

Federal Court



Cour fédérale

**Date: 20110106**

**Docket: IMM-2202-10**

**Citation: 2011 FC 5**

**Ottawa, Ontario, this 6<sup>th</sup> day of January 2011**

**Before: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**JOSE GUADALUPE VELAZQUEZ HERNANDEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of a member of the Immigration and Refugee Board (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, (the “Act”) by Jose Guadalupe Velazquez Hernandez (the “applicant”). The Board determined that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant is a Mexican citizen from Ocultzapotlan, in the state of Tabasco. He alleges that on April 7, 2006, he was the victim of a home robbery while he was away. Upon his return, neighbours informed him that the perpetrator was a local criminal known only as “El Pollero”. The applicant allegedly attempted to register a complaint with the local office of the Public Prosecutor, but states that they refused to receive the complaint for lack of evidence and witnesses. He says that his neighbours refused to act as witnesses for fear of reprisals from the local criminal elements. The police allegedly told the applicant that surveillance would be increased.

[3] Nevertheless, the applicant alleges that El Pollero somehow found out that the applicant had attempted to make this complaint. The applicant says that he received threats from El Pollero and his accomplices between April 2006 and August 2006.

[4] The applicant alleges that he changed cities several times within the region and that, on June 22, 2007, he was in Villa Hermosa, approximately 55 km from Ocultzapotlan, when he and a colleague were attacked in the street and robbed. The applicant says that they filed a police complaint with the help of a company lawyer, and that the complaint was registered. The applicant adds that he did not mention El Pollero’s name in this complaint, though he alleges that the attackers told him that they were accomplices of El Pollero, acting in reprisal.

[5] The applicant later returned to live in Ocultzapotlan, the location of the original robbery, where his family lived. He alleges that he continued to fear for his life. He arrived in Canada on May 3, 2008, and claimed refugee status the same day.

[6] The Board rejected the applicant's request for refugee status based on a lack of credibility, the existence of state protection, and the existence of a viable internal flight alternative.

[7] This matter raises three issues:

- a. Was it unreasonable of the Board to conclude that the applicant's story was fabricated and lacked credibility?
- b. Did the Board err in concluding that state protection was available to the applicant?
- c. Did the Board err in concluding that an internal flight alternative was available to the applicant?

[8] Dealing first with the question of state protection, which is a mixed question of fact and law, according to Justice Yves de Montigny in *Paguada v. The Minister of Citizenship and Immigration*, 2009 FC 351, paragraph 19, and is therefore subject to the standard of reasonableness, the Board found that there was adequate state protection available to the applicant in Tabasco. The Board noted that when the applicant was duly diligent following the June 2007 attack, the complaint was registered by the police. It also noted that the applicant was allegedly told in April 2006 that surveillance would be increased following the robbery. The Board concluded that this demonstrated that the state institutions were functioning normally, and that the applicant had not demonstrated any clear and compelling evidence that these institutions were in disarray.

[9] The applicant submits essentially that the Board did not respect the criteria set out by the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, pp. 724-726, regarding the absence of state protection. He argues that it is well-known in Mexico that the government is unable to protect its citizens from criminal groups, who terrorize citizens without

repercussions; however, the applicant does not point to any serious evidence before the Board to support this allegation.

[10] *Ward* places the burden on the applicant to provide “clear and compelling evidence” that the state was unable or unwilling to protect him. In *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.), it is acknowledged that no government can guarantee protection all the time, and that it is, therefore, not enough to show that the government is not always effective at protecting persons in that particular situation. In *Kadenko et al. v. Canada (Solliciteur général)* (1996), 206 N.R. 272 (F.C.A.), it is further noted that the failure of a local police department to provide protection does not necessarily mean that state protection as a whole is inadequate, especially where there is difficulty investigating because of a lack of witnesses or where the assailant’s identity is unknown (as in the present case).

[11] Finally, I find it significant that the applicant did not provide any evidence that state protection would not be forthcoming where, as in the case of the applicant’s June 2007 complaint, there were witnesses and an identifiable assailant.

[12] I find, therefore, that it was reasonable for the Board to conclude that the applicant did not meet the burden of showing that the state was unable or unwilling to protect him in the circumstances.

[13] Turning to the internal flight alternative issue, the Board noted that the applicant was asked whether he could move to Mexico City, and that the applicant had indicated that he could find a job

and an apartment there without difficulty. The Board noted that the applicant mentioned in his Canada Border Services Agency (“CBSA”) interview that he did not wish to move to Mexico City because he feared losing his job, though he did have family there. The Board found that the applicant had made no reasonable efforts to seek an internal flight alternative, and that there was no evidence that he would be personally and actually at risk throughout Mexico.

[14] The applicant argues that the Board erroneously concluded that he had made no effort to find an internal flight alternative, and notes that he moved from his hometown to both Cardenas and Comalcalco, but that he was allegedly traced there by El Pollero.

[15] The respondent argues that the applicant failed to show that he would be personally and currently at risk if he were to move to Mexico City. The respondent notes that the applicant admitted that he would be able to find an apartment and a job there (even if, as the applicant alleges, he did not qualify this as a “normal life”), and, according to the Board, stated in his CBSA interview that he merely did not want to move to Mexico City for fear of losing his job. The respondent submits that the Board duly considered the applicant’s submission that he feared that El Pollero could trace him throughout Mexico, but did not accept this submission. The respondent argues that the applicant is merely disagreeing with the Board’s assessment of the evidence as a whole.

[16] I agree with the respondent on this point. The standard of review applicable to the Board’s finding of the existence of an internal flight alternative, which is a fact-based question, is also reasonableness, according to *Navarro v. The Minister of Citizenship and Immigration*, 2008 FC 358, at paragraphs 12 to 14. In my opinion, the Board acted reasonably in concluding that an internal

flight alternative exists for the applicant in Mexico City. The applicant has not shown any significant evidence which was before the Board to refute this conclusion.

[17] As the above findings are determinative of this application for judicial review, it will not be necessary to deal with the question of credibility.

[18] For the above-mentioned reasons, this application for judicial review is dismissed.

[19] I agree with counsel for the parties that this is not a matter for certification.

**JUDGMENT**

The application for judicial review of a decision of a member of the Immigration and Refugee Board determining that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-2202-10

**STYLE OF CAUSE:** JOSE GUADALUPE VELAZQUEZ HERNANDEZ v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 30, 2010

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

**DATED:** January 6, 2011

**APPEARANCES:**

Me Eric Freedman FOR THE APPLICANT

Me Christine Bernard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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