

Federal Court



Cour fédérale

Date: 20110704

Docket: IMM-5224-10

Citation: 2011 FC 821

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 4, 2011

PRESENT: The Honourable Madam Justice Johanne Gauthier

BETWEEN:

**RICARDO DE JESUS MENDEZ CERVANTES,
VICTORIA GUADAL MONTIEL MANZO,
AND
MARIAH FERNANDA MENDEZ MONTIEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In view of the applicants' application for judicial review of the decision of the Refugee Protection Division (RPD) rejecting their refugee protection claim because they had not established that their state, Mexico, was unable to protect them from Mr. Munoz.

[2] Having reviewed the documentation filed by the parties, including the certified record, and having considered the oral submissions of their counsel.

[3] Having noted that the RPD raised several points affecting the credibility of the principal applicants, specifically their “complaint with a human rights organization”, the death threats presumably uttered against Mr. Mendez Cervantes on April 28, 2008, and how this applicant could have apparently left his country while leaving behind his wife who, according to him, was being terrorized following the theft of her clothing and underwear (and their sporadic reappearances accompanied by obscene messages) and while a police officer or former police officer, Mr. Munoz, was presumably obsessed with her.

[4] In fact, at paragraph 17 of its decision, the RPD indicated that, in its opinion, the only complaint that was made by the applicants was that of October 14, 2007 (theft committed shortly after their arrival in Tijuana following Mr. Mendez Cervantes’ removal from the United States where the two spouses had lived illegally and were married). It also found that their testimony “is not trustworthy...[it] finds the testimony implausible in terms of the key components of their claim”, including the confusing explanations and the contradictions concerning their assailant, and the reasons why he was able to find them again in Mexico City (Federal District) and subsequently in Hidalgo.

[5] These comments and findings were not contested by the applicants in their memorandum or at the hearing. In fact, the applicants instead focused their submissions on the RPD’s analysis and finding that they had not presented clear and convincing evidence that the presumption of state

protection did not apply and that they had left their country without having tried to take the appropriate reasonable steps to obtain that protection. In fact, according to them, the RPD disregarded the documentary evidence and did not take into account the seriousness of the events they experienced. They argue that an in-depth review of the record will enable the Court to find that they did everything that could and should reasonably have been done in the circumstances.

[6] Having considered that the standard of review applicable to the issues described above is reasonableness, since the applicants are raising question of fact and questions of mixed fact and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paras. 51, 53 [*Dunsmuir*]; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para. 38; *Canada (Minister of Citizenship and Immigration) v. Gondara*, 2011 FC 352, at para. 25).

[7] Having determined that despite the fact that the RPD indicated at paragraph 9 that its finding concerning state protection would apply even if the alleged facts were true, the Court cannot disregard its finding concerning the lack of credibility of the principal applicants' testimony. This is even more important when we consider that, given the applicable standard of review, the Court cannot simply substitute its own assessment of the evidence for that of the decision-maker. All it can do is determine whether the decision falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" and meets the test of transparency, intelligibility and justification (*Dunsmuir*, at para. 47).

[8] The grounds on which the applicants are claiming protection were not very specific. In fact, Mr. Mendez Cervantes, in his Personal Information Form, indicated that he is a member of an

unidentified social group, while at the hearing he stated that his fear is instead based on criminality. Even though he originally said it concerned Mr. Munoz's sexual obsession with his wife, he also said that it results from an altercation between himself and Mr. Munoz at the police station on February 14, 2008, when he was again complaining that the police had not found the person responsible for the theft and the obscenities uttered against his wife. On February 25, 2008, he allegedly complained about Mr. Munoz's attitude on February 14 with a human rights organization and it was after that that his problems started. As for Ms. Montiel Manzo, she says that she fears Mr. Munoz (police officer or former police officer from Tijuana) and she is making her claim based on her membership in the group of Mexican women who are victims of violence or, as the protection officer indicated at the hearing before the RPD, as a victim of crime. However, she testified that during her rape, it was her husband that Mr. Munoz was looking for. He also allegedly uttered threats against her granddaughter.

[9] That is why the RPD focused its analysis (pp. 7 to 11) on the measures taken by the Mexican state to counter corruption among police officers and public servants and to improve staffing procedures, as well as the measures taken to ensure that citizens can denounce them, and finally those taken to protect women victims of violence (even though the documentary evidence deals generally with spousal violence, which is not the case here). The RPD stated that it was satisfied after examining the documentary evidence that the state has taken important measures that have had concrete results, even if they are clearly imperfect. At paragraph 28, it also noted that "local failures in maintaining order in an efficient manner do not amount to a lack of state protection".

[10] The Court is satisfied that the RPD took into account the explanations given by the applicants that, according to them, all police officers are corrupt and that they have read in the newspapers that there is a “blue law” which requires police officers to cover for each other, and that when they complained to the police about their theft and the obscenities uttered against Ms. Montiel Manzo, they (Mr. Munoz) made fun of them.¹

[11] The RPD simply found more credible the documentary evidence that indicated, among other things, that the complaints made to the organizations established for that purpose have led to numerous investigations and that various concrete corrective actions had been taken, which I previously mentioned. The RPD did not close its eyes to the imperfections of the Mexican system.

[12] The Court cannot find that the RPD committed a reviewable error by not expressly referring to the document cited by my colleague Justice James Russell in *Villicana v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205 (Professor Adler Hellman’s report). The Court notes in this respect that the said document is not included in the certified record or in the applicants’ record and that it was not referred to at the hearing before the RPD in the oral submissions.

[13] International protection was never intended or implemented as front-line protection. As indicated in *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689, “[t]he international community intended that persecuted individuals be required to approach their home state...” (at para. 18). That is why the Federal Court of Appeal recently reiterated in a matter involving a Mexican citizen, in

¹ Here again, the evidence is contradictory, because the applicant also indicated that his information was taken in writing and that the police had duly advised him to be very cautious, because this could be a case of sexual harassment that could have serious consequences.

Carrillo v. Canada (Minister of Citizenship and Immigration), 2008 FCA 94, that a refugee protection claimant has a heavy burden of proof to meet in that respect.

[14] No one has contested that the applicants truly believe that the complaints concerning the central facts of this claim (rather than those concerning the theft) would not come to anything. It is precisely because of such prejudices that their government has implemented awareness campaigns to encourage the public to turn to the institutions and mechanisms that it has established.

[15] Unfortunately, such a belief is not sufficient in itself to meet their burden of proof, particularly pursuant to section 97 of the IRPA (see *Castillo v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 134, at para. 31).

[16] There is no similarity here between the steps they claim to have taken when they were in Tijuana to obtain help following a minor theft, the obscene messages, and the altercation of February 14, and the total lack of steps taken with regard to the much more serious actions described by the applicants and committed in jurisdictions where nothing in the documentary evidence indicates that a simple police officer² or former police officer from Tijuana would have support.

[17] After a thorough review of the record, I have not been convinced by the applicants of the existence of a reviewable error. I am satisfied that the RPD's findings in the specific circumstances of the case and its in-depth analysis meet the standard of reasonableness.

[18] The parties did not submit any questions for certification. In my opinion, this matter does not give rise to any questions of general importance.

[19] The application is dismissed.

² There is no evidence that Mr. Munoz was high-ranking or that he was part of a network of drug traffickers or other organized gang.

ORDER

THE COURT ORDERS that the application be dismissed.

“Johanne Gauthier”

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5224-10

STYLE OF CAUSE: RICARDO DE JESUS MENDEZ CERVANTES ET AL
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 26, 2011

REASONS FOR ORDER: GAUTHIER J.

DATED: July 4, 2011

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANTS

Marilyne Trudeau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Istvanffy FOR THE APPLICANTS
Counsel
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec