

Federal Court



Cour fédérale

Date: 20111128

Docket: IMM-2421-11

Citation: 2011 FC 1375

Vancouver, British Columbia, November 28, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**MAURICIO GARCIA GOMEZ
IVETH VARGAS SAAVEDRA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER

UPON APPLICATION for judicial review of a decision of the Refugee Protection Division, of the Immigration and Refugee Board of Canada, holding that the claimants are not Convention refugees and are not persons in need of Canada's protection;

UPON REVIEWING the record and considering the written and oral representations of counsel;

UPON NOTING the following paragraphs in the reasons for the decision:

29 I accept that the claimants were threatened by a businessman in the State of Guanajuato.

42 I find that the claimant is a victim of criminality. I accept that drug cartels and gangs are powerful in Mexico. However there was inadequate evidence presented to me that this particular man named Ortega was connected to major cartels or to high ranking government officials at the State or Federal level.

UPON ACCEPTING that as such the applicants are not Convention refugees within the meaning of section 96 of the *Immigration and Refugee Protection Act*;

CONSIDERING, thereafter, the provisions of section 97 of the Act;

CONSIDERING, more specifically, that the claim appears to be personalized in that the persecutor, Juan Ortez, was someone with whom the principal claimant had done business over a number of years;

CONSIDERING that a woefully inadequate analysis led to the subsequent finding that the applicants were the victims of generalized crime and, therefore, cannot benefit from section 97;

CONSIDERING that there was no finding that the claimants were not credible, and considering that it is unreasonable to hold that the risk they faced from Mr. Ortez is a risk faced generally by other individuals in Mexico;

CONSIDERING that, in the circumstances, a further analysis of both state protection and the internal flight alternative should have been carried out;

CONSIDERING the decision in *Ponce Uribe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1164, [2011] FCJ No 1431 (QL);

THIS COURT ORDERS that

1. The application for judicial review is granted.
2. The matter is referred back to the Refugee Protection Division of the Immigration and Refugee Board of Canada for re-determination by a differently constituted tribunal.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge