without concrete reasoning derived from the evidence. No such reasoning is provided; there is no objective basis provided for rejecting the Applicant's statement that no higher authority existed for him, in particular, given the evidence of police corruption.

[8] As an alternative finding, the RPD found that the principal claimant and his family had an IFA in Mexico City. With respect to this issue, the principal claimant testified that Mexico City was not a possible relocation site because there is a National Registry which contains the names of current and former police officers with their names and addresses and the criminal would know how to use it to find him. The RPD did not accept the principal claimant's evidence about the existence of the Registry because "there is no mention of this National Police Registry in the documentary evidence" (paragraph 38). Given the principal claimant's evidence that the Registry exists, I find that this statement constitutes a negative credibility finding which does not conform to the law which is well established: the RPD is under a duty to give its reasons for casting doubt upon a

claimant's credibility in clear and unmistakable terms with clear reference to the evidence (*Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); and (*Leung v. Canada (Minister of Employment and Immigration)* (1994), 81 F.T.R. 303 at paragraph 14). As a result, I find that the IFA finding is made in reviewable error.

**ORDER**

**THIS COURT ORDERS that:**

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

---

Judge



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

**DOCKET:** IMM-5163-09

**STYLE OF CAUSE:** SALVADOR MONROY NIEVES  
INGRID NAOMI MONROY MORELOS  
CAROLINA MORELOS FRANCO v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 4, 2010

**REASONS FOR ORDER  
AND ORDER:** CAMPBELL J.

**DATED:** May 5, 2010

**APPEARANCES:**

Maureen Silcoff FOR THE APPLICANTS

Neal Samson FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Maureen Silcoff FOR THE APPLICANTS  
Barrister & Solicitor  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada