

Federal Court



Cour fédérale

Date: 20120117

Docket: IMM-3963-11

Citation: 2012 FC 60

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, January 17, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**JOAQUIN MANUEL GONZALEZ MOJICA
YAZNIT LUNA PARRAL**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It was open to the Refugee Protection Division (RPD) to find that the applicant had not availed himself of state protection since he did not follow up on his complaints. The applicant merely reiterated his fear of the authorities' corruption. The RPD noted the following points from the applicant's explanations:

[10] The male claimant explained that he had not followed up on his complaints because either [translation] "they" do nothing or his assailant has no

fear of reprisals since he is well protected, or because the police cannot do anything against a government entity. ...

II. Judicial Proceeding

[2] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act (2)* (Act), of the decision by the RPD dated May 26, 2011, wherein the applicants were found to be neither a Convention refugee as defined in section 96 of the IRPA nor a person in need of protection under section 97 of the IRPA.

III. Facts

[3] Joaquin Manuel Gonzalez Mojica, the principal applicant, and his common-law spouse, Yaznit Luna Parral, are Mexican citizens.

[4] The applicant worked for the Federal Electricity Commission, a Mexican government corporation, since 1999. He claims that, during the years he worked there, he witnessed drug use and sales during working hours, done with impunity.

[5] The applicant alleges that, in February 2009, he refused to take cocaine offered by his direct supervisor for the first time during working hours in a company vehicle.

[6] Following this refusal, the applicant was allegedly the victim of persecution, harassment and baseless sanctions from his direct supervisor. The applicant filed a complaint with his union, which did nothing.

[7] Following this complaint, the applicant alleges that his direct supervisor pointed a gun at his head because he was an informant.

[8] On March 15, 2009, the applicant filed a complaint of death threats with the Mexican police. The police allegedly made fun of him and discouraged him from filing a complaint against his direct supervisor.

[9] According to the applicant, he was threatened with death again by his direct supervisor for having reported him to the police. He claims that his direct supervisor told him that he was protected by the “Zetas”.

[10] On March 16 and 17, 2009, the applicant got information about applying for refugee protection and took steps to purchase airline tickets to leave Mexico.

[11] The applicants arrived in Canada on May 10, 2009, and made a refugee protection claim that same day.

IV. Decision subject to this application for judicial review

[12] The RPD did not impugn the applicant’s credibility. For the RPD, the pivotal issue for the refugee protection claim is state protection. The RPD found that Mexico, as an organized democracy, is presumed to be able to protect its citizens. The onus was on the applicant to rebut this presumption.

[13] To make this finding, the RPD placed considerable importance on documentary evidence (National Documentation Packages) that reveals, in its opinion, that the government of Mexico is able to fight corruption, it can protect its citizens from reprisals and a number of recourses are available to victims of corruption by federal public servants. In the panel's opinion, Mexico "makes serious efforts to protect its citizens who are victims of crime or who are threatened with criminal acts, the mere fact that it is not always successful at doing so is not enough to justify a claim that victims or persons threatened with criminal acts are unable to avail themselves of such protection" (Decision at para 13).

[14] The RPD concluded that the principal applicant "failed to act" in that he should have followed up on his complaints to the union and the Public Ministry (Decision at para 13). The RPD draws an unfavourable inference from the fact that the applicant took steps to buy airline tickets three days after filing his complaint with the Public Ministry.

V. Issue

[15] Under the circumstances, is the RPD decision reasonable?

VI. Relevant statutory provisions

[16] The following provisions of the IRPA are applicable in the case at bar:

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

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

social group or political opinion,

nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their 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

a) soit se trouve hors de tout 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) 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.

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

Personne à protéger

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

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

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

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

(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 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.

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

(ii) elle y est exposée en 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

[17] First, the applicants submit that the RPD erred by applying the wrong test to find that there was state protection. Consequently, it committed a reviewable error. The applicants claim that the case law on which the panel relied does not reflect the current situation in Mexico. Indeed, it is allegedly easier to rebut the presumption of state protection in a country like Mexico that is a developing democracy. Moreover, they maintained that the RPD overlooked some documentary evidence showing that the effectiveness of protection in Mexico, despite the government's efforts, is weak.

[18] Furthermore, the RPD allegedly overlooked the applicant's testimony about his efforts to seek protection from Mexico.

[19] The respondent argued that the RPD properly analyzed the issue of state protection. It emerges from an analysis of the documentary evidence that the applicant has not exhausted all the recourses available to avail himself of the protection of his country of origin, particularly human rights organizations. Thus, the RPD is not required to comment on each and every piece of evidence that was adduced. Moreover, the applicants did not file the documents they refer to in support of their affidavit. In addition, according to the respondent, it was reasonable for the RPD to give weight to the fact that the applicant did not follow up on his complaints, and that he left the country three days after he filed his complaint with the Public Ministry. In the case at bar, the applicant's situation demonstrates a local problem and it does not appear that protection was ineffective throughout the country.

VIII. Analysis

[20] The appropriate standard of review for the RPD's findings regarding state protection is that of reasonableness. The Supreme Court of Canada has stated that RPD decisions are owed some degree of deference (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

[21] It is important to recall that in issues of state protection, each case has its specific context and facts, and the objective evidence must be analyzed in light of the particular circumstances (*Arellano v Canada (Citizenship and Immigration)*, 2006 FC 1265).

[22] In *Burgos v Canada (Citizenship and Immigration)*, 2006 FC 1537, Justice Edmond P.

Blanchard explained the principle of state protection as follows:

[35] Mr. Justice Denis Pelletier of the Federal Court, as he then was, stated that the failure of local authorities to maintain order in an effective manner is not equivalent to a lack of state protection (*Zhuravlyev v. Canada (M.C.I.)*, [2000] F.C.J. No. 507 (QL)). He added that the evidence must establish a broader pattern of state inability or refusal to extend protection in order to prove the lack of state protection.

[36] However, when it considers the issue of state protection, the Court cannot require that the protection currently available be perfectly effective. The following excerpt written by Mr. Justice James Hugessen in *Villafranca v. M.E.I.*, [1992] F.C.J. No. 1189 (F.C.A.) (QL), sets out this principle:

On the other hand, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection.

[Emphasis added.]

[23] The reasoning of Justice Marie-Josée Bédard in *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, [2009] FCR 237, is relevant:

[20] I find Madam Justice Gauthier's approach to the presumption of state protection in Mexico to be persuasive. While Mexico is a democracy and generally willing to protect its citizens, its governance and corruption problems are well documented. Accordingly, decision-makers must engage in a full assessment of the evidence placed before them suggesting that Mexico, while willing to protect, may be unable to do so. This assessment should include the context of the country of origin in general, all the steps that the applicants did in fact take, and their interaction with the authorities (*Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1211, [2007] F.C.J. No. 1563 (QL), at para. 21; *G.D.C.P. v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 989, [2002] F.C.J. No. 1331 (QL), at para. 18).

[24] The RPD placed considerable emphasis on the efforts of the Mexican government to combat corruption. The RPD reviewed the evidence, set out at paragraph 12 of its decision, that the applicant could have sought state protection through various mechanisms established by the government to fight corruption, such as filing a complaint with the attorney general, to name but one example.

[25] The Court is of the opinion that in order for the applicant to succeed in his argument about the ineffectiveness of government measures, he must in fact demonstrate this ineffectiveness. He cannot raise a subjective fear to justify his failure to avail himself of state protection. As the Court explained in *Castaneda v Canada (Minister of Citizenship and Immigration)*, 2010 FC 393:

[26] In spite of this, the applicant claimed that fear prevented him from going to the federal authorities. This explanation cannot be accepted, for the adequacy of state protection cannot rest on the subjective fear of an applicant. The presumption of state protection cannot be rebutted on this subjective basis alone (*Suarez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1050, 141 A.C.W.S. (3d) 116).

[27] To rebut the presumption of state protection, an applicant must present clear and convincing proof of the state's inability to protect. The evidence must be

relevant and reliable, and convince the trier of fact that the state protection is inadequate (*Ward; Carrillo v. Canada (M.C.I.)*, 2008 FCA 94, [2008] 4 F.C.R. 636). [Emphasis added.]

[26] As for the applicant's argument that the RPD had not taken into account the relationship of the applicant to the authorities as an electrician in a government corporation, it has no merits and must be dismissed. Indeed, this fact is explicitly mentioned in paragraph 10 of the RPD's decision. In this case, persecution allegedly committed by a state official is not sufficient to discharge the applicant of his burden to rebut the presumption of state protection (*Cardona v Canada (Citizenship and Immigration)*, 2010 FC 57).

[27] The Court is of the opinion, in light of the evidence on the record, that the RPD reasonably ruled that the applicant did not discharge his onus of proof to rebut the state protection presumption. The RPD considered the particular circumstances of this case, its finding concerning state protection is reasonable.

IX. Conclusion

[28] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS the dismissal of the applicant's application for judicial review.

No question of general importance is to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Monica F. Chamberlain

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3963-11

STYLE OF CAUSE: JOAQUIN MANUEL GONZALEZ MOJICA
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 16, 2012

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AND JUDGMENT:** SHORE J.

DATED: January 17, 2012

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