

Federal Court



Cour fédérale

**Date: 20120619**

**Docket: IMM-6737-11**

**Citation: 2012 FC 780**

**Toronto, Ontario, June 19, 2012**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MIGUEL ANGEL SANDOVAL SALAMANCA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Refugee Protection Division of the Immigration and Refugee Board rejected the claim for protection filed by Mr. Sandoval Salamanca, finding that “there is no objective basis for the claimant’s alleged fear, whether under section 96 or section 97 of the Act, as state protection is available to him.” The applicant made no effort to seek state protection before fleeing Guatemala for Canada.

[2] The Board made no finding as to credibility and therefore the Court must accept as true all of the facts alleged by the applicant.

### **Background**

[3] The applicant was born in Guatemala on November 15, 1988. During his university studies, he worked as a ramp agent for an airline company loading and unloading luggage from airplanes. On February 20, 2010, he was approached by two men who had a job proposition for him. They would give him \$50,000 if he placed a package on a plane. He was given two weeks to think about it and was warned not to contact airport, airline or police authorities. He was told that the organization to which these men belonged had people within all of these authorities that they would know if he reported them, and if he did then they would kill him and his family.

[4] Five days later, unable to cope with the stress, the applicant took a leave of absence from his job. The next morning, two men dragged him into a van and pointed a gun to his head. He was blindfolded and taken to an unknown location. He was told that he was going to die. He pled for his life and told the men that he would do anything. In response, the men told him that he had one more chance to place a package on a plane. The men reiterated that if the applicant told anyone then he and his family would be killed.

[5] On February 26, 2010, the applicant returned to work and booked a flight to Mexico. He spent the night at his friend's house and left the very next day. From Mexico, he crossed into the United States illegally. He called his sister who told him that the men threatened to kill him.

She was also afraid so she fled to El Salvador. On April 24, 2010, the applicant arrived in Canada and claimed refugee protection.

### **Issue**

[6] The sole issue is whether the Board's conclusion that the applicant had failed to rebut the presumption of state protection was reasonable.

### **Analysis**

[7] The applicant was asked by the Board why he did not report the encounters he had to his employer or to the police. He responded that he did not because the men who spoke to him informed him that they had people inside both organizations and he and his family would be killed if he reported their interaction. He also said that all of the police in Guatemala are corrupt.

[8] The statements below from the decision are indicative of the Board's assessment of this evidence and its view of the objective evidence of state protection in Guatemala. I agree with the applicant that the Board failed to consider or distinguish aspects of the objective documentary evidence that was directly contrary to its findings and which supported the applicant's assertions that he believed the police would do nothing and that corruption was rampant in the police force. There is no question that the Board is presumed to have considered all of the evidence before it. That presumption, however, is overcome when there is objective evidence that is in stark contrast to the Board's findings and which it fails to mention, let alone weigh or distinguish.

[9] The Board summarized the applicant's evidence as follows:

When asked about police corruption, the claimant testified that he believes all Guatemalan police officers are corrupt. ... When asked if he thought police would have investigated his allegations if he reported them, the claimant testified that police would not have investigated; there are many reports that police do not investigate... The claimant went on to say that from his own experience he knows that police do not perform their work, people get robbed and murdered all the time and that is why they would not protect him.

[10] The conclusions the Board reached were as follows:

Insufficient credible evidence was presented to indicate that the authorities would not provide the claimant with protection. ... [I]nsufficient credible evidence was forwarded to suggest...that police would not investigate their allegations.

Although there have been instances of corruption and misconduct within the police ranks in Guatemala, I find that there is no persuasive evidence before me to suggest that corruption is widespread, generalized, and systemic throughout all the police ranks...

I find that there is no persuasive evidence to establish that these problems have rendered the police force completely incapable or unable to provide an adequate measure of protection to those who need it in Guatemala [emphasis added].

[11] These findings that there was insufficient, “credible” or “persuasive” evidence is in stark contrast to three reports before the Board: Human Rights Watch World Reports 2011; Department of State (DOS) 2010 Country Reports on Human Rights Practices, Guatemala; and United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, Vol. 1, March 2011 [US Narcotics Report].

[12] The Human Rights Watch Report describes the virtual inability of the police force in Guatemala to deal with violent crime:

Guatemala's justice system has proved largely incapable of curbing violence and containing criminal mafias and gangs. According to official figures, there was 99.75 percent impunity for violent crime as of 2009. Deficient and corrupt police, prosecutorial, and judicial systems, as well as the absence of an adequate witness protection program, all contribute to Guatemala's alarmingly low prosecution rate. In addition, members of the justice system are routinely subject to attacks and intimidation [emphasis added].

[13] These figures are confirmed in the US Narcotics Report:

Guatemala is also beset with an array of transnational crime including trafficking in persons, arms trafficking, and an upsurge in regionally powerful youth gangs who engage in armed robbery, murder-for-hire and extortion schemes.

The GOG [Government of Guatemala] did not allocate the resources necessary to confront these challenges; it has one of the lowest tax collection rates in Latin America, and, in 2010, cut the justice and law-enforcement budgets. This constrained the effectiveness of U.S. Government (USG)-sponsored assistance. These factors have combined to create an impunity rate of 96.5 percent for murder, with similarly high numbers for other crimes including organized crime [emphasis added].

[14] In addition, although the Board rejected the applicant's testimony that all police in Guatemala were corrupt, and perhaps that was an overstatement, the applicant's assessment of corruption in the police force is largely affirmed in the US Narcotics Report: "Weak law enforcement and criminal justice institutions operate in an environment of pervasive corruption" and "corruption remains endemic in public institutions and society as a whole [emphasis added]."

[15] Lastly, it is noted that the US DOS Report says that “there were credible reports of killings of witnesses.”

[16] None of these passages or information from these objective reports was discussed by the Board. Given that they appear to strongly support the applicant’s evidence that he would be at risk if he went to the authorities and would not receive protection from them, the Board had a duty to make specific reference to this evidence and, if it remained of the view that the applicant could receive adequate protection from the police in Guatemala, state specifically why it so concluded in the face of this evidence.

[17] In this respect, I must note and briefly comment on the Board’s finding that “adequate and effective state protection might reasonably have been forthcoming to him [emphasis added].” That a person “might” receive state protection is not the proper test. He might also win the lottery. If only one in a great number receives protection, can it be said to be adequate? While no state offers perfect protection, and there will always be instances of persons who were not able to obtain adequate or any protection, in my view, the level necessary to show “adequate” state protection is a level where it is far more likely than not that the individual will be protected.

[18] The Minister does not have a burden of proving that there is state protection in a democracy; however, when an applicant whose credibility has not been impugned at all by the Board testifies that the police fail to protect and are corrupt and that his life will be at risk if he reports the criminal activity, and those views are supported by objective evidence, then the Board must provide reasons why that objective evidence is rejected or does not support the claimant’s

views. That was the failure of the Board in this case. The decision must be set aside as being unreasonable due to the failure to address the documentary evidence that was contrary to the view expressed by the Board and which supported the applicant's evidence as to the adequacy of state protection in Guatemala.

[19] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed, the application for protection is remitted to a differently constituted Board, and no question is certified.

"Russel W. Zinn"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6737-11

**STYLE OF CAUSE:** MIGUEL ANGEL SANDOVAL SALAMANCA v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 5, 2012

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

**DATED:** June 19, 2012

**APPEARANCES:**

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