

Federal Court



Cour fédérale

Date: 20110909

Docket: IMM-7536-10

Citation: 2011 FC 1065

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 9, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**MARIA ADRIANA TORRES MARTINEZ
CANDIDO JULIAN TORRES MARTINEZ
ANGEL ADRIAN TORRES TORRES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] For a state to be in a position to protect its citizens, it needs to know whom or what to protect its citizens from. Without knowing who the persecutors are, even states that should

(according to the terms of the classic decision in *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL/Lexis)) protect their citizens, cannot do so.

II. Judicial proceeding

[2] This is an application for judicial review submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, rendered on November 29, 2010, that the applicants are not refugees or persons in need of protection, because there was no clear and convincing evidence to show, on a balance of probabilities, that in their case state protection was inadequate.

III. Facts

[3] The applicants are Maria Adriana Torres Martinez, born on July 1, 1984, her spouse, Candido Julian Torres Martinez, born on February 2, 1984, and their son, Angel Adrian Torres Torres, a minor, born on September 3, 2006. They are all Mexican citizens and come from the city and the state of Querétaro.

[4] The applicants claim that they fear a certain Ugo Hernandez. He allegedly tried to take revenge following an altercation with the principal applicant's brother. The principal applicant's brother sought refuge in Canada on April 2007 after having lived for some time with the applicants in Mexico.

[5] The applicants argue that some people allegedly attempted to kidnap their son on June 2, 2007, and that these individuals then tried to approach them posing as photographers. They apparently also received numerous telephone calls from strangers looking for them and strangers trying to pass as friends in their own home, then at the home of the female applicant's mother, where she had sought refuge after the events of June 2, 2007.

[6] The applicant was the first one to leave the country for Canada. She was accompanied by her son Angel Adrian. They arrived in Canada on July 17, 2007, and claimed refugee protection the same day. The principal applicant, Candido Julian Torres Martinez, left Mexico on August 5, 2007, and also claimed refugee protection in Canada.

IV. Decision under judicial review

[7] The RPD determined that the applicants were not Convention refugees or persons in need of protection. It found that the applicants were credible but that the determinative issue was nevertheless one of state protection, in this case.

[8] The RPD also noted that according to the documentary evidence, the state was making efforts to end corruption in Mexico. The procedure for making a claim is also explicit in the documentary evidence.

[9] The RPD raised the fact that the applicants had explained that they filed a complaint after the kidnapping attempt on their son and following the threats they received, but that the police officer who processed their complaint told them that he could not investigate if the female applicant

could not provide a better description of the aggressors. At the time, the applicants did not know the aggressor's identity and did not know that it was in fact their son's neighbour. In response to this concern, the RPD determined that the police officers would not have problems identifying the aggressor because the applicants knew, since their arrival in Canada, that in this case it was the neighbour of the applicant's brother and that this problem was therefore resolved.

[10] The RPD further noted that if the applicants were dissatisfied with the services of one of the police officers, they could turn to one of his colleagues, or otherwise file a complaint with internal affairs at the Federal Prosecutor's Office or otherwise with the Human Rights Commission in Mexico.

V. Issue

[11] Is the decision of the RPD tainted by an error of fact or law warranting the intervention of the Court?

VI. Relevant statutory provisions

[12] Sections 96 and 97 of the IRPA are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en

faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Position of the parties

[13] The applicants submit that the RPD failed to take into consideration the contradicting documentary evidence. In their opinion, it is clear that the RPD's decision is patently unreasonable, considering the evidence it had before it. The Applicants point out that the RPD did not question the applicants' credibility.

[14] As for the respondent, he argues that the RPD's decision relies on the evidence submitted, draws reasonable inferences from it and complies with the applicable legal principles. According to him, the applicants filed a complaint against their aggressors on one occasion, but they failed to provide clear and convincing evidence showing that, on the balance of probabilities, in their particular situation, the protection of Mexico would be inadequate.

VIII. Standard of review

[15] It is established in the case law that the standard of review applicable in issues that concern state protection is that of reasonableness:

[5] The standard of review for determination of the issue of state protection, a question of mixed fact and law, is the standard of reasonableness. On this standard, the Court should not intervene where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

(*Dosantos v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1174)

IX. Analysis

[16] The Court considers that the RPD's reasons relating to state protection were based in fact and in law. It is clear that the RPD considered all of the facts particular to the applicants' situation. The RPD also referred to extensive documentary evidence in its decision: in the National Document Package on Mexico of March 17, 2010, tab 2.1: *Country Reports on Human Rights Practices for 2009*; tab 9.5 of June 5, 2006, *Procedures followed to file a complaint with the Federal Prosecutor's Office*; and tab 7.4 of June 8, 2009, *Kidnappings for ransom, including the types of kidnapping, protection available to victims, the effectiveness of anti-kidnapping measures, and the complicity of some police officers* (Decision at pp. 4-5).

[17] The RPD mentioned that corruption is still a problem in Mexico; however, it did take the trouble to study the methods used by Mexico to fight criminal organizations. The RPD also reasonably reviewed the documentary evidence showing that Mexico is a democratic state that generally respects the rights of its citizens and has the necessary resources to provide a measure of protection to Mexicans and more specifically with respect to the facts surrounding the applicants' situation.

[18] Because of the female applicant's inability to describe the aggressors and the lack of information about the aggressors, the police officers could not effectively investigate the applicants' aggressors. The Court agrees with the RPD's opinion that the discovery of Ugo Hernandez's identity, and the reasons for his actions, will help the police forces to respond more effectively.

X. Conclusion

[19] For all these reasons, the Court's view is that the applicants failed to give substantial grounds warranting the Court's intervention. The applicant's application for judicial review is therefore dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. There is no question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7536-10

STYLE OF CAUSE: MARIA ADRIANA TORRES MARTINEZ
CANDIDO JULIAN TORRES MARTINEZ
ANGEL ADRIAN TORRES TORRES
v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 1, 2011

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

DATED: September 9, 2011

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