

Federal Court



Cour fédérale

Date: 20111102

Docket: IMM-3751-11

Citation: 2011 FC 1251

Ottawa, Ontario, November 2, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**LUIS ENRIQUE FLORES CABRERA
and MARIA SANTOS RUBIO GARCIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] By motion made in writing, the applicants ask this Court, pursuant to paragraph 72(2)(b) and (c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, to extend the time for filing and serving their application for leave and judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) dated May 12, 2011, that denied their claim for protection. Those provisions provide as follows:

72. (2) The following provisions govern an application under subsection (1):

...

(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court (“the Court”) within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

72. (2) Les dispositions suivantes s’appliquent à la demande d’autorisation :

...

b) elle doit être signifiée à l’autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l’alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;

c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

[2] The burden of proof lies with the applicants. The Federal Court of Appeal in *Canada (Attorney General) v Hennelly*, [1999] FCJ No 846 at para 3, set out the test to be applied when considering requests for an extension of time:

The proper test is whether the applicant has demonstrated:

1. a continuing intention to pursue his or her application;
2. that the application has some merit;
3. that no prejudice to the respondent arises from the delay; and
4. that a reasonable explanation for the delay exists.

These criteria are conjunctive; the party seeking the extension must satisfy the Court that all four have been established on the balance of probabilities.

[3] Even if the other criteria are met – a proposition I do not find, but merely assume for the purposes of this application - I am not satisfied that the applicants have established that their application for leave and judicial review has merit, nor have they provided a reasonable explanation for the delay.

[4] The applicants are citizens of Mexico. They filed a claim for protection alleging that their lives were at risk as a result of reporting to the police that a local man was selling drugs in the neighbourhood. They allege that he had friends in the Federal Police and that those friends were friends with the Los Zetas, a major criminal organization in Mexico. Without describing their evidence to the RPD in detail, it is observed that they asserted that they had received threatening phone calls, moved from their home in Los Cues, had the door of their new home kicked in, were assaulted, and received death threats.

[5] The RPD held that the applicants did not have a well-founded fear of persecution with a nexus with any of the five Convention grounds set out in s. 96 of the Act. It was also held that the applicants' removal to Mexico would not, on a balance of probabilities, subject them personally to a risk to their lives or to a risk of cruel and unusual treatment or punishment as provided for in s. 97 of the Act. Further, the RPD held that the applicants had an internal flight alternative in Mexico and that this was determinative of their claim.

[6] In their submissions made in support of this motion, the applicants submit that they were not given enough time for their lawyer to properly prepare their case before the RPD, that they were poorly advised by this lawyer, and that they did not know that they could have filed a complaint with the Law Society of Upper Canada. They further submit that they left out three important pieces of information that could have persuaded the RPD to come to a different decision: (1) medical information which would have demonstrated that the third assault was more severe than what the RPD believed it to be, (2) proof that Mr. Flores Cabrera received a gunshot to the leg when he and his wife were attempting to jump over the fence of their backyard, and (3) a certificate from the *Procuraduria General de Justicia* in Mexico which provides evidence of Mr. Flores Cabrera's clean criminal record. The applicants' request for Legal Aid has been refused; they are acting on their own behalf in this motion.

[7] I have reviewed the entire record before the Court and have concluded that this motion cannot succeed.

[8] The applicants have not demonstrated that their application for judicial review has merit. They have not filed any evidence that shows that having a "good" lawyer, or having more time with their lawyer, could have resulted in a different finding by the RPD. Further, and contrary to the view of the applicants, I have determined that the medical info, the gunshot wound and the criminal record certificate would not likely have persuaded the RPD to render a different decision regarding the IFA. None was germane to that issue. As that finding was determinative of the applicants;' claim for protection, the result would not change even if the evidence was admitted.

[9] This Court has often held that waiting for a response from Legal Aid is not a reasonable explanation for delay: *Espinoza v Canada (Minister of Employment and Immigration)* (FCA), [1992] FCJ No 437, and *Zheng v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1005. Other than stating that they have difficulties understanding the procedure before this Court, they have not advanced any other explanation to justify their delay.

[10] For these reasons, this motion must be dismissed.

ORDER

THIS COURT ORDERS that the applicants' motion for an order under paragraph 72(2)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, extending the time for filing and serving their application for leave and judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated May 12, 2011, is dismissed, without costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3751-11

STYLE OF CAUSE: LUIS ENRIQUE FLORES CABRERA ET AL v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

**REASONS AND ORDER OF
THE HONOURABLE:** ZINN J.

DATED: November 2, 2011

WRITTEN REPRESENTATIONS BY:

Luis Enrique Flores Cabrera
Maria Santos Rubio Garcia

APPLICANTS –
ON THEIR OWN BEHALF

Sharon Stewart Guthrie

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

SELF-REPRESENTED
APPLICANTS

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FOR THE RESPONDENT