

Federal Court



Cour fédérale

Date: 20110531

Docket: IMM-6804-10

Citation: 2011 FC 603

Ottawa, Ontario, this 31st day of May 2011

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Fernando MARTIN DEL CAMPO CORDERO

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 Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Board”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) by Fernando Martin Del Campo Cordero (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 citizen of Mexico and resided in Ciudad Juarez. He was the manager of a chain of five video stores. He was present at one of these stores in December 2005 when it was robbed. The local police attended and the applicant also gave a statement to a judge at the judicial centre.

[3] In February 2006, the applicant alleges that he received a telephone call from a man who identified himself as Officer Ramirez of the judicial police, stating that he had been assigned the investigation of the robbery. Officer Ramirez met with the applicant and questioned him. After a week, the applicant received another phone call from Officer Ramirez, telling him that he should consider getting personal protection for the stores considering all of the crime taking place in Juarez. The applicant was suspicious of the Officer's motivation and informed his superior and the company lawyer. The applicant's superior told him to ignore it. Officer Ramirez subsequently called again, and the applicant told him that the company would not accept any "under the table" offers. Officer Ramirez informed the applicant that the case might never be solved and that the applicant should consider asking for personal protection, which would cost one thousand pesos. The applicant refused.

[4] After a second offer and refusal, Officer Ramirez threatened the applicant and his family and demanded five thousand pesos. He gave the applicant three days to come up with the money. At

the end of three days he demanded it, and the applicant told him he would be able to get it by the end of the month, being March 2006.

[5] On March 25, 2006, the applicant was stopped by two police vehicles while on the way to visit his children. Officer Ramirez was present. He threatened the applicant with a gun and told him that the new demand was ten thousand pesos.

[6] The applicant informed his ex-wife of the threats and asked her to take the children into hiding. The applicant hid at his mother's home, where he was living. He resigned from his job and planned his departure from Mexico. On May 22, 2006, Officer Ramirez contacted him again, and the applicant asked for an extension until May 30.

[7] On June 11, 2006, the applicant traveled to the United States. He lived and worked there illegally. In February 2007, the applicant's ex-wife received a phone call stating that the applicant had been detained and that ten thousand pesos would secure his release. She called the applicant and established that this was untrue. She had no further contact with any extortionist.

[8] The applicant lost his job in December 2008, and due to the American economy knew that he would have difficulty finding employment there. He came to Canada on February 11, 2009 and requested refugee protection the same day.

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[9] The determinative issue for the Board was the existence of state protection. The Board's main concern was whether it would have been objectively unreasonable for the applicant to have pursued state protection in Mexico. The Board member noted that a claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state; the rebuttal must be objectively based.

[10] The Board took note of jurisprudence establishing that state protection need not be completely effective, so long as the government is taking serious steps to provide or increase protection for individuals. The Board cited the 2009 U.S. Department of State Report on Mexico to find that Mexican citizens can file complaints with federal prosecutors, can seek redress at higher levels of the security forces, can submit complaints to internal monitoring bodies at the Office of the Attorney General, and can submit complaints at government-funded human rights organizations. The applicant testified to not being aware of any of these procedures; the Board found that he had not made the necessary enquiries.

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[11] At the hearing before me, the applicant's counsel raised the following two issues:

- a. Was the Board's finding regarding subjective fear unreasonable?
- b. Was the Board's finding regarding state protection unreasonable?

[12] Regarding the first issue, Justice Marie-Josée Bédard found in *Gomez v. Minister of Citizenship and Immigration*, 2010 FC 1041 at para 11, that the existence of subjective fear is a question of fact and therefore subject to the standard of reasonableness.

[13] The standard of review applicable to a Board's finding on the subject of state protection is likewise that of reasonableness, according to Justice François Lemieux in *Mendoza v. Minister of Citizenship and Immigration*, 2010 FC 119 at paras 26-27. Therefore, the Board's conclusions on both issues must fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

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A. *Subjective fear*

[14] The applicant argues that the Board erred in finding that he had not demonstrated subjective fear without making a negative credibility finding against him. The applicant also argues that the Board erred in relying on delay to find that subjective fear was not established, contending that if the applicant is credible and offers an explanation, delay alone is not enough to negate subjective fear. The applicant further submits that the Board ignored evidence in the form of letters from the applicant's ex-wife and mother supporting his subjective fear of persecution. The applicant also takes issue with the Board's noting that Ramirez's deadlines passed without any actual repercussions.

[15] For his part, the respondent submits that the issues raised on the question of subjective fear are not determinative of the claim, as the only determinative issue was state protection. The respondent argues that the question of whether state protection exists is the first step in determining whether refugee claimants have an objective basis for their fear of persecution. I agree.

[16] The Board was clear in the regard that the determinative issue was state protection, and declined to make any finding with regard to the applicant's credibility. Whether or not the Board was incorrect in making the statements that it did without coming to an actual credibility finding, the finding that state protection exists, if reasonable, would still be determinative of the result of the case. In my view the question of subjective and objective fear are not, as argued by the applicant, crucial to the determination of whether state protection exists; they become relevant afterwards when the state is found not to have been able to protect the claimant. Paragraph 52 of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 722, is clear on this point:

Having established that the claimant has a fear, the Board is, in my view, entitled to presume that persecution will be likely, and the fear well-founded, if there is an absence of state protection.

[Emphasis is mine.]

B. *State protection*

[17] The respondent cites a list of cases in which this Court has held that state protection exists in Mexico; the applicant counters with an equally long list of cases in which this Court has overturned a Board's finding of state protection in Mexico. I accept the applicant's point that each case is to be decided on its own facts and circumstances.

[18] In the case at bar, the applicant, in my view, has not demonstrated that the Board's decision concerning state protection was unreasonable. The applicant made no effort at all to seek out the state's protection at any point during his dealings with Ramirez. He testified to not having looked into any potential procedures he could have undertaken. While it is true that it was a previous dealing with the police that led to his persecution by Ramirez, there was evidence showing that corruption is not absolute; it is difficult for the applicant to show that protection would not have been reasonably forthcoming when he did not make any attempt at all to make the state aware of his situation. I do not find it sufficient for him to state that his company superiors told him not to bother reporting the threats to the police; in my view this in itself does not show that protection would not have been forthcoming had he actually gone to the police.

[19] Regarding the documentary evidence, I do not find that the present case was one where the Board erred by not discussing the documents cited by the applicant in his memorandum. The Board clearly accepted that corruption is a major problem in Mexico, but also found that there is not a complete breakdown of the state apparatus. Leaving aside the recourse to human rights organizations (the jurisprudence following *Zepeda v. Minister of Citizenship and Immigration*, 2008 FC 491, [2009] 1 F.C.R. 237 (F.C.), is consistent that such organizations are not sufficient providers of state protection), there were certain avenues available within the police hierarchy that were not taken by the applicant. As the respondent notes, the Board is presumed to have considered and weighed all of the documentary evidence. In my view the applicant has not pointed out any reviewable error in the Board's conclusions regarding the documentary evidence, but merely disagrees with the Board's ultimate weighing of this evidence. I find it difficult to accept the applicant's proposition that due to the existence of corruption within Mexican police forces, he did

not have any obligation at all to attempt to complain about his dealings with Ramirez. In this regard I find the decisions in *Borges v. Minister of Citizenship and Immigration*, 2005 FC 491, and *Palomares et al. v. Minister of Citizenship and Immigration* (June 7, 2006), IMM-5447-05, cited by the respondent, to be on point. At paragraph 12 of *Palomares*, Justice Elizabeth Heneghan held that:

. . . the Principal Applicant did not seek state protection at any time .
. . It is not enough for the Principal Applicant to refer to documentary evidence that, admittedly, paints a mixed picture about the state response to domestic violence and say that the Board committed a reviewable error in her case.

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[20] For the above-mentioned reasons, the application for judicial review is dismissed. I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-6804-10

STYLE OF CAUSE: Fernando MARTIN DEL CAMPO CORDERO v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 10, 2011

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

DATED: May 31, 2011

APPEARANCES:

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