

Federal Court



Cour fédérale

**Date: 20110308**

**Docket: IMM-3193-10**

**Citation: 2011 FC 271**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Toronto, Ontario, March 8, 2011**

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

**BETWEEN:**

**MARCOS HERNANDEZ RENDON**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Hernandez Rendon is a citizen of Mexico who is seeking refugee protection in Canada. He alleges that he was raped by his stepbrother and that he was ostracized by his family when he told his father about the rape. He also claims that he suffered physical and emotional abuse from his father and from schoolmates. He became an advocate for gay rights in Mexico.

[2] In 2000, the applicant began work teaching courses at the Police College in the state of Mexico. When he discovered the existence of corruption that involved selling course grades, cocaine and diplomas in colleges, he began reporting these acts in 2005. As a result of his speaking

out, he claims he was assaulted on the college principal's orders and that he was raped by one of the assailants.

[3] He was fired in 2006, and then assaulted once again in 2007. He complained to the local authorities without success and arrived in Canada in November 2007.

### **DECISION UNDER REVIEW**

[4] The panel dismissed the applicant's refugee protection claim on the ground that he had an internal flight alternative. While there are questions as to the applicant's credibility, they are not determinative. With regard to the internal flight alternative, the applicant stated that he could not live elsewhere in Mexico due to the drug trafficking and violence. He also mentioned that he could be found through his elector's card. The panel found that these explanations failed to demonstrate how and why his assailants would have the will and means to track him all over Mexico.

[5] The applicant also raised his sexual orientation as being a barrier to his settling elsewhere in Mexico. He even added that he would rather support himself by working low-paying jobs and relying on food banks in Canada than return to Mexico.

### **PARTIES' SUBMISSIONS**

[6] In his principal argument, the applicant stated that after the first hearing the panel designated him as a vulnerable person under Guideline 8. Consequently, the applicant was to be questioned first by his counsel, instead of the panel. This decision was not respected at the second hearing. The decision that is under review makes no reference to that previous decision.

[7] The issue of credibility was not raised at the hearing. The applicant argued that it was not possible to analyze the issue of the availability of an internal flight alternative solely on the basis of his sexual orientation and whether he could find a place where homosexuals are safe, such as Guadalajara. The applicant instead argued that he had exposed police corruption and that these corrupt officers would be able to pursue him throughout the country. He also submitted that the documentation clearly shows that people who expose corruption are not safe in Mexico.

[8] The respondent stated that the applicant had had ample opportunity to plead his case and to provide detailed answers to the questions he had been asked. With regard to the internal flight alternative, the applicant failed to demonstrate that his alleged assailants were determined to pursue him to another part of the country.

[9] In reply, the applicant stated that he was stigmatized and that he cannot return to Mexico. He added that the panel was aggressive and sarcastic toward him.

## **ISSUES**

[10] The issues are as follows:

1. Did the panel err by not following the order of questioning that had been established in a previous decision?
2. Did the panel err when it determined that the applicant had an internal flight alternative in Mexico?

## **ANALYSIS**

### **Standard of review**

[11] Issues of breach of procedural fairness are questions of law, reviewable on a standard of correctness (*Benitez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 461, [2007] 1 F.C.R. 107, at paragraph 45).

[12] Issues of availability of an internal flight alternative are questions of fact (see *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, [2008] F.C.J. No. 571 (QL), at paragraph 21). Pursuant to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the applicable standard of review is reasonableness.

### **The application of Guidelines 7 and 8 by the panel**

[13] The applicant attended two hearings. At the first hearing, which was adjourned, the member designated the applicant as a vulnerable person under Guideline 8. Consequently, the order of questioning of the applicant was to have been reversed. However, this Guideline was not followed at the applicant's second hearing. In fact, the panel instead followed Guideline 7, according to which the decision-maker questions the claimant first.

[14] First of all, it should be noted that a subsequent decision-maker is in no way bound by the first member's statement. In this case, the panel followed the first member's recommendation but then decided to follow the order of questioning set out in Guideline 7 and question the claimant first.

[15] There is nothing in the record to suggest that the applicant was placed at a disadvantage by the application of Guideline 7. The issue of the application of this Guideline was addressed by the Federal Court in *Benitez*, above, and was upheld by the Federal Court of Appeal in *Benitez v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 199, [2008] 1 F.C.R. 155. In that decision, Justice Mosley of the Federal Court found that the Guideline itself did not infringe the general principles of fundamental justice, or fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*. With regard to the discretion of the members, Justice Mosley determined that Guideline 7 does not serve as a mandatory pronouncement which fetters their discretion.

[16] These findings were upheld by Justice Evans of the Federal Court of Appeal, at paragraph 38 of the decision.

[17] It is also important to note that the applicant was represented by the same counsel at both hearings and that at the second hearing no objection was raised by the applicant's counsel with regard to the order of questioning. Therefore, this amounts to an implied waiver on the applicant's part.

[18] Therefore, I find that the applicant was not placed at a disadvantage when the panel decided to proceed with the order of questioning set out in Guideline 7.

### **Internal flight alternative**

[19] The applicant submits that he will be pursued wherever he settles in Mexico. However, the police need to obtain a court order and authorization from the Minister before they can pursue someone. The applicant adduced no evidence that the police officers he had exposed would have had access to his personal information. Furthermore, the applicant in no way showed that these individuals were determined to pursue him elsewhere in Mexico.

[20] The applicant had an opportunity to defend his position at the hearing. In fact, he clearly indicated his distaste for the city of Guadalajara, where he did not want to move due to drug traffickers and other problems. This is a general situation that does not lead to the conclusion that the applicant feared moving to this city due to his particular situation.

[21] I therefore find that the applicant would simply prefer to live in Canada rather than in Mexico. This is not the purpose of Canada's refugee system, or of sections 96 and 97 of the *Immigration and Refugee Protection Act*.

[22] The application for judicial review is dismissed. No serious questions of general importance were proposed for certification and none arise from the matter.

**ORDER**

**THE COURT ORDERS** that the application for judicial review be dismissed and that no serious question of general importance be certified.

“Sean Harrington”  
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Judge

Certified true translation

Sebastian Desbarats, Translator

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

**DOCKET:** IMM-3193-10

**STYLE OF CAUSE:** MARCOS HERNANDEZ RENDON v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 1, 2011

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

**DATED:** MARCH 8, 2011

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