

Federal Court



Cour fédérale

Date: 20110704

Docket: IMM-5539-10

Citation: 2011 FC 815

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 4, 2011

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

**PEDRO CERVANTES YANEZ
MARIA AMANDA BARAJAS GARIBAY
PEDRO ALEXIS CERVANTES BARAJAS
DIEGO IVAN CERVANTES BARAJAS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (panel) submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are members of the same family and are all Mexican citizens. The panel rejected their refugee claim solely on the basis of an internal flight alternative (IFA) in one of three cities: Mexico City, Monterrey or Merida, places far from the cities of Guadalajara and Santiago, in which reside the agents of persecution, two judicial police officers and two attorneys within the Office of the Public Prosecutor, four corrupt people involved in the drug trade, according to the applicants. Their daughter's refugee claim was withdrawn in advance of the hearing before the Board; she lives in the United States.

[3] The source of the applicants' persecution lies in the complaint that the principal applicant, Pedro Cervantes Yanes, filed with the Office of the Public Prosecutor for the city of Guadalajara against police officers Lopez and Hernandez, who were extorting from him. The principal applicant said that they threatened, kidnapped, tortured and attempted to murder him. He managed to escape and flee Mexico for Canada, where he was joined by his family members after his daughter, Amanda Priscila Cervantes Barajas, was raped by Officer Hernandez.

[4] The applicants' credibility was not tainted despite the fact that the panel, in its decision, had some reservations. The existence of an IFA was determinative for the panel.

[5] Counsel for the applicants raises one issue against the panel's decision. She argues that the panel disregarded evidence that police officers Lopez and Hernandez would easily be able to locate the applicants if they returned to live in Mexico given that the police have access to government databases containing their contact information. She cites the recent decision of my colleague, Justice Michel Shore, in *Vargas v. Canada (Citizenship and Immigration)*, 2011 FC 543.

[6] In this case, the panel stated the following:

[30] With respect to an IFA, the claimants' evidence is that the agents of persecution are localized. The principal claimant testified that both Hernandez and Lopez are located in Guadalajara, where they also work, as are Norma Hernandez Reyes and Flavio Gonzales Lopez from the Attorney General's office in Jalisco, who they also allegedly fear.

...

[34] I also find the claimants' belief that they would be located elsewhere in Mexico through their use of identity documents to obtain employment, make payroll deposits and to services such as telephones is not compelling. The principal claimant also testified that the agents of persecution would use their governmental authority to access all of the databases and find them. These concerns are largely speculative, in light of the principal claimant's evidence that he based his knowledge that the agents of persecution could access databases from what he had seen on the news, and by what the agents of persecution had told them. It is particularly speculative, given the absence of evidence that the agents of persecution have used or accessed such information in the past. . . .

[7] The applicants submitted as evidence Exhibits P-14 and P-15 (Tribunal Record, at pages 428 to 433), two documents from *El Universal.com.mx*, dated April 19 and 21, 2010, respectively, that show the existence of an illegal trade in personal information from databases that gang members and the police can access.

[8] In *C.M.M.V.*, above, Justice Shore wrote the following:

[17] In addition, the Applicants submitted newspaper articles from *La Presse*, *The Globe and Mail*, *The Toronto Star*, *The National Post*, *Embassy Mag*, *El Confidential*, *El Universal*, *CNN.com* and *The Guardian* (Tribunal Record (TR) at p 264 and following). The objective evidence clearly demonstrates that the Applicants' persecutors are well organized and extremely dangerous. Drug

cartels in Mexico are structured, powerful organizations. As an example, *The Guardian*'s article "The Zetas: gangster kings of their own brutal narco-state" explains:

The crucial point about the "relative peace" in areas held by the Zetas is that it is peace whereby the cartels controls every fact of life, is uncontested by its rivals and presides over an omnipresent reign of terror.

(TR a p 381)

[18] In addition, at the hearing, the principal Applicant explained that their persecutors were collaborating with corrupt police officers; and, that their persecutors would, therefore, be able to find them anywhere in Mexico (TR at p 428). The Applicants testified that their persecutors could easily obtain their address, phone number, credit cards and other personal information. Since the credibility of the Applicants had been accepted by the Board, the matter becomes self-evident.

[19] In the present case, the Board failed to explain why it did not accept the pertinent evidence which fully supported the Applicants' arguments. This failure constitutes a reviewable error. The Court, thus, acknowledges that this case, within its particular context and distinct evidence, requires a more significant analysis. The Board was under obligation to explain why it had ignored evidence which corroborated the Applicants' allegations.

[9] I believe that the case before me is identical.

[10] For these reasons, the application for judicial review will be allowed.

[11] No question of importance was raised by the parties.

JUDGMENT

The application for judicial review is allowed. The decision dated August 25, 2010, by a member of the Refugee Protection Division of the Immigration and Refugee Board is set aside and the matter is referred back to a differently constituted panel of the Board for redetermination.

“François Lemieux”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5539-10

STYLE OF CAUSE: PEDRO CERVANTES YANEZ,
MARIA AMANDA BARAJAS GARIBAY,
PEDRO ALEXIS CERVANTES BARAJAS,
DIEGO IVAN CERVANTES BARAJAS and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 18, 2011

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

DATED: July 4, 2011

APPEARANCES:

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Christine Bernard FOR THE RESPONDENT

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