

Federal Court



Cour fédérale

Date: 20110624

Docket: IMM-7277-10

Citation: 2011 FC 763

Ottawa, Ontario, June 24, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CESAR ALEJANDRO CHAVEZ FRAIRE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision of the Refugee Protection Division of the Immigration and Refugee Board. The Board determined that the applicant was neither a Convention refugee nor a person in need of protection.

[2] The applicant is a citizen of Mexico. Between 2002 and 2008 he was threatened, beaten, and robbed by members of the criminal organization Los Zetas. He moved cities twice in this time but Los Zetas located him. He also reported the assaults to the police who did nothing. He came to Canada and sought refugee protection in December 2008 after Los Zetas beat him up and “told him to leave Mexico because they would make his life miserable since he reported them to the police and tried to evade them.”

[3] The applicant’s refugee claim was dismissed because the Board found that the risk feared by the applicant was generalized and that, therefore, he was not eligible for protection under s. 97 of the Act.

[4] The applicant submits that the Board erred in this determination because it “failed to deal with a key element of the Applicant’s case, namely that the nature of the risk to him changed and evolved from the original extortion threats made because he was perceived to be a successful businessman, to the specific, personalized threats made to him after that time, which arose because he had reported the matter to the police and had tried to flee, both of which were taken by the Zetas to be extremely aggravating factors.”

[5] In support of this submission, the applicant points to and emphasizes the word “therefore” in the following passage:

The panel finds that the claimant is a victim of generalized crime. The claimant did not pay the extortion money to the Zetas. He went to the police and left the city. Next time, they beat him and took his money. The following two times they threatened him and

beat him. These crimes are the result of not paying the extortion money and reporting them to the police. The claimant was originally targeted because he was a businessman perceived to have money; just as many businessmen are targeted by the Zetas. Therefore, the panel finds the risk feared by the claimant is generalized risk faced by citizens of Mexico. [emphasis added]

[6] The applicant submits that the use of the word “therefore” indicates that the Board only looked at the risk he had faced as a perceived successful businessman and not the increased or different risk he faced because he had reported Los Zetas to the police.

[7] The Board found as a fact that “since the claimant went to the police, the Zetas have a vendetta against him.”

[8] The applicant relies on the decisions of this Court, including those of *Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 365 and *Zacarias v Canada (Minister of citizenship and Immigration)*, 2011 FC 62. I find those decisions distinguishable from the facts here. In those two cases the Board failed to consider the specific circumstances of the applicants. In *Pineda* the Board failed to consider that the applicant had been personally targeted by the MS-13 gang on multiple occasions because he had refused to join the gang; rather, it examined his claim as if he was merely a university student in El Salvador. In *Zacarias* the Board failed to consider the evidence that the applicant was targeted due to collaboration with the authorities, refusal to comply with the gang’s demands, and knowledge of a murders committed by the gang; rather, it examined the applicant as if he was merely a successful vendor in Guatemala. In the case before the Court the Board did not fail to consider the personal characteristics of the

applicant, including the fact that he went to the police. It was this action that was the foundation for the Board's finding that there was a vendetta.

[9] In its reasons, after describing the last interactions the applicant had with Los Zetas and specifically the confrontation wherein he was told that Los Zetas would make his life miserable because he had reported them to the police and tried to evade them, the Board made the following finding:

The panel further finds that the Zetas, as well as other gangs of organized crime, are persistent in following up on those people they have made demands of. Documentary evidence indicates that "it (Zetas) executes and kidnaps its enemies." Therefore, the panel finds that the risk of harm that the claimant fears is one feared by the general population of Mexico.

[10] The applicant's submission is based on a microscopic examination of the phrasing of the decision and overlooks the fact that the Board did consider the heightened risk the applicant would have as an enemy of Los Zetas, but found that this risk was a generalized one. That risk did not become personalized simply because the applicant fell into the group of those who were enemies of Los Zetas.

[11] For these reasons I find the decision of the Board to be reasonable and the application must be dismissed.

[12] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7277-10

STYLE OF CAUSE: CESAR ALEJANDRO CHAVEZ FRAIRE v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 20, 2011

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

DATED: June 24, 2011

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