

Federal Court



Cour fédérale

Date: 20130131

Docket: IMM-3389-12

Citation: 2013 FC 107

Ottawa, Ontario, January 31, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MARIANO MENDEZ HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, a 28 year old citizen of Mexico, claimed that the drug gang Los Zetas threatened him and he was stabbed for his refusal to sell drugs. His refugee protection claim was denied and he sought judicial review of that decision.

II. FACTS

[2] The Immigration and Refugee Board [IRB] decision sets out the crucial facts and conclusions reached. The salient features of the decision are:

- the Applicant's fear of Los Zetas means that he does not fall within one of the Convention grounds for refugee status;
- the Applicant was approached by Los Zetas in December 2007 to sell drugs. He was threatened and told not to go to the police. When the Applicant refused, he was stabbed;
- he was taken to hospital and allegedly a police report was filed, though the report was not submitted in evidence;
- following the stabbing incident, he moved to Mexico City in February 2008 where the cycle of violence continued. After hiding at a relative's house, he fled to Canada;
- the Applicant never reported the incidents to the Mexican authorities;
- there were no witnesses' reports, and the IRB was not satisfied that the assaults occurred;
- the perception of the Applicant being rich was not sufficient to ground a claim;
- the IRB concluded that Los Zetas wanted the Applicant to work for them due to his popularity;
- the IRB rejected the claim that police corruption meant that there was no state protection;
- three statements concerning threats posed were rejected for vagueness. The same applied to a letter from the Applicant's brother;

- the Applicant did not have a subjective fear as he took no steps to learn what was necessary to file a claim;
- the refugee claim was only made in April 2011 (three years after entry into Canada) at the urging of a girlfriend; and
- there was no personalized risk only evidence that crime is a serious problem common to many Mexicans.

[3] The only issue is whether the IRB decision is reasonable. The standard of review for the components of this decision (subjective fear, state protection, nexus) and the decision as a whole is reasonableness.

III. ANALYSIS

[4] On the issue of state protection, there is contradictory evidence that state protection is not available in certain parts of Mexico. However, it was within the scope of the IRB's mandate to express concern about the absence of any police reports, even the one filed by the hospital where the Applicant was treated following the stabbing.

[5] The IRB was entitled to rely on the presumption of state protection and it was reasonable in the context of this case to find that the Applicant failed to rebut the presumption.

[6] The failure to rebut the presumption of state protection is a complete answer to the Applicant's claim and on this ground alone, the claim would fail.

[7] It was not unreasonable to find that the Applicant had not established a nexus between a Convention grounds and the fear alleged. The fear of criminal gangs (except where such fear is based on one of the five Convention grounds) is not itself a valid basis for refugee status.

[8] The finding of only a generalized risk is reasonable given the evidence (see *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, 78 Imm LR (3d) 163).

[9] Lastly, it was reasonable to conclude that there was insufficient evidence of subjective fear. The IRB did not accept the Applicant's explanation that his employer advised him that if he went to immigration authorities, he would be deported. A three-year delay in seeking refugee protection is inconsistent with a real subjective fear of being returned to Mexico.

IV. CONCLUSION

[10] This decision viewed as a whole is reasonable and therefore this judicial review will be denied.

[11] There is no issue for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is denied.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3389-12

STYLE OF CAUSE: MARIANO MENDEZ HERNANDEZ

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 18, 2012

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

DATED: January 31, 2013

APPEARANCES:

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